

THE PUBLIC UTILITIES COMMISSION FOR THE STATE  
OF KANSAS ET AL., APPELLANTS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NAT-  
URAL GAS COMPANY, ET AL.

FILED SEPTEMBER 20, 1917.

No. 225.

KANSAS CITY, MISSOURI, THE PUBLIC SERVICE COM-  
MISSION OF THE STATE OF MISSOURI, ET AL., APPEL-  
LANTS.

JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.

FILED JANUARY 23, 1918.

No. 226.

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY  
GAS COMPANY, ET AL., APPELLANTS.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND  
GEORGE F. SHARITT, RECEIVERS, AND FIDELITY  
TITLE AND TRUST COMPANY.

FILED JANUARY 18, 1918.

No. 227.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS ET AL., APPELLANTS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NAT-  
URAL GAS COMPANY, ET AL.

FILED SEPTEMBER 20, 1917.



**(26,160, 26,283, 26,284, 26,323)**

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1918.**

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**No. 277.**

THE PUBLIC UTILITIES COMMISSION FOR THE STATE  
OF KANSAS ET AL., APPELLANTS,

*vs.*

JOHN M. LANDON, AS RECEIVER OF THE KANSAS  
NATURAL GAS COMPANY, ET AL.

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**No. 329.**

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COM-  
MISSION OF THE STATE OF MISSOURI, ET AL., AP-  
PELLANTS,

*vs.*

JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.

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**No. 330.**

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY  
GAS COMPANY, ET AL., APPELLANTS,

*vs.*

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON  
AND GEORGE F. SHARITT, RECEIVERS, AND FIDEL-  
ITY TITLE AND TRUST COMPANY.

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**No. 353.**

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS ET AL. APPELLANTS,

*vs.*

JOHN M. LANDON, AS RECEIVER OF THE KANSAS  
NATURAL GAS COMPANY, ET AL.

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a In the Supreme Court of the United States, October Term,  
1917.

No. 693.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS  
et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company  
et al., Appellees.

No. 816.

KANSAS CITY, MISSOURI, et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company  
et al., Appellees.

No. 817.

KANSAS CITY GAS COMPANY et al., Appellants,

vs.

KANSAS NATURAL GAS COMPANY et al., Appellees.

No. 856.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS  
et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company  
et al., Appellees.

Appeals from the District Court of the United States for the District  
of Kansas.

*Stipulation for Printing Record.*

b 1. That the entire record in case No. 817, together with  
the items called for in paragraph No. 76 of the præcipe in  
case No. 816, together with the entire record in case No. 856, avoid-  
ing duplications, may be printed, considered, used and constitute  
the record for each and all of the above entitled cases. The filing  
of the statements of errors intended to be relied upon and parts of

the record necessary for the consideration thereof with proofs of service provided for in Rule 10, are hereby waived.

2. That the cash deposit required by the clerk under Rule 10 for printing and supervision fees shall be advanced, one-fourth each by the Public Utilities Commission of Kansas, the Public Service Commission of Missouri, the City of Kansas City, Missouri, and the Kansas City Gas Company, and if said fees or any part thereof are finally taxed to and paid by appellees, the clerk shall refund the same to said parties in like proportion.

F. S. JACKSON,

H. O. CASTER,

*Solicitors for Public Utilities Commission for  
the State of Kansas et al., Appellants in  
693 and 856.*

J. A. HARZFELD,

A. F. SMITH,

A. F. EVANS,

ALEX. Z. PATTERSON,

JAS. D. LINDSAY,

R. H. DAVIS,

CHAS. L. FAUST,

*Solicitors for Kansas City, Missouri, Public  
Service Commission of Missouri, Joplin,  
Missouri, St. Joseph, Missouri, Attorney-  
General of Missouri, et al., Appellants in 816.*

J. W. DANA,

*Solicitor for Kansas City Gas Company et al.,  
Appellants in 817.*

J. W. DANA,

*Solicitor for The Wyandotte County Gas Com-  
pany, The Kansas City Pipe Line Company,  
and Fidelity Trust Company, Appellees in  
693 and 856.*

JOHN H. ATWOOD,

CHESTER I. LONG,

ROBERT STONE,

*Solicitors for John M. Landon, Receiver, et al.,  
Appellees in 693, 816, 817 and 856.*

T. S. SALATHIEL,

R. A. BROWN,

*Solicitors for Kansas Natural Gas Company  
et al., Appellees in 693, 816, 817 and 856.*

CHAS. BLOOD SMITH,

*Solicitor for Fidelity Title & Trust Company,  
Appellee in 693, 816, 817 and 856.*

JOHN J. JONES AND

CHAS. BLOOD SMITH,

*Solicitors for Geo. F. Sharitt, Receiver, et al.,  
Appellees in 693, 816, 817 and 856.*

d In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Notice.*

To Kansas Natural Gas Company, John M. Landon, and George F.  
Sharitt, Receivers of Kansas Natural Gas Company, and Fidelity  
Title and Trust Company, Greetings:

You will please take notice that the appellants have lodged their  
statement of the evidence in the Clerk's office for your examination  
and have filed their praecipe for a transcript of the record on appeal  
and that they will on the 15th day of December, 1917, at ten o'clock  
A. M. or as soon thereafter as convenient to the Court, at the Court-  
room of the United States District Court at Minneapolis, Minnesota,  
apply to the Court or the Honorable Wilbur F. Booth, Judge assigned  
to the above entitled cause, to approve said statement of the evidence  
and settle said record on appeal to the Supreme Court of the United  
States.

J. W. DANA,  
*Solicitor for Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity  
Trust Company, and The Kansas City Pipe  
Line Company.*

Service of the foregoing notice and receipt of a copy of the praecipe  
are acknowledged and accepted this 1st day of December,  
e 1917.

CHAS. BLOOD SMITH,  
*Solicitor for George F. Sharitt, Receiver  
of Kansas Natural Gas Co.*  
CHAS. BLOOD SMITH,  
*Solicitor for Fidelity & Title Tr. Co.*  
CHESTER L. LONG,  
JOHN H. ATWOOD,  
ROBERT STONE,  
*Solicitor for John M. Landon, Receiver  
of Kansas Natural Gas Co.*

1816.

Service of the foregoing notice and receipt of a copy of the praecepe are acknowledged and accepted this 4th day of December, 1917.

T. S. SALATHIEL,

R. A. BROWN,

*Solicitor for Kansas Natural Gas Company*

Filed — the District Court. Dec. 7, 1917. Morton Albough,  
Clerk.

1817.

In the District Court of the United States for the District of Kansas,  
First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

f THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS  
et al, Defendants.

*Notice.*

To John M. Landon, Receiver of the Kansas Natural Gas Company;  
The Kansas Natural Gas Company; George F. Sharritt, Receiver of  
The Kansas Natural Gas Company:

Please take notice that the undersigned appellants have lodged in the office of the Clerk of the District Court of the United States for the District of Kansas, First Division, their statement of the evidence in the above entitled cause, prepared under Equity Rule 75, and said appellants will, on December 15, 1917, at the hour of ten A. M. or as soon thereafter as counsel may be heard, in the Court Room of the United States District Court, at Minneapolis, Minnesota, request Judge Wilbur F. Booth, United States District Judge, assigned to this cause, to approve said statement of the evidence.

The undersigned appellants now serve upon you their præcipe, prepared under Equity Rule 75.

THE CITY OF KANSAS CITY, MISSOURI,  
By J. A. HARZFELD,  
*City Counselor of Kansas City, Missouri.*  
BENJ. M. POWERS,

1818.

*Assistant City Counselor.*  
THE PUBLIC SERVICE COMMISSION OF  
THE STATE OF MISSOURI AND  
WILLIAM G. BUSBY,  
EDWIN J. BEAN,  
DAVID E. BLAIR,  
NOAH W. SIMPSON, AND  
EDWARD FLAD,

*As the Public Service Commission of the State of Missouri;*  
ALEX. Z. PATTERSON,

*As Attorney for the Public Service Commission  
of the State of Missouri, and*  
FRANK W. McALLISTER,

*As Attorney General of the State of Missouri.*  
By ALEX. Z. PATTERSON,  
*General Counsel of the Public Service Commission  
of the State of Missouri.*

JAMES D. LINDSAY, *Assistant Counsel.*  
THE CITY OF JOPLIN, MISSOURI,

By R. H. DAVIS,  
*City Attorney of Joplin, Missouri.*  
THE CITY OF ST. JOSEPH, MISSOURI,  
By CHARLES L. FAUST,  
*City Attorney of St. Joseph, Missouri.*

The Undersigned respondents hereby acknowledge receipt and service this First day of December, 1917, of the above notice and the Præcipe of the above named appellants.

JOHN M. LANDON,  
*Receiver of the Kansas Natural Gas Company.*  
By JOHN H. ATWOOD,  
CHESTER L. LONG,  
ROBERT STONE,

*His Attorneys of Record.*  
THE KANSAS NATURAL GAS COMPANY,  
By T. S. SALATHIEL AND  
ROBERT A. BROWN,

*Its Attorneys of Record.*  
GEORGE F. SHARRITT,  
*Receiver of the Kansas Natural Gas Company.*  
By JOHN J. JONES AND  
CHAS. BLOOD SMITH.

Dec. 4, 1917.

Filed in District Court Dec. 11, 1917. Morton Albaugh, Clerk.



1819.

## 1 UNITED STATES OF AMERICA:

To John M. Landon, Receiver of the Kansas Natural Gas Company;  
The Kansas Natural Gas Company, and George F. Sharritt, as  
Receiver of the Kansas Natural Gas Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington in the District of Columbia, on the eighth day of December, A. D. 1917, pursuant to an order allowing an appeal from the final order and decree in the District Court of the United States for the District of Kansas, First Division, entered on August 13, 1917, in that certain cause In Equity numbered No. 136-N, wherein John M. Landon, Receiver of the Kansas Natural Gas Company, is plaintiff and The Public Utilities Commission of the State of Kansas and others are defendants and The City of Kansas City, Missouri, The Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, are appellants and you, and each of you, are respondents, to show cause, if any there be, why the said decree rendered against the said appellants as aforesaid should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America, this eighth day of November, A. D. 1917.

JOHN C. POLLOCK,

*Judge of the District Court of the United States  
for the District of Kansas, First Division.*

Ordered on request  
JUDGE BOOTH.

2 I hereby accept and acknowledge service of the within citation this 9 day of November, 1917, having received a copy thereof.

JOHN M. LANDON,

*Receiver of the Kansas Natural Gas Company.*

By CHESTER I. LONG,  
JOHN H. ATWOOD,  
ROBERT STONE,

*His Attorneys of Record,*  
THE KANSAS NATURAL GAS  
COMPANY,

By ———, *Its Attorney of Record,*  
GEORGE F. SHARRITT,

*As Receiver of the Kansas Natural Gas Company.*

By ———, *His Attorney of Record.*

[Endorsed:] No. 136-N. In Equity. John M. Landon, Receiver of the Kansas Natural Gas Co., Plaintiff, vs. The Public Utilities Commission of the State of Kansas, et al., Defendants. Citation on Appeal on Behalf of Public Service Commission of the State of Missouri. Filed Dec. 11, 1917. Morton Albaugh, clerk.

3 I hereby accept and acknowledge service this First day of December, 1917, of the Citation issued pursuant to the appeal of the Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Kansas City, Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, from the final decree in that cause in the District Court of the United States for the District of Kansas, First Division, entitled John M. Landon, Receiver of the Kansas Natural Gas Company, Plaintiff vs. The Public Utilities Commission of the State of Kansas, et al., Defendants, No. 136-N. In Equity, having received a true copy thereof.

KANSAS NATURAL GAS COM-  
PANY.

By T. S. SALATHIEL AND  
ROBERT A. BROWN,

*Its Attorneys of Record,*

JOHN M. LANDON,

*Receiver of Kansas Natural Gas Company,*

By CHESTER I. LONG,

JOHN H. ATWOOD,

ROBERT STONE,

*His Attorneys of Record,*

GEORGE F. SHARRITT,

*Receiver of Kansas Natural Gas Company,*

By JOHN J. JONES &

CHAS. BLOOD SMITH,

*His Attys.*

[Endorsed:] #136-N. Acknowledgement of Service of Citation on behalf of Public Service Commission of the State of Missouri. Filed Dec. 11, 1917. Morton Albaugh, Clerk.

4 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receiver of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS;

Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public  
Utilities Commission of the State of Kansas;

H. O. Castor, as Attorney for the Public Utilities Commission of the  
State of Kansas;

S. M. Brewster, as Attorney-General of the State of Kansas;

John T. Barker, as Attorney-General of the State of Missouri;

William G. Busby, as Counsel of the Public Service Commission of  
the State of Missouri;

The Public Service Commission of the State of Missouri;

John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw,  
and Eugene McQuillan, as the Public Service Commission of the  
State of Missouri;

John F. Overfield, as Receiver of the Kansas City Pipe Line Com-  
pany;

Fidelity Title & Trust Company, a Corporation;

Fidelity Trust Company, a Corporation;

Delaware Trust Company, a Corporation;

Kansas City Pipe Line Company, a Corporation;

George F. Sharritt, as Receiver of the Kansas Natural Gas Company;

Kansas Natural Gas Company,

Distributing Companies:

St. Joseph Gas Company;

The Union Gas and Traction Company;

5 The Atchison Railway, Light and Power Company;

The Leavenworth Light, Heat and Power Company;

The Tonganoxie Gas and Electric Company;

The Citizens Light, Heat and Power Company;

L. G. Treleven, Receiver, The Consumers Light, Heat and Power  
Company;

The Kansas City Gas Company;

The Wyandotte County Gas Company;

The Olathe Gas Company;

The Ottawa Gas and Electric Company;

O. A. Evans and Company;

The Parsons Natural Gas Company;

The Elk City Oil and Gas Company;

The American Gas Company;

The Home Light, Heat and Power Company;

The Carl Junction Gas Company;  
 The Oronogo Gas Company;  
 The Joplin Gas Company;  
 The Weir Gas Company;  
 The Kansas Gas & Electric Company;  
 The Fort Scott & Nevada Light, Heat, Water and Power Company;  
 The Coffeyville Gas & Fuel Company;  
 The Fort Scott Gas & Electric Company;  
 The Kansas Farmers Gas Company;  
 The Edgerton Gas Company;  
 The Gardner Gas Company;  
 The Baldwin Gas Company;  
 The Ottawa Gas & Electric Company;  
 The Richmond and Princeton Gas Company;  
 The Wellsville Gas Company;  
 The Anderson County Light & Heat Company.

Cities:

St. Joseph, Missouri;	Moran, Kansas;
Weston, Missouri;	Ft. Scott, Kansas;
Atchison, Kansas;	Deerfield, Missouri;
Leavenworth, Kansas;	Nevada, Missouri;
Tonganoxie, Kansas;	Thayer, Kansas;
Topeka, Kansas;	Parsons, Kansas;
Lawrence, Kansas;	Elk City, Kansas;
Baldwin, Kansas;	Independence, Kansas;
Ottawa, Kansas;	Coffeyville, Kansas;
Kansas City, Missouri;	Liberty, Kansas;
Kansas City, Kansas;	Altamont, Kansas;
Merriam, Kansas;	Oswego, Kansas;
Shawnee, Kansas;	Columbus, Kansas;
Lenexa, Kansas;	Scammon, Kansas;
Olathe, Kansas;	Weir City, Kansas;
Gardner, Kansas;	Cherokee, Kansas;
Edgerton, Kansas;	Galena, Kansas;
Wellsville, Kansas;	Pittsburg, Kansas;
Princeton, Kansas;	Carl Junction, Missouri;
Scipio, Kansas;	Oronogo, Missouri;
Richmond, Kansas;	Joplin, Missouri;
Welda, Kansas;	Oakland, Kansas;
Colony, Kansas;	Rosedale, Kansas,
Bronson, Kansas;	Defendants,

For cause of action against the defendants, the plaintiffs, John M. Landon and R. S. Litchfield, as Receivers of the Kansas Natural Gas Company, by direction of the District Court of Montgomery County, Kansas, file this bill of complaint, and allege:

## I.

That this bill of complaint is dependent upon and ancillary to the causes entitled John L. McKinney, et al., v. Kansas Natural Gas Company, No. 1351; Equity, and Fidelity Title & Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company No. 1-N, Equity, now pending in this Court, and is brought for the purpose of protecting the property now in the potential possession of this Court in said causes, and of enforcing the jurisdiction of this Court in said causes.

That the matter and amount in controversy in this cause exceeds the sum or value of Three Thousand Dollars, exclusive of interest and costs.

That the causes of action herein stated arise under the constitution and laws of the United States.

That this Bill of Complaint is filed against the Public Utilities Commission of the State of Kansas and the Public Service Commission of the State of Missouri for the purpose of restraining and enjoining said Commissions from prescribing and requiring these

7 plaintiffs to observe certain schedules of rates for the transportation and sale of natural gas in said states, which said rates are so unreasonably low as to be unremunerative, non-compensatory and confiscatory, and amount to the taking of property in the possession and control of these plaintiffs without compensation and without due process of law; and to prevent and restrain said two Commissions and the Attorney-General of each of said States, and the Attorney and Counsel of each of said Commissions from interfering with plaintiffs' putting in reasonable rates until such time as some lawful authority approves a lawful schedule of rates, and to restrain and enjoin said Public Utilities Commission and said Public Service Commission from interfering with the interstate commerce conducted by these plaintiffs in the transportation, distribution and sale of natural gas produced in Oklahoma and transported and delivered to consumers in Kansas and Missouri.

That the causes of action herein set forth against the Public Utilities Commission of the State of Kansas and the Public Service Commission of the State of Missouri, the Attorney-General of each of said States, and the Attorney and Counsel of each of said Commissions, are united in order to promote the convenient administration of justice and for the reason that the relationship and the acts of the parties are and have been such that it is not practicable to present, hear and determine said causes other than in one court and at the same time.

## II.

That the defendants, Joseph L. Bristow, C. F. Foley and John M. Kinkel, are the duly appointed, qualified and acting members of the Public Utilities Commission of the State of Kansas; that the defendant S. M. Brewster, is the duly elected, qualified and



8 acting Attorney-General of the State of Kansas and the chief law officer of the State of Kansas; that the defendant, H. O. Castor, is the duly appointed, qualified and acting Attorney for the Public Utilities Commission of the State of Kansas. That the defendant members of the Public Utilities Commission of the State of Kansas, and the defendant Attorney-General of the State of Kansas, and the defendant Attorney for the Public Utilities Commission of the State of Kansas, are charged by the laws of the State of Kansas with the duty and obligation of executing and enforcing all of the laws affecting public utilities and other property.

That the defendant, John T. Barker, is the duly elected, qualified and acting Attorney-General of the State of Missouri.

That the defendant, William G. Busby, is the duly appointed, qualified and acting Counsel of the Public Service Commission of the State of Missouri.

That the defendants, John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw and Eugene McQuillan, are the duly appointed, qualified and acting members of the Public Service Commission of the State of Missouri. That the defendant members of the Public Service Commission of Missouri and the defendant Attorney-General of the State of Missouri and the defendant Counsel of the Public Service Commission of the State of Missouri are charged by the laws of the State of Missouri with the duty and obligation of executing and enforcing the laws of said State affecting public utilities and other property.

That the defendant Fidelity Title & Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is trustee under a certain first mortgage and supplemental mortgages heretofore executed by the  
9 Kansas Natural Gas Company on its property here involved.

That said Fidelity Title & Trust Company is complainant in two of the suits pending in this Court herein referred to.

That the defendant, the Delaware Trust Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is the trustee under a certain second mortgage executed and delivered by the Kansas Natural Gas Company covering part of the property here involved. That the said Delaware Trust Company is defendant in one of the suits herein mentioned.

That the Fidelity Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is the trustee under a certain first mortgage and three supplemental mortgages executed and delivered by the Kansas City Pipe Line Company, whose property, as hereinafter set forth, has been leased to the Kansas Natural Gas Company and is being operated by the plaintiff receivers.

That the Kansas City Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey. That all of the property of said Kansas City Pipe Line Company has heretofore been leased to the Kansas Natural

Gas Company and is now in the possession of the Receivers of said Kansas Natural Gas Company. That said pipe lines of the Kansas City Pipe Line Company are of but little or no use unless they be operated in conjunction with the balance of the system of the Kansas Natural Gas Company.

That the Marnet Mining Company is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia. That said Marnet Mining Company owns certain  
10 property and pipe lines in the State of Oklahoma, which said pipe lines and property form a part of the system of the Kansas Natural Gas Company, as will be more fully seen by reference to the files in the case of John L. McKinney, et al. v. Kansas Natural Gas Company, et al., pending in this Court, the files of which case are hereby made a part of this petition by reference. That all of the property of the said Marnet Mining Company is of but little value if separated from the system of pipe lines operated by the Kansas Natural Gas Company.

That John F. Overfield is a citizen and resident of Montgomery County, Kansas, and was, on the 21st day of June, 1913, appointed Receiver of the Kansas City Pipe Line Company by the District Court of Montgomery County, Kansas, in a proceeding had in that court, and is still such receiver.

That the defendant Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and from 1904 to October, 1912, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas. That it has been duly admitted to do business in the State of Kansas as a foreign corporation. That it owns and operates a system, by lease and otherwise, of pipe lines extending from the counties of Roger, Wagoner, and Tulsa in the State of Oklahoma northerly to the Kansas-Oklahoma state line, and through the State of Kansas into the state of Missouri, with terminals at Joplin, Oronogo, Neck City, Nevada, Kansas City and St. Joseph in the State of Missouri, and Atchison, Leavenworth, Topeka, Galena, Pittsburg and Kansas City in the State of Kansas, and other points, which are more fully shown in the map herein referred to and filed with this petition. That since October, 1912, said system of pipe  
11 lines has been in the control of and operated by receivers of said Kansas Natural Gas Company.

That the defendant George F. Sharritt has potential possession and control of the property of the Kansas Natural Gas Company, and the property under lease by it, within the states of Kansas, Oklahoma and Missouri, as Receiver of this Court, under order of September 22, 1914, made and entered in the cases of John L. McKinney, et al. v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title & Trust Company v. Kansas Natural Gas Company and Delaware Trust Company, No. 1-N, Equity, now pending in this Court, as will more particularly appear hereinafter.

## III.

That said John M. Landon and R. S. Litchfield, plaintiffs, are in the actual possession and control of the property of the Kansas Natural Gas Company, and the property under lease to it, in the State of Kansas, as Receivers of said company appointed by the District Court of Montgomery County, Kansas, in a proceeding had in said court as is more fully set forth herein.

That said John M. Landon and R. S. Litchfield are in the actual possession and control of the pipe line system of the Kansas Natural Gas Company, including the leased lines, located in the States of Oklahoma and Missouri as ancillary receivers of this Court under an appointment had in the cases of John L. McKinney, et al. v. Kansas Natural Gas Company, and Fidelity Title & Trust Company v. Kansas Natural Gas Company and Delaware Trust Company, now pending in this Court. That the files and papers of said last two mentioned cases are specifically referred to and incorporated by reference herein, for the reason that the volume of such records is so great that it is physically impossible to include them in this bill.

## IV.

That on January 5, 1912, the Honorable John S. Dawson, then Attorney-General of the State of Kansas, as such Attorney-General, commenced an action in the District Court of Montgomery County, Kansas, being case No. 13,476, in said court, entitled The State of Kansas v. The Independence Gas Company, a corporation. The Consolidated Gas, Oil & Manufacturing Company, a corporation, and Kansas Natural Gas Company, a corporation, defendants, for the purpose of ousting said corporations, and each of them, from the exercise of corporate powers and privileges within the State of Kansas, and for the appointment of receivers for said corporations for and on account of violations of the anti-trust and anti-monopoly laws of the State of Kansas, and for and on account of the abuses and misuse of the corporate powers and privileges of said corporations in seeking to control and monopolize the business of producing, purchasing, transporting and selling of natural gas in the State of Kansas, and of destroying competition in said business, and other corporate abuses; that said defendants were legally served with summons, and answered in said cause, and said cause was legally tried before the court on September 28th, 29th, and October 1st, 1912, and said cause at said time, submitted to the court for its determination; that afterwards and on February 15, 1913, the District Court of Montgomery County, Kansas, having fully considered the evidence, and being fully advised, entered its order finding the said defendants guilty as charged in the petition of the Attorney-General, and appointed these plaintiffs, John M. Landon and R. S. Litchfield, as Receivers for all of the property and assets of Kansas Natural Gas Company in the State of Kansas and elsewhere, and di-

rected them forthwith to take possession of, and control and manage all of the said properties and assets of Kansas Natural Gas Company, and to carry on and conduct the business theretofore carried on and conducted by Kansas Natural Gas Company. That after said cause had been submitted to the District Court of Montgomery County, Kansas, on October 1, 1912, and to-wit, on October 7, 1912, one John L. McKinney, a stockholder, and the holder of certain of the second mortgage bonds of Kansas Natural Gas Company, filed a bill in this Court, No. 1351, Equity, alleging the insolvency of Kansas Natural Gas Company, and praying the appointment of receivers to take possession of, hold and manage its properties and assets; that on said day Kansas Natural Gas Company, by Eugene Mackey, its President, and its general attorney, John J. Jones, entered its voluntary appearance in said cause confessing the allegations of said bill, and consented to the appointment of receivers, and on October 9th, 1912, its President, Eugene Mackey, then of Pittsburgh, Pennsylvania, Conway F. Holmes of Kansas City, Missouri, and George F. Sharitt, of Topeka, Kansas, were by said court appointed receivers for Kansas Natural Gas Company, and immediately qualified and took possession of all properties of Kansas Natural Gas Company in the states of Oklahoma, Kansas and Missouri, and thereafter carried on the business theretofore conducted by Kansas Natural Gas Company of producing, purchasing, distributing and selling natural gas to the people of Kansas and Missouri.

That thereafter and within ten days of said 9th day of October, 1912, and pursuant to the requirements of Section 56 of Chapter 4 of the Judicial Code (Act of Congress of March 3, 1911) a certified copy of the bill of said John L. McKinney and of the said order of the court appointing said receivers were filed in the United States District Court for the Western District of Missouri and also in the United States District Court for the Eastern District of Oklahoma.

That on February 3, 1913, suit was filed in this Court by the Fidelity Title & Trust Company, complainant, against the Kansas Natural Gas Company and the Delaware Trust Company, defendants, being No. 1-N, Equity, to foreclose a mortgage, under which it was trustee, on the property of the Kansas Natural Gas Company. On the same date, on motion the receivership theretofore existing by order of said court in suit No. 1351, wherein John L. McKinney and the Fidelity Title & Trust Company were complainants and the Kansas Natural Gas Company and the Delaware Trust Company defendants, was extended on the same terms and conditions to said suit commenced by the Fidelity Title & Trust Company, and the receivers therein appointed were appointed receivers of the property described in the bill of complaint filed by the said Fidelity Title and Trust Company.

That thereafter in argument of the cause in the District Court of Montgomery County, Kansas, the attention of the District Court of Montgomery County, Kansas, was called to the fact of the appointment of said Federal receivers and of their possession of the property and assets of Kansas Natural Gas Company, and upon entering its

decree on February 15, 1913, the District Court of Montgomery County, Kansas, ordered John S. Dawson, Attorney-General, and said John M. Landon and R. S. Litchfield as receivers, appointed by said court, to appear in this Court and urge the prior jurisdiction of the District Court of Montgomery County, Kansas, over the subject matter, and the parties and the rights of the State of Kansas in said action, and that they pray a delivery of the property to the receivers appointed by the District Court of Montgomery County, Kansas; that acting under said instruction, said state receivers employed counsel learned in the law, and made said application to this Court on February 18, 1913, praying for delivery of all property in the hands of the said federal receivers to the receivers appointed by the District Court of Montgomery County, Kansas. That afterwards this Court rendered judgment thereon directing the delivery to said state receivers of all of the property of Kansas Natural Gas Company in Kansas; (206 Fed. 772). That said judgment was affirmed by the Circuit Court of Appeals, Eighth Circuit (209 Fed. 300), and said federal receivers, on January 1, 1914, delivered to said state receivers all of the property of Kansas Natural Gas Company situated in the State of Kansas.

That during the pendency of the aforesaid appeal and on July 10, 1913, the said Public Utilities Commission of Kansas made an order directing the federal receivers to extend their pipe lines in Oklahoma so as to secure additional gas, a copy of which order is hereto attached, marked Exhibit "G." On application by the Federal receivers to this Court for instruction, this Court on July 24, 1913, directed said receivers not to comply with the order of the said commission. (219 Fed. 614.)

That on the 6th day of December, 1913, an application was filed in said District Court of Montgomery County, Kansas, in said cause therein pending, requesting the court to extend the receivership in said cause on the additional ground of insolvency, for the reason of the confessed insolvency made by Kansas Natural Gas Company in the United States District Court, and the court, upon being advised, sustained said application, and extended the receivership upon the additional ground of insolvency.

That on the 2nd day of January, 1914, the said Eugene Mackey, resigned as receiver of the Kansas Natural Gas Company, appointed in the case of John L. McKinney et al. v. Kansas Natural Gas Company and in the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., and on the 9th day of January, 1914, said resignation was by this Court accepted and said Eugene Mackey was discharged as such receiver.

That on March 12, 1914, Conway F. Holmes, one of the two remaining receivers appointed by this Court, resigned as receiver for the Kansas Natural Gas Company, and such resignation was by this Court accepted and on said date the said George F. Sharritt was made the sole receiver of this Court for the Kansas Natural Gas Company and the properties operated by it for the District of Kansas, the Western District of Missouri and the Eastern District of Oklahoma,

and the said George F. Sharritt ever since said date has been and now is such receiver.

That after said property of the Kansas Natural Gas Company within the State of Kansas was delivered to said state receivers on January 1, 1914, said state receivers, acting through their attorneys, made further application to this Court for the delivery of the remaining property of Kansas Natural Gas Company in the hands of said Federal receivers, which application was denied and on appeal to the Circuit Court of Appeals, said order of this Court was reversed

(217 Fed. 187), and in accordance with the mandate of said Court of Appeals, this Court ordered its receiver, pursuant to the order set forth herein, to deliver to said state receivers of the District Court of Montgomery County, Kansas, all of the property and assets of every kind and nature of Kansas Natural Gas Company situated in the states of Oklahoma and Missouri, excepting \$50,000 in money retained by this Court, and on September 22, 1914, the possession of all property and assets of every kind and character of Kansas Natural Gas Company, except the \$50,000 as aforesaid, was delivered by said Federal receiver to said state receivers as aforesaid, and since said time said state receivers have been conducting and carrying on the business theretofore carried on and conducted by the Federal receivers and by the Kansas Natural Gas Company prior to the appointment of the Federal receivers.

That the transcripts of the records in said above mentioned causes in the Circuit Court of Appeals, Eighth Circuit, to-wit, Kansas City Pipe Line Company v. Fidelity Title & Trust Company, No. 4202; Kansas City Pipe Line Company and Fidelity Trust Company v. Fidelity Title & Trust Company, et al., No. 4179; John M. Landon and R. S. Litchfield v. Kansas Natural Gas Company et al., No. 4195; Kansas City Pipe Line Company and Fidelity Trust Company v. Fidelity Title & Trust Company, No. 4196; John L. McKinney et al. v. John M. Landon et al., No. 4008, and Fidelity Title & Trust Company v. John M. Landon et al., No. 4009, are hereby referred to and incorporated by reference herein for the reason that the volume of such transcripts and records is so great that it is physically impossible to include them in this bill.

That so much of said order of September 22, 1914, as is pertinent hereto, so made by this Court in said cause is as follows:

18 "It is further ordered, adjudged and decreed that this Court through its said receiver, George F. Sharritt, shall retain the potential possession of the estates, properties and assets of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company, and Marnet Mining Company, situate in the States of Kansas, Missouri and Oklahoma or elsewhere in this the Eighth Judicial Circuit; but the said John M. Landon and R. S. Litchfield and their successors shall have the right as Receivers to retain the actual possession, control and management of the estate, property, money, funds, assets and earnings of the said Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and The Marnet Mining Company situated in the states of Missouri and



Oklahoma or elsewhere, under the terms and conditions expressed in the order of this Court made January 24, 1914, as modified herein; the intent hereof being, that if and when said State Court shall surrender, lose or abandon possession, jurisdiction or control over said properties or any part thereof (otherwise than a loss of control resulting from a sale or other disposition by order of said State Court) the same shall thereupon revert to the possession of the receiver of this Court; to the end that no other person, officer or court shall be enabled or permitted to seize, levy upon, possess, control or exercise jurisdiction over any of the estates, properties or assets of said Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and the Marnet Mining Company within this the Eighth Judicial Circuit except the District Court of Montgomery County, Kansas, and its ancillary receivers and the said John M. Landon and R. S. Litchfield, receivers appointed by said Court, and that, by virtue of the prior right of

19 possession and jurisdiction of said Court to said properties situated in the State of Kansas and pursuant to and upon the terms and conditions provided for in said order of January 24, 1914, as herein modified; and said order of this Court dated January 24, 1914, together with this modification thereof and a certified copy of the order of the District Court of Montgomery County, Kansas, and of the receipt of said receivers pursuant to this order shall be filed in the District Court of the United States for the Eastern District of Oklahoma and the District Court of the United States for the Western District of Missouri, in the manner provided by Sec. 56 of the Judicial Code; and all persons, and officers and receivers appointed by other courts will take notice hereof and they are hereby restrained and enjoined from attempting to levy upon, seize, possess or control any of the properties of the Kansas Natural Gas Company, including the leasehold estate and contracts of and with the Kansas City Pipe Line Company and the Marnet Mining Company, or any part thereof, situate in the States of Kansas, Missouri, or Oklahoma, or elsewhere in this the Eighth Judicial Circuit, and from molesting, disturbing or interfering with the actual possession and control of said properties by the said John M. Landon and R. S. Litchfield, receivers appointed by the District Court of Montgomery County, Kansas."

That on or about January 9, 1915, this Court on application duly made, appointed said John M. Landon and R. S. Litchfield ancillary receivers in this court in said causes therein pending, for all the property and assets of the Kansas Natural Gas Company situated in the States of Missouri and Oklahoma. That thereupon said John M. Landon and R. S. Litchfield duly qualified as required by the orders of this Court and ever since said time have been and

20 now are the duly qualified and acting receivers of this Court for all the property of the Kansas Natural Gas Company situated in the states of Missouri and Oklahoma.

## V.

That on the 17th day of December, 1914, all parties concerned in said suits pending in the Federal and state courts, including the State of Kansas, the First and Second mortgage bondholders of the Kansas Natural Gas Company and the Kansas City Pipe Line Company, the Kansas Natural Gas Company, the said John M. Landon and R. S. Litchfield, as Receivers of the Kansas Natural Gas Company, and the Marnet Mining Company, entered into a certain agreement and stipulation called "Creditors' Agreement," which agreement is of record in said suits mentioned in both state and this Court and approved by the District Court of Montgomery County, Kansas, a copy of which Creditors' Agreement is hereto attached, marked Exhibit "A," and made a part hereof.

That said Kansas Natural Gas Company, prior to the appointment of receivers, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas, and carrying on its said activities in the states of Oklahoma, Kansas and Missouri; that after the appointment of the receiver of this Court, said receivers continued and carried on the said business after the manner the same had been theretofore conducted by Kansas Natural Gas Company, and after the delivery of the property aforesaid, to said state receivers, as aforesaid, they continued to carry on said business theretofore conducted and carried on by said Federal receivers and by said Kansas Natural Gas Company.

21 That in carrying on said business as aforesaid, these plaintiff receivers carry on and conduct the same by the use of instrumentalities consisting of pipelines, gas wells, compressor stations, gathering lines, feed lines, measuring stations, regulation stations, and other devices commonly used in the gas business, and that said pipelines extend from the counties of Roger, Wagoner and Tulsa in the State of Oklahoma, northerly through the counties of Washington and Nowata, in the State of Oklahoma, through the State of Kansas, and into the State of Missouri, reaching terminals at Joplin, Oronogo, Neck City, Nevada, Kansas City and St. Joseph, in the State of Missouri; that the said pipelines extending through Kansas reach the cities of Atchison, Leavenworth, Topeka, Galena, Pittsburg and Kansas City, and points intermediate between the said last named points in the State of Kansas and the Kansas-Oklahoma state line. That the gas is taken from the wells where it is produced in the states of Oklahoma and Kansas, and piped at its own natural pressure into pipelines which transport it to the main pipelines or trunk lines extending from Oklahoma through Kansas, into Missouri. It is transported through said pipelines to the compressor stations, where it is compressed to a high pressure and made to flow freely through said pipelines by means of said compression to the next compressor station, where it is again compressed and made to flow through said pipeline to the next compressor station, where it is again compressed, and by this process of compression and recompression, it is transported through said pipelines to the consumers



in the states of Kansas and Missouri. That each of said compressor stations is part of the unit system of transportation owned and operated by these plaintiffs, and are essential and necessary parts of said transportation system.

22 That said pipelines constitute one complete system, which cannot be operated separately or otherwise than as one unit. That said natural gas from the time it leaves the gas wells in Oklahoma until it is delivered to the consumers in the states of Kansas and Missouri and by them consumed, is in continuous course of transportation and at no time is it stored or is its transportation suspended. That plaintiffs begin in Oklahoma such transportation of natural gas with the intent and purpose that said natural gas shall be continuously moved and transported without interruption until it is delivered to consumers in Kansas and Missouri, and the same is true of the natural gas transported from Kansas to consumers in Missouri. That none of the natural gas transported by plaintiffs is produced in Missouri, and only 6% is both produced and delivered to consumers in Kansas.

That the natural gas is delivered to the consumers in the several cities by plaintiffs through distributing companies under written contracts of which those set out in the files and records in cases No. 1351 Equity, and No. 1-N, Equity, of this Court are typical. That the amount paid by the consumer for natural gas purchased, as measured by his meter, is divided between plaintiffs and the distributing company in payment of the services rendered by each according to the percentages set out in the contracts above referred to, and such amount includes the original cost of the product to plaintiffs plus the cost of transportation and profits, if any.

That of the total volume of natural gas obtained and transmitted by plaintiffs in carrying on said business, approximately 85% is obtained in Oklahoma and 15% in Kansas, and that the portion obtained from Kansas wells is piped and transmitted from said wells

direct to the transporting pipelines employed by plaintiffs, and  
23 is there, and immediately upon entering the same, inextricably commingled with the gas from Oklahoma wells, and cannot be thereafter separated or distinguished from the same; nor can such Kansas gas be controlled without interfering with the control and management of said Oklahoma gas, which is transmitted through and by means of said pipelines from the wells in Oklahoma in one continuous and uninterrupted journey to the consumers in Kansas and Missouri.

These plaintiffs further say that the business carried on and conducted by them as and in the manner aforesaid, is the carrying on of business and commerce among different states of the Union, to-wit, Oklahoma, Kansas and Missouri, and is exclusively under the control of the Congress of the United States, as confided to it by Section 8 of Article I of the Constitution of the United States, and is not subject to control, regulation or interference by the states of Kansas, or Missouri, or their officers.

## VI.

That in March, 1911, the Legislature of the State of Kansas enacted Chapter 238, Laws of Kansas, 1911, which created the Public Utilities Commission and provided among other things as follows:

30. "Unless the Commission shall otherwise order, it shall be unlawful for any common carrier or public utility governed by the provisions of this act within this state to demand, collect or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same services on the 1st day of January, 1911."

20. "Whenever any common carrier or public utility governed by the provisions of this act shall desire to make any change  
24 in any rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the services or rates of any such public utility or common carrier, such public utility or common carrier shall file with the Public Utilities Commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications or in new issues thereof. No change shall be made in any rate, toll, charge or classification or schedule of charges, joint rates or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission, and within thirty days after such changes have been authorized by said Public Utilities Commission, then copies of all tariffs, schedules, and classifications, and all rules and regulations, shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection."

That the Kansas Natural Gas Company and these plaintiff receivers have been unable to secure the permission of the Public Utilities Commission of the State of Kansas to raise the price of gas except as hereinafter stated.

That on January 1, 1911, rates were in effect for the sale and delivery of gas in accordance with the schedule marked Exhibit "C" hereto attached and made a part hereof.

That said Chapter 238 took effect the 22nd day of May, 1911, and provided among other things as follows:

25 Sec. 38. "If any common carrier or public utility governed by the provision of this act shall violate any of the provisions of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it in this act, or shall fail, neglect or refuse to obey any lawful requirement or order made by the commissioners, or any final judgment or decree made by any court upon appeal from any order of the commissioners, it shall, for every such violation, failure or refusal, forfeit and pay to the support of the common schools a sum not less than one hundred dollars and not more than one thousand dollars for such offense. Such forfeiture

shall be enforced and collected by the attorney general in any court of competent jurisdiction. In construing and enforcing the provisions of this act, any act, omission or failure of any officer, agent or other person acting for or employed by any such public utility or common carrier while acting within the scope of his employment, shall in every case be deemed to be the act, omission or failure of such public utility or common carrier and every day during which any such public utility or common carrier or officer, agent, or employee thereof, shall fail to comply with any order or direction of the commissioner, or to perform any duty required or enjoined by this act, shall constitute a separate and distinct violation of the provisions of this act."

That said Chapter 238 is still in full force and effect and has not been amended or repealed in any wise.

That on December 30, 1912, this Court in the receivership suits herein pending fixed a schedule of prices for the sale of gas at various points supplied by the Federal receivers. This order provided for rates from fourteen cents at Caney, Kansas, to thirty-five cents at St.

26 Joseph, Missouri, and Atchison, Kansas, with a thirty-one cent rate at Kansas City, Kansas, and Kansas City, Missouri. That such prices were rates charged distributing companies for gas measured by meter placed at the point where their systems connected with the lines of the Kansas Natural Gas Company.

That on January 4, 1913, this court modified the order of December 30, 1912, which order and modification is as follows:

"It is ordered that said order of December 30, 1912, be modified by eliminating the provisions requiring the receivers to shut off the supply of gas from the distributing companies, failing to elect in writing to take the gas at the rates specified in said order before the expiration of the ten-day period mentioned in said order.

And it is further ordered that the further hearing on the said petition be continued until the February, 1913, Rule Day of this Court.

It is also ordered that until the February, 1913, Rule Day of this Court all parties having any interest in this controversy, or who may be affected, and given leave, may come into this action by intervention or otherwise, to the end that the trust fund and properties, the interests of the distributing companies, the consumers of gas, and all persons concerned, may be considered, protected and preserved.

This cause is continued for further orders."

## VII.

That in January, 1913, the attorney for the Public Utilities Commission of the State of Kansas filed a complaint with the said Commission bringing in as respondents the Kansas Natural Gas Company,

27 its receivers, and the distributing companies. That during the pendency of this proceeding the order of this Court increasing the price of natural gas was suspended. That in said proceeding before the Public Utilities Commission the receivers asked for permission to establish a certain schedule increasing the rates theretofore charged. That said Public Utilities Commission denied

permission to increase the rates charged on January 1, 1911, and denied said petition and ordered the said receivers to maintain the schedule of rates in force on January 1, 1911, a copy of which order and opinion of said Public Utilities Commission is hereto attached, marked Exhibit "E" and made a part hereof.

That on April 9, 1915, these plaintiffs, John M. Landon and R. S. Litchfield, as receivers of the Kansas Natural Gas Company, filed before said Public Utilities Commission their complaint alleging that the schedule heretofore fixed by the said Public Utilities Commission of the State of Kansas, and then in force and effect was unreasonably low, non-compensatory, unremunerative and confiscatory, and did not permit a reasonable return on the investment and did not permit said receivers to comply with the terms of said Creditors' Agreement heretofore referred to as Exhibit "A," and asked for permission of the Commission to put in force and effect a schedule of rates, a copy of which schedule is hereto attached, marked Exhibit "F" and made a part hereof. That on July 16, 1915, said Public Utilities Commission of the State of Kansas rendered its opinion, a copy of which is hereto attached, marked Exhibit "H," and made a part hereof, authorizing an increase in the prices charged consumers in Kansas to twenty-eight cents (28c.) net, where the price then was twenty-five cents (25c.) per thousand cubic feet, but made such consent contingent upon the establishment of the same schedule

28 of rates in Missouri as provided in said opinion, and denied all other relief sought by the said John M. Landon and R. S. Litchfield.

That on the 27th day of August, A. D. 1915, after hearing had, the District Court of Montgomery County, Kansas, enjoined the enforcement of said order of the Public Utilities Commission of the State of Kansas and ordered an establishment of a rate of thirty cents (30c.) per thousand cubic feet, all of which more fully appears in the findings of fact and the journal entry in said cause, a copy of which is hereto attached marked Exhibit "I" and made a part hereof.

That an appeal was taken to the Supreme Court of the State of Kansas by the said Public Utilities Commission from the order overruling its demurrer filed to the petition in the above case, which appeal was heard by the Supreme Court of the State of Kansas at the same time as the mandamus proceeding hereinafter mentioned.

That on August 17, 1915, H. O. Castor as Attorney for the Public Utilities Commission of the State of Kansas filed a suit in mandamus in the Supreme Court of the State of Kansas against the said John M. Landon and R. S. Litchfield, Receivers, and the Judge of the District Court of Montgomery County, Kansas, to require said receivers to maintain the schedule of rates promulgated by the said Public Utilities Commission and to require the said Judge of the said District Court of Montgomery County, Kansas, to vacate and set aside the order making the Public Utilities Commission a party defendant in the action pending in said District Court of Montgomery County, Kansas, and to set aside the temporary restraining order in that action and to dismiss the suit against the Public Utilities Commission. That

29 the said John M. Landon and R. S. Litchfield filed an answer in said cause. On October 4, 1915, the Supreme Court of the State of Kansas in an opinion which is reported in Volume 96 of the Kansas Reports, page 372, denied the writ against R. S. Litchfield and John M. Landon holding that the twenty-eight cent (28c.) rate prescribed by the Public Utilities Commission was unreasonable, non-compensatory, unremunerative and confiscatory, and did not afford the said John M. Landon and R. S. Litchfield sufficient revenue to pay operating expenses and to comply with the terms of said Creditors' Agreement hereto attached, marked Exhibit "A." Said Supreme Court, however, in the appeal case decided that the District Court of Montgomery County, Kansas, did not have jurisdiction of the Public Utilities Commission and reversed the order of said court.

### VIII.

That thereafter on the 7th day of October, 1915, said John M. Landon and R. S. Litchfield, as receivers aforesaid, filed a petition for rehearing in the proceeding theretofore had before the Public Utilities Commission of the State of Kansas, asking for permission to put in a schedule of rates of thirty-seven cents (37c.) per thousand cubic feet outside of Montgomery County, Kansas, a copy of which petition for rehearing is hereto attached, marked Exhibit "J" and made a part hereof.

That in said petition for rehearing, the expenses and needs of said plant operated by said receivers were pointed out as well as the errors of the Commission in making the former computation. That hearing was had on said petition for rehearing, additional evidence introduced by said John M. Landon and R. S. Litchfield and the case submitted to the Commission on the 27th day of October, 30 1915. That on the 10th day of December, 1915, said Commission filed its opinion containing its findings of fact and conclusions thereon, and made its order in said case whereby it authorized the said John M. Landon and R. S. Litchfield to file a schedule for the sale of natural gas through their distributing companies to take effect in the State of Kansas, to-wit: For domestic gas in Montgomery County, except Elk City, 23c. per thousand cubic feet; for domestic gas in Elk City, 25c. per thousand cubic feet; for boiler gas in Montgomery County, Kansas, 10c. per thousand cubic feet; for domestic gas in all other counties and cities other than those supplied by the Gunn Pipe Line 28c. per thousand cubic feet; for all consumers supplied by the Gunn pipe line 30c. per thousand cubic feet, and for all boiler gas except in Montgomery County, 12½c. per thousand feet. A copy of said order and opinion and the findings of said Public Utilities Commission is hereto attached, marked Exhibit "K" and made a part hereof. That said Exhibit "K" also contains the dissenting opinion of Commissioner Foley who held that the schedule was too low. That said Public Utilities Commission by said order and opinion denied the application of said John M. Landon

and R. S. Litchfield, plaintiffs herein, to put into effect the schedule of rates marked Exhibit "F" hereto attached.

### IX.

That said findings of fact of said Commission contained in Exhibit "K" are erroneous and not supported by any evidence introduced on the original hearing or on the rehearing before said Commission in said matter.

That said findings of fact, opinion and order of said Public Utilities Commission of the State of Kansas were not based on evidence introduced before the Commission but were based upon information given to the Commission by its clerks, accountants and engineers while not under oath, and whom plaintiffs were not afforded an opportunity to cross-examine as to the correctness of the information given, thus depriving plaintiffs of their property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

That on page 7 of said Exhibit "K" the said Commission finds the total value of the company's property employed in the business of producing, transporting and distributing natural gas as of January 1, 1915, to be \$8,994,811.03. That the only evidence before the Commission as to value of the property was that of its engineer, who found the value of the physical property as of January 1, 1915, to be \$8,994,811.03. That said engineer testified that such valuation did not include "going value," "going concern value," or any value of the property for the cost of attaching the business or as a going concern. That the value of the property as found by the Commission does not include any going value. That plaintiffs are and were entitled to a return on the going value of said plant. That the fair and reasonable "going" value or development cost of said plant as a going concern as of January 1, 1915, was and is now not less than \$2,637,400.

Plaintiffs aver that the fair and reasonable total value of said plant and property used and employed in the business of producing, transporting and distributing natural gas to the consumers in Kansas and Missouri as of January 1, 1915, was and now is more than the sum of \$11,632,211, on which they are entitled to a return of ten per cent.

That the Commission in not allowing any intangible value for said property erred and thereby deprived these plaintiffs of property without due process of law. That the said Commission while in fact finding the value of said property as of January 1, 1915, to be \$8,994,811.03, did consider only \$7,083,605.64 as the total value on which plaintiffs were entitled to a return but in fact said Commission permitted a return on only \$3,221,379.49 (see pages 7, 9, 12 and 16 of Exhibit "K").

That said Commission in its tables and opinion allows no value whatever for leaseholds that were conveyed to the Kansas Natural Gas Company by R. M. Snyder, T. N. Barnsdall, James O'Neil and others at the time of the organization of the Kansas Natural Gas



Company who took in exchange for said leaseholds stock of the corporation. That said leaseholds were at such time of the fair and reasonable value of \$6,000,000.

That said Commission in its opinion and findings erred in fixing the life of the plant and field to be twelve years instead of six years. That the true life of the plant, as elsewhere in this bill alleged, is in fact but six years from January 1, 1915.

That said Commission in its table No. 3 on page 13 of Exhibit "K" in ascertaining and attempting to ascertain the income derived from the production and distribution of natural gas included in the item of gas sales (\$30,629,066.07) the item of gas produced (\$6,023,792.16), thereby showing the total income prior to December 31, 1914, to be \$6,023,792.16 more than it actually was. That said Commission in said Table No. 3 on page 13 charged operating expenses with gas produced from the leaseholds owned by the company in the sum of \$6,023,792.16, and in income credited the company with the gas so produced in the same amount, thus making one charge offset the other and thereby giving the public  
33 the benefit of over \$6,000,000.00 worth of gas without charge.

That the reasonable value of gas produced from said leaseholds owned by the company up to and including December 31, 1914, was in excess of \$10,000,000.00 instead of \$6,023,792.16, as found by said Commission.

That said Commission in attempting to separate the property used in the production of natural gas from the property used in the transportation of natural gas erred in that the accounts of the company were not so separated and the whole was used in all the system of production and transportation of natural gas and all said property was employed in said business.

That said Commission erred (Table No. 5, page 18) in using four cents as the price of gas to be purchased in the future for the reason that the price of gas to be purchased is and will not be less than six cents per thousand cubic feet.

That said Commission erred (Table No. 5, page 18) in estimating the increased revenue to be obtained in the schedule put into effect after the order of December 10, 1915. That instead of the increase being \$171,513.63, as found by the Commission, the increase in revenue after deducting losses in revenue will not amount to more than \$75,059.53.

That the said Commission erred in estimating the amount of operating expenses and taxes at \$510,536.14 (Table No. 5, page 18). That the true amount required for these purposes is \$800,000.00 per year. That said Commission erred in omitting from said item of operating expenses the cost of obtaining the supply of gas, to-wit the cost of making extensions to new fields to secure the  
34 necessary amount of gas which item amounts to and will amount to \$500,000.00 for 1916 and \$200,000.00 for each year thereafter.

That said Commission erred in its Table No. 5 (p. 18) in allowing depreciation on only \$7,083,615.64, when it found the value of the

plant to be \$8,994,811.03, and the actual total value of said plant employed in said service is \$11,632,211.

The Commission also erred in fixing the depreciation on a basis of twelve years *from* the true life of said plant is five years from January 1, 1916, in which time all but \$1,500,000.00 of said total valuation of \$11,632,211 must be amortized.

Said Commission erred in allowing a return upon the investment at the rate of six per cent per annum only instead of ten per cent per annum. That owing to the hazardous nature of the business any return less than ten per cent on the value of the property employed in said business is and will be unreasonable and confiscatory.

That the total fair value of the said plant in the possession and control of these plaintiffs employed and used for the purpose of transporting, producing and selling natural gas to consumers in Kansas and Missouri, and upon which these plaintiffs are entitled to a fair and reasonable return at the rate of not less than ten per cent per annum, exclusive of operating expenses, depreciation and repairs is \$11,632,211.

That by reason of each and all of said errors plaintiffs are and will be deprived of property in their control and possession without due process of law and such property is and will be taken without compensation.

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X.

That as evidence of the true value of the said property as above set forth, plaintiffs aver the value of the property of the Kansas Natural Gas Company, including operated and leased property in the State of Kansas as assessed for taxation by the State Tax Commission for said State for the year 1915, is and was \$8,003,699.00; that the valuation of the property of the Kansas Natural Gas Company in the State of Missouri, as assessed by the taxing authorities for the year 1915, is and was \$145,610.00. That the value of the property of the Kansas Natural Gas Company, including the property leased to it, in the State of Oklahoma, as assessed by the taxing authorities for the year 1915, is and was \$1,860,434.00; that the total assessed valuation of the property of the Kansas Natural Gas Company including the property operated and leased by it in the states of Kansas, Missouri and Oklahoma, for the year 1915 is and was \$10,009,743.00. That said assessed valuations show the proper proportion of the property of the Kansas Natural Gas Company in the possession of these plaintiffs lying and situated in each of the states of Kansas, Missouri and Oklahoma.

XI.

That to avoid complications and litigation with the State of Kansas and the Public Utilities Commission of the State of Kansas and additional financial loss and suits for penalties under the statutes heretofore set out, plaintiff receivers filed with the Public Utilities Commission a schedule of rates, but under protest.



That the schedule of rates which has been put into effect  
 36 by the plaintiff receivers under the order of December 10,  
 1915, of the Public Utilities Commission of the State of Kan-  
 sas, is as shown by Exhibit "M" hereto attached, and made a part  
 hereof. That said schedule and tariff also show the rates in effect  
 in Kansas prior to December 10, 1915.

That the net income above operating expenses, taxes, repairs and  
 accrued depreciation has not at any time during the time the plant  
 has been operated, amounted to a fair return on the investment.

## XII.

That by reason of the decrease in the production of oil the mis-  
 cellaneous revenue for 1915 and future years will be less than for  
 previous years, the true and correct amounts of such differences be-  
 ing in the following table.

### *Table.*

Showing actual decrease in Miscellaneous Revenue for 10 months  
 of 1915—as compared with the same period in 1914:

Sales of Oil.....	\$28,258.00
Interest on Bank Balance, etc.....	20,971.00
Total .....	<u>\$48,229.00</u>
Estimated for the entire year at.....	\$60,000.00

## XIII.

That at the time the Kansas Natural Gas Company was organized  
 expert engineers were sent into the gas fields to determine the  
 37 life of the fields. These engineers reported a length of life  
 of the fields far in excess of what has proved to be their actual  
 life. For a number of years after the Kansas Natural Gas Company  
 was organized the supply of gas was furnished from the counties of  
 Allen, Wilson and Montgomery in the State of Kansas, from leases  
 owned by that corporation. These gas fields became largely ex-  
 hausted at a much earlier date than the reports of expert engineers  
 had led the corporation to believe probable and it became necessary  
 to secure a supply from the State of Oklahoma. This involved the  
 construction of new pipe lines, the erection of additional compressor  
 stations and the piping of gas with its attendant leakage from much  
 greater distance than was ever intended by the incorporators of the  
 Kansas Natural Gas Company. The source of supply has been rap-  
 idly moving south in what is known as the "Mid-Continent Field"  
 and the problem of purchasing a sufficient supply of gas to supply  
 the market served by the transportation system operated by these  
 plaintiffs has been fraught with great hazards, difficulties, cost and  
 expense and it yearly requires a large sum of money to build exten-

sions to the plant and secure supplies of gas from new sources and new fields in order to furnish the same amount of gas as was supplied the previous year. That the cost of gas has increased during the past year at least one cent (1c.) per thousand feet owing to the short duration of the gas pools and fields (see opinion and ruling of the Oklahoma Corporation Commission on Conservation of Gas, P. U. R. 1915-E 1001) and also by reason of two other trunk lines or transportation systems operating in and now diminishing the source of supply, a true and correct map showing said three trunk lines Kansas Natural, Quapaw & Wichita, and Oklahoma Natural, and the fleeting character of the pools, fields, the original and present  
38 rock pressures and the competition for said gas, together with an analysis of said map in the Mid-Continent Gas Field is filed herewith, marked Exhibit "L" and made a part hereof by reference.

That now more than eighty-five per cent of the gas supplied by these plaintiffs to consumers in Kansas and Missouri is secured from Oklahoma. That owing to the financial condition of the Kansas Natural Gas Company very few leases have been purchased by that company or these plaintiffs in recent years but on the other hand practically all of the gas secured from Oklahoma has been purchased in Oklahoma at a specified rate per thousand feet. That of the gas so purchased five per cent is lost through leakage in gathering the same and transporting it from the wells to the trunk lines and compressors. That of the quantity delivered to the trunk lines and compressors only ninety per cent (90%) is delivered to the distributing systems in various towns and cities. That of the quantity delivered to the distributing systems less than eighty per cent (80%) is delivered to consumers. That all the evidence shows the probable life of the gas fields which may be profitably reached by the plant of the Kansas Natural Gas Company is six years from January 1, 1915.

That the said period of six years stated as the life of said gas plant is also the determination of the creditors, bondholders, and the State of Kansas by its Attorney-General in making and executing the Creditors' Agreement heretofore attached to this petition as Exhibit "A." That said period of six years was adopted as the probable life of said gas plant by the said Public Utilities Commission of the State of Kansas in its opinion of July 16, 1915, heretofore attached as  
Exhibit "H."

39 That the plant of the Kansas Natural Gas Company at the end of said six years will have no value whatever except as scrap. That the machinery for its compressor stations has been built specially and at the end of the six years will be worth but little more than the cost of dismantling. That because of the fact that the pipelines are buried in the ground and are of special construction, not suitable for any other purpose, their value hardly exceeds the cost of removing them, that the correct scrap value of the plant of the Kansas Natural Gas Company at the end of the six-year period will not exceed \$1,500,000.

That the difference between the total value of the plant as of date of January 1, 1915, and the scrap value at the end of the life of the

plant is \$10,132,211, which sum must be amortized in the five years from January 1, 1915, as the revenue for the year 1915, owing to the confiscatory rates plaintiffs have been obliged to maintain, have been insufficient to amortize any part of the plant value during 1915. That a revenue must be provided sufficiently large to provide an annual sum for amortization in addition to the operating expenses and repairs and a reasonable return on the property employed in the business. That it will require the sum of \$500,000 for the first year and \$200,000 per year for each of the succeeding four years in order to procure the annual additional supply of gas necessary to maintain the same volume of gas supplied to consumers as is now transported and distributed. That nothing less than ten per cent per annum is a fair and reasonable rate of return on the property employed and used in said business, considering the hazardous nature of said business. That the following table shows the true and correct amount of gross revenue which is necessary for these plaintiffs to obtain in order to meet operating expenses, repairs, secure  
 40 future gas supply and provide for the amortization of the plant in five years, and a fair return on the property employed in the service:

*Table.*

Showing revenue required and items thereof for the years 1916 and 1917:

	1916.	1917.
Operating Expense and Taxes.....	\$ 800,000	\$ 800,000
Gas Purchased .....	1,000,000	1,000,000
Amortization—(5 years) .....	2,026,442	2,026,442
Interest on Property Employed, 10% .....	1,163,221	1,046,899
Maintenance of Supply (Extensions) .....	500,000	500,000
	<hr/>	<hr/>
	\$5,489,663	\$5,073,341

## XV.

That the correct amount of revenue which the order of December 10, 1915, will produce in the State of Kansas and the revenue which the rates now in existence will create in the State of Missouri, is shown by the following table:

*Table.*

Showing revenue that will be received from the State of Kansas by putting into force the Order of December 10, 1915, and the revenue that will be received from Missouri based on present  
 41 rates there. Assuming that the volume of business will be the same as in 1914.

From the State of Kansas.....	\$1,400,696.81
From the State of Missouri.....	1,460,536.01
Total .....	\$2,861,232.82
Revenue for 1914—All States.....	2,726,173.29
Increase in Kansas .....	135,059.53
Less Loss of Miscellaneous Revenue.....	60,000.00
Net Increase .....	75,059.53
Correct amount of total revenue in Kansas and Missouri under new Kansas rates.....	\$2,801,232.82

The foregoing tables show that the revenue under the rates now in effect will produce but \$2,801,232, after deducting for losses in miscellaneous and other revenue. That \$5,140,696 revenue is required for the year 1916, and \$4,698,845 for the year 1917 and each year thereafter during the remaining years of the life of the plant. That the present rates fall short of producing the required revenue by \$2,339,464 for the year 1916, and \$1,897,613 for the year 1917 and each year thereafter. That an increase of 1 cent per thousand cubic feet in the rate charged for natural gas sold in both Kansas and Missouri will give to these plaintiffs an additional revenue of approximately \$75,000. Thus it is seen that even the rate of 37 cents at all points in Kansas, north of Montgomery County, and at all points in Missouri except St. Joseph (where 40 cents is now charged) will not be sufficient to give plaintiffs a fair return on the property employed in said business. Plaintiffs, however, ask no more than 37 cents at present.

## 42

## XVI.

That all of the foregoing tables are typical of the years of the remaining life of said plant. That any lower schedule of rates in the state of Kansas than those set out in Exhibit "F" of this petition will be unreasonable, unremunerative, non-compensatory and confiscatory. That these plaintiffs have been deprived of property without compensation and without due process of law and will continue to be deprived of property without compensation and without due process of law in the transportation of gas to consumers in the state of Kansas unless the rates set out in Exhibit "F" are put into effect. On account of all of which, said order of the Public Utilities Commission of the State of Kansas is void and in contravention of the Fourteenth Amendment to the Constitution of the United States and an interference with interstate commerce which is exclusively under the control of the Congress of the United States, and which is confided to it by Section 8 to Article I of Constitution of the United States.

That the business of transporting, distributing and selling natural gas is not that of a common carrier and is not subject to the regulation or control or jurisdiction of the Interstate Commerce Commission. That neither said Kansas Natural Gas Company nor said Fed-

eral receivers nor these plaintiffs have or do deliver or sell gas to domestic consumers in the State of Oklahoma or conduct or carry on any business of or as a public utility therein.

## XVII.

43 That said order of December 10, 1915, of the said Public Utilities Commission of the State of Kansas provides and requires plaintiff receivers to furnish gas produced in Kansas to consumers in Kansas at such an unreasonably low rate as not to afford sufficient revenue to pay a fair return above operating expenses on the property employed in such service and thereby imposes a burden on the interstate commerce conducted by plaintiff receivers as part of said business of producing, transporting and distributing natural gas.

That plaintiffs have no adequate remedy in the premises except such relief as may be obtained by appealing to a court of equity to annul and hold void such arbitrary and confiscatory rates so prescribed by the Public Utilities Commission of the State of Kansas, and to restrain said Public Utilities Commission of the State of Kansas from interfering with the plaintiffs putting in reasonable rates until such time as some lawful authority approves a lawful schedule of rates.

That it is desired by these plaintiffs to put into effect the schedule of rates set forth in Exhibit "F" attached to this bill so as to obtain reasonable compensation for gas transported and delivered to consumers in Kansas and to obtain a return on the property and investment of the Kansas Natural Gas Company used in such service. That these plaintiffs desire to put into effect a schedule of reasonable rates.

That so far as the Public Utilities Commission of the State of Kansas has legal control over the rates charged to consumers in Kansas these plaintiff receivers are prevented and intimidated from putting into effect a schedule of reasonable rates and charges because of the highly excessive and unusually severe penalties provided in the aforesaid penalty statute (Section 38, Chapter 238, Laws of

44 Kansas, 1911) and because of the refusal of the Public Utilities Commission of Kansas to consent to putting into effect the schedule of such rates and charges. That under the provisions of such penalty statute if plaintiff receivers should raise the schedule of rates to be collected and upon a judicial investigation into their right to do so it should be determined that plaintiff receivers' raise of said rates in excess of the schedule provided in said order of December 10, 1915, was not valid then the fines and penalties provided for failure to conform to said order of December 10, 1915, of the Public Utilities Commission of the State of Kansas, at the minimum basis thereof would approximate for the period of one year only the enormous and prohibitory sum of \$2,258,401,000. In fact, for the year from January 1, 1916, to January 1, 1917, the fines and penalties which might be imposed upon these plaintiff receivers under the conditions aforesaid would aggregate the exorbitant and confiscatory

sum of \$2,258,401,000. That the maximum amount of penalties which might be imposed during said time aforesaid would aggregate the confiscatory sum of \$22,584,010,000. In this connection these plaintiff receivers state that they furnish gas through the distributing companies to 61,874 consumers per day in Kansas. Because of the constraint and intimidation of the unusual penalties these plaintiff receivers have been forced to keep in effect the requirements and schedules prescribed by said Public Utilities Commission of the State of Kansas from time to time and the fines provided for failure to conform to said orders are so unusual and enormous as to force upon these plaintiff receivers an abandonment of the right to act independently of said void and illegal orders, and by virtue of such facts said orders of said Public Utilities Commission are void and unconstitutional as depriving these plaintiffs of their property

45 without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. In this connection plaintiffs allege that the penalties provided for the failure to conform to said orders of said Public Utilities Commission are so unusual, oppressive and unreasonable that the said plaintiffs are thereby precluded from the privilege of asserting their rights independently and challenging in the courts the validity of said orders except at the risk and with the chance of becoming subject to the unusual and excessive penalties aforementioned as the result of which situation these plaintiffs are denied the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

### XVIII.

Adequate relief at law from this situation would not be available to these plaintiffs and plaintiffs' resources and efforts would be absorbed in unnecessary and highly burdensome litigation. Because of which facts the said Kansas Natural Gas Company's property would be needlessly appropriated without due process of law.

### XIX.

Plaintiffs further allege that all of the effects herein prescribed as operating on and against Kansas Natural Gas Company because of the unremunerativeness of the rates and charges fixed by said Public Utilities Commission and the unreasonable burdens of the penalty statutes provided in connection therewith and because of the direct interference with interstate commerce occasioned, apply and

46 continue to apply with like force and effect against the plaintiff receivers, officers of one of the courts of the United States, in their conduct and operation of the said Kansas Natural Gas Company under the laws of the United States, and by virtue of all of said facts said orders and refusal of said Commission to consent to the putting into effect of the schedule marked Exhibit "F," and the penalty statute provided in connection with changes and charges not made with the consent and approval of said Commission deprive



these plaintiff receivers, as said receivers and as the legal representatives and trustees of the creditors, bondholders and stockholders of said Kansas Natural Gas Company, of their properties without due process of law and compel plaintiff receivers in their said representative capacity to deliver and transport gas to consumers within the state of Kansas for less than the actual cost of said service and therefore at an actual loss for each and every cubic foot of gas so supplied and transported.

## XX.

That by said opinion of the Public Utilities Commission of Kansas no return is provided on 54.52% of the property used in the transportation of natural gas. That the greater part of such property is located within the state of Kansas and beyond the jurisdiction and control of the Public Service Commission of the state of Missouri. That said Public Service Commission of Missouri in the fixing of rates for natural gas delivered in that state cannot take into consideration said property so located within the State of Kansas, and is not bound and will not be bound by the 47 percentages of allocation so fixed by the Public Utilities Commission of Kansas. That if the rates for natural gas in Kansas are fixed by the Public Utilities Commission of Kansas and the rates in Missouri are fixed by the Public Service Commission of Missouri, a considerable part of the property of plaintiffs used in the production and transportation of natural gas will not be considered by either commission in determining the fair value of the property employed by plaintiffs in the production and transportation of natural gas, and these plaintiffs will, as a result thereof, be deprived of property without due process of law and will not be afforded equal protection of the law.

That the said Public Utilities Commission erred in attempting to separate the property used in the transportation of gas to consumers in Kansas from the property used in the transportation of gas to consumers in Missouri, for the reason that the property and plant is such that it cannot be operated or considered except as one unit. That the Circuit Court of Appeals for this Circuit in the case of *Kansas City Pipe Line Company v. Fidelity Title & Trust Company*, 217 Fed. 189, held that said property and plant must be treated and considered as one unit. That the State of Kansas through its Attorney General has recognized and insisted upon the same principle. That the District Court of Montgomery County, Kansas, has so decided.

That said decision of the Public Utilities Commission of the State of Kansas of December 10, 1915, is violative of such unity. That the Public Service Commission of Missouri insists and requires the observance of the rates heretofore fixed by franchises in the different cities of Missouri, while the Public Utilities Commission of 48 Kansas will not allow or permit plaintiffs to charge rates set forth and fixed in the franchises granted by the respective cities in Kansas.

That in determining what are reasonable rates to be charged in either Kansas or Missouri, because of the interstate character of the property employed, its location, the interstate character of the business conducted with such property, the unity of the plant and the necessity of continuing to conduct it as a unit, the divergent views and orders of the two rate fixing bodies in Kansas and Missouri, the property and plant of plaintiffs must be treated and considered as a whole.

That the demand of the consumers is rapidly increasing in both Kansas and Missouri, and with such increased demand the problem of supplying the additional gas and also the same amount as heretofore furnished is a serious one, requiring the building of extensions to pipe lines used in common in Oklahoma to supply such demand from the states of Kansas and Missouri. That the question of extending the pipe lines in Oklahoma and procuring additional gas to replace the diminishing supply requires permission to fix reasonable rates for both states at the same time. That as decided by this court in *McKinney v. Kansas Natural Gas Company*, 219 Fed. 614, no extensions can be made to the pipe lines in Oklahoma without the consent of the court. That neither the Public Utilities Commission of Kansas nor the Public Service Commission of Missouri has authority to require or permit such extensions.

## XXI.

That the defendant Public Service Commission of the State of Missouri on or about the 27th day of September, 1915, held  
49 a conference with the Public Utilities Commission of the State of Kansas in the City of Kansas City, Missouri. That after said conference the said John M. Atkinson, as Chairman of said Missouri Public Service Commission and for said Commission, announced that said Public Service Commission would not permit a higher rate to be charged in cities in the State of Missouri than was charged in border cities in the State of Kansas. That said Missouri Public Service Commission has ever since said announcement adhered to said policy so announced and has refused to permit an increase in the rates charged in the cities served by these plaintiff receivers in the state of Missouri because the rates charged in Kansas had not been raised.

That on the 13th day of September, 1915, schedules of rates were filed by the local distributing companies with the Public Service Commission for the State of Missouri, prescribing a rate of 30 cents net for Oronogo and Carl Junction. That on the 30th day of October, 1915, said Public Service Commission suspended said schedules of rates and has ever since refused to permit said rates to be put into force and effect.

That the St. Joseph Gas Company is a distributing company through whose pipe lines within the city of St. Joseph natural gas supplied by plaintiffs is distributed to consumers in that city. That on September 30, 1914, the St. Joseph Gas Company of St. Joseph, Missouri, filed with the Public Service Commission of the State of



Missouri a proposed new schedule effective November 1, 1914, whereby it sought to raise the rate on natural gas in the said City of St. Joseph from 40 cents to 60 cents per thousand cubic feet, net. That on October 19, 1914, said Public Service Commission issued an order suspending said rate and made further orders from time to time extending the suspension of said rate until on November 27, 1915, the said Commission rendered its opinion and findings of fact and order requiring said St. Joseph Gas Company to cancel said proposed new schedule of 60 cents.

That said Public Service Commission of the State of Missouri found the return on the property employed by the St. Joseph Gas Company in the distribution of natural gas was 2.42%, and that said return was unreasonably low and confiscatory, but denied the increase on the ground that said St. Joseph Gas Company was paying to the Kansas Natural Gas Company 26 2-3 cents as the Kansas Natural Gas Company's proportion of the 40-cent rate, and that said amount of 26 2-3 cents was 10 cents more than the Kansas Natural Gas Company received as its proportion of the rate paid in the City of Atchison, Kansas, and other municipalities.

That said Public Service Commission of the State of Missouri also denied said increase on the ground that the proportion of the rate received by the Kansas Natural Gas Company at St. Joseph for gas delivered to consumers in that city was higher than the proportion which said company received in border cities of Kansas.

That said cancellation of the proposed new rate of 60 cents for St. Joseph, Missouri, ordered by said Public Service Commission was in furtherance of its announced policy to permit no higher rate to be charged in Missouri than in the border cities of Kansas.

That said Public Service Commission of Missouri in said order directed the St. Joseph Gas Company to cancel its contract with these plaintiff receivers and the Kansas Natural Gas Company and to obtain a new contract under which said St. Joseph Gas Company should pay more than 17 cents per thousand cubic feet to these plaintiff receivers as their proportion of the rate to be charged for gas supplied to consumers in St. Joseph, Missouri. That pursuant to said order and direction the said St. Joseph Gas Company has instituted suit in the District Court of Montgomery County, Kansas, to cancel said contract and secure in lieu thereof a contract as outlined by the said Public Service Commission of Missouri.

That the said sum of 26 2-3 cents per thousand cubic feet, which plaintiff receivers have been receiving as their proportion of the 40 cent rate charged for gas delivered to consumers in St. Joseph, is on the same basis as charged to other cities and other distributing companies and is received by virtue of contract similar to contracts with other distributing companies, to-wit, 66 2-3% of the rate charged consumers. That the 17 cents which the said Public Service Commission proposes to allow plaintiff receivers as their proportion is unreasonably low, non-compensatory, unremunerative and confiscatory, and would amount to an undue preference in favor of consumers in St. Joseph and the St. Joseph Gas Company and would oblige plaintiff receivers to furnish greater service for a less sum to

a city in Missouri than to cities in Kansas, contrary to the Act of Congress of October 15, 1914, called the "Clayton Law." That the transportation of gas to St. Joseph, Missouri, by plaintiff receivers requires the carrying and transportation of gas for a longer distance than to any other city served by said pipe line system operated by plaintiff receivers. That by reason of such longer distance the leakage is greater, the cost of transporting the gas is greater than the cost of transporting gas to other points supplied by these plaintiff receivers. That 26 2-3 cents per thousand cubic feet is unreasonably low, non-compensatory, unremunerative and confiscatory for the services and property employed in transporting gas to St. Joseph, Missouri.

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## XXII.

That any schedule or rate for natural gas below 37 cents per thousand cubic feet for gas delivered to consumers in all other cities in the State of Missouri except St. Joseph, and 26 2-3 cents for plaintiffs' proportion of the gas delivered in St. Joseph, is and will be unreasonably low, unremunerative, non-compensatory and confiscatory. That the rates now prescribed by the Public Service Commission of Missouri are unreasonably low, unremunerative, non-compensatory and confiscatory.

That these plaintiffs have been deprived of property without compensation and without due process of law and will continue to be deprived of property without compensation and without due process of law in the transaction of gas to consumers in the State of Missouri. On account of all of which, said schedules of rates and the orders suspending the proposed new schedules of rates at the various points in Missouri made by the Public Service Commission of said state, are void and in contravention of the Fourteenth Amendment to the Constitution of the United States and an interference with interstate commerce which is exclusively under the control of the Congress of the United States and which is confided to it by Section 8 of Article 1 of the Constitution of the United States.

## XXIII.

That plaintiffs have no adequate remedy in the premises except such relief as may be obtained by appealing to a court of equity to annul and hold void such arbitrary and confiscatory rates so prescribed by the Public Service Commission of the State of Missouri, and to restrain said Commission from interfering with the plaintiffs' putting in reasonable rates until such time as some lawful authority approves a lawful schedule of rates.

That it is desired by plaintiff receivers to put into effect reasonable rates for natural gas delivered to consumers in all cities in Missouri supplied by these plaintiff receivers, so as to obtain reasonable compensation for gas transported and delivered to consumers in Missouri and to obtain a return on the property of the Kansas Natural Gas Company in the control of these plaintiff receivers, used in such

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service. That the present rates in effect in Missouri and prescribed by said Public Service Commission are not reasonable but are unremunerative, non-compensatory and confiscatory.

#### XXIV.

That even if the Public Service Commission of the State of Missouri accepts the basis of allocation of property used in the transportation of gas as between Kansas and Missouri made by the Public Utilities Commission of the State of Kansas in its opinion of December 10, 1915, the rates charged the Missouri cities (except Kansas City) supplied with natural gas will necessarily be higher than the rates charged to the border cities in Kansas as the gas must be transported further, the property used is more (as found by said Public Utilities Commission) and the leakage is greater.

That under the announced policy of the Public Service Commission of the State of Missouri to suspend all schedules of rates 54 proposing or attempting to put into force in Missouri cities rates higher than rates collected in the border cities of Kansas, the plaintiff receivers will be compelled to violate Section 2 of the Act of Congress of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (commonly called the Clayton Law), by forcing plaintiff receivers to furnish greater services to cities in Missouri, (except Kansas City, Missouri,) at the same price charged for less services furnished to cities in Kansas.

That such violation will also subject these plaintiff receivers to the provision of Section 16 of said Act of October 15, 1914, and subject plaintiff receivers to innumerable suits and thereby needlessly dissipate the property in their control.

That the Public Service Commission of the State of Missouri has and does now threaten to suspend any rate or schedule proposed or attempted to be put into force in Missouri by plaintiff receivers or their agents, prescribing a higher proportion than 17 cents per thousand cubic feet as plaintiffs' proportion of the rate charged for gas delivered to consumers at St. Joseph, and a higher rate than 28 cents per thousand cubic feet for gas delivered consumers at Kansas City and all other points in the state of Missouri supplied by these plaintiff receivers.

#### XXV.

That in March, 1913, the Legislature of the State of Missouri, enacted a certain law designated as the "Public Service Commission Act," which law is now in full force and effect in the State of 55 Missouri and provides among other things, as follows:

"Sec. 70. Power of Commission to Stay Increased Rate.— Whenever there shall be filed with the commission by any gas corporation, electrical corporation, water corporation or municipality any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating

to any rate, charge or service or to any general privilege or facility, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested gas corporation, electrical corporation, water corporation or municipality, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation or practice, and pending such hearing and the decision thereon, the commission upon filing with such schedule, and delivering to the gas corporation, electrical corporation, water corporation or municipality affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, form of contract or agreement, rule, regulation or practice, would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, form of contract or agreement, rule, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, form of contract or agreement, rule, regulation or practice as would be proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule, regulation or practice had become effective; Provided, that if any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation or municipality, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

"Sec. 83. Forfeiture for Noncompliance with Order.—Every gas corporation, electrical corporation and water corporation, and the officers, agents and employes thereof shall obey, observe and comply with every order and decision of the commission under authority of this act so long as the same shall be and remain in force. Any such person or corporation, or any officer, agent or employe thereof, who knowingly fails or neglects to obey or comply with such order or decision, or any provision of this act, shall forfeit to the state of Missouri not to exceed the sum of one thousand dollars for each offense. Every distinct violation of any such order or decision of this act shall be a separate and distinct offense and in case of a continuing violation each day shall be deemed a separate and distinct offense."

"Sec. 85. Defense in Case of Excessive Charges for Gas, Water or Electricity.—If it be alleged and established in an action brought in any court for the collection of any charge for gas, electricity, or

57 water that a price has been demanded in excess of that fixed by the commission or by statute, in the municipality wherein the action arose, no recovery shall be had therein, but the fact that such excessive charges shall have been made shall be a complete defense to such action."

## XXVI.

That these plaintiffs are prevented and intimidated from putting into effect a schedule of reasonable rates for gas supplied to all points in Missouri, because of the highly excessive and unusually severe penalties provided in the aforementioned penalty statute of the State of Missouri, and because of the suspension by the said Public Service Commission of Missouri of all proposed schedules, and the announced policy of said Commission, which it has adhered to, to suspend all rates and schedules of rates which are higher than the rates charged in the border cities of Kansas. That under the provisions of said penalty statute, if plaintiff receivers should raise the schedule of rates to be collected and upon a judicial investigation into their right to do so, it should be determined that plaintiff receivers' raise of said rates was not valid, then the fines and penalties provided for failure to conform to said orders of said Commission of Missouri, at the maximum basis thereof for the period of one year would approximate the enormous and the prohibitory sum of \$29,272,540,000. In fact, for the year from January 1, 1916, to January 1, 1917, the fines and penalties which might be imposed upon these plaintiffs under the conditions aforesaid would aggregate the exorbitant and confiscatory sum of \$29,272,540,000. In this connection these plaintiff receivers state that they furnish gas through the distributing companies to 80,196 consumers per day in the state of Missouri.

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## XXVII.

Because of the constraint and intimidation of said unusual penalties these plaintiffs have been forced to keep in effect the requirements and schedules prescribed by said Public Service Commission of the State of Missouri from time to time, and the fines and penalties provided for failure to conform to said orders are so unusual and enormous as to force upon the plaintiffs an abandonment of their right to act independently of said void and illegal orders, and by virtue of such facts said orders of said Public Service Commission are void and unconstitutional as depriving these plaintiffs of their property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. In this connection plaintiffs allege that the penalties provided for the failure to conform to said order of the said Public Service Commission are so unusual, oppressive and unreasonable that the said plaintiffs are thereby precluded from the privilege of asserting their rights independently and challenging in the courts the validity of said orders except at the risk and with the chance of becoming subject to the unusual and excessive penalties aforementioned as the result of

which situation these plaintiffs are denied the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Adequate relief at law from this situation would not be available to the plaintiffs and plaintiffs' resources and efforts would be absorbed in unnecessary and highly burdensome litigation. Because of which facts the said Kansas Natural Gas Company's properties would be needlessly appropriated without due process of law.

59 That by reason and virtue of all of said facts and acts of the said Public Service Commission of the State of Missouri and the penalty statute of the State of Missouri provided in connection with changes and charges not made with the consent and approval of said Public Service Commission these plaintiffs are deprived of their property without due process of law and are compelled to transport and deliver gas to consumers in Missouri for less than the actual cost of said service, and therefore at an actual loss for each and every cubic foot of gas so supplied and delivered.

### XXVIII.

That the application to the Public Utilities Commission of Kansas in 1913 resulted in no increase above twenty-five cents per thousand cubic feet. The application of April, 1915, resulted, on July 16, 1915, in an opinion that twenty-eight cents per thousand cubic feet north of Montgomery County, Kansas, was sufficient. On rehearing on December 10, 1915, permission was given to put these rates into effect, although the majority of the Commission found them excessive, and that any higher rate would be unjustified and an imposition upon the public.

### XXIX.

That the low rates prescribed by the said Public Utilities Commission of the State of Kansas and the Public Service Commission of the State of Missouri will take all or the greater part of the property now in the actual possession of John M. Landon and R. S. Litchfield, the plaintiffs, before the end of the six-year period set out in said Creditors' Agreement (Exhibit "A") as the duration  
60 of their control and possession, and leave nothing to be turned over to George F. Sharitt as Receiver of this court and is an interference with the possession and control of this court over property potentially in its charge and custody.

### XXX.

Plaintiffs are without adequate remedy at law in the premises hereinbefore set forth and will suffer irreparable injury unless accorded the injunctive relief herein prayed for.

## XXXI.

Plaintiffs respectfully show to the court that all said circumstances above enumerated also deprive the Kansas Natural Gas Company of its property without due process of law, take its property without compensation and deny to it equal protection of the law, and apply with the same force and effect as they do to plaintiffs.

Plaintiffs respectfully show to the court that the said order of the Public Utilities Commission of Kansas of December 10, 1915, is void for the following reasons:

(a) Because the penalties provided for the infraction thereof are so enormous as to intimidate these plaintiffs and to force an abandonment of all rights to act independently thereof, and said order and act are therefore unconstitutional as depriving these plaintiffs of property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

61 (b) Because said order and schedule is so unreasonably low as to be non-compensatory, unremunerative and confiscatory, thereby depriving these plaintiffs of property without due process of law in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(c) Because said order is an interference with the transportation of gas in interstate commerce from the State of Oklahoma to consumers in Kansas, in contravention of Section 8 of Article I of the Constitution of the United States.

(d) Because the schedule of rates provided and required by said order to be maintained and kept in force is so unreasonably low, as applied to gas produced and sold within the State of Kansas as not to afford sufficient revenue to pay a fair return, above operative expenses, on the property employed in such service and thereby imposes a burden on the interstate commerce conducted by plaintiff receivers.

(e) Because said order and schedule of rates prescribed therein is so unreasonably low as to amount to the taking of and an interference with the property potentially in the possession of and under the control of this court.

(f) Because any rate lower than thirty-seven cents per thousand cubic feet in Kansas, north of Montgomery County, is so unreasonably low as to amount to the taking of property without due process of law and an interference with property potentially in the possession and control of this court.

## XXXII.

62 Plaintiffs respectfully show that the refusal of the Public Utilities Commission of the State of Kansas to permit the plaintiff receivers to put into force and effect a schedule of reasonable rates, in so far as said Public Utilities Commission has con-



trol over gas delivered to consumers in the state of Kansas by these plaintiff receivers, is void for the following reason:

Because said refusal, in connection with the penalties provided for changing the rate without the consent of said Commission compel these plaintiff receivers to adhere to the schedule of rates prescribed by said Commission, which are so unreasonably low as to be non-compensatory, unremunerative and confiscatory, thereby depriving these plaintiffs of their property without due process of law in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Plaintiffs respectfully show unto the court that the orders of said Public Service Commission of the State of Missouri in suspending the schedule of rates sought to be put into effect at Oronogo and Carl Junction, and attempting to reduce the proportion these plaintiffs are to receive for natural gas delivered at St. Joseph from 26 2-3 cents to 17 cents, and the announced policy of said Commission to allow no higher rate to be charged in Missouri than in the cities of Kansas, are void for the following reasons:

(a) Because the penalties provided for the infraction thereof are so enormous as to intimidate these plaintiffs and to force an abandonment of their rights to act independently thereof, and said orders and acts are therefore unconstitutional as depriving these plaintiffs of property without due process of law in contravention of the Fourteenth Amendment of the Constitution of the United States.

63 (b) Because said orders prescribe and require the keeping in effect of a schedule of rates so unreasonably low as to be unremunerative, confiscatory and non-compensatory, thereby depriving these plaintiffs of property without due process of law in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(c) Because said orders are an interference with the transportation of gas in interstate commerce from Oklahoma and Kansas through Kansas to consumers in Missouri in contravention of Section 8 of Article 1 of the Constitution of the United States.

(d) Because said orders and the rate required to be maintained by reason of said orders of said Commission are so unreasonably low as to amount to the taking of and an interference with the property potentially in the possession and control of this court.

(e) Because any sum less than 26 2-3 cents as plaintiffs' proportion of the rate charged for natural gas delivered to consumers at St. Joseph and any rate lower than thirty-seven cents per thousand cubic feet at all other points in Missouri served by these plaintiffs is so unreasonably low as to amount to the taking of property without due process of law and an interference with the property potentially in the possession and control of this court.

### XXXIII.

Plaintiffs further allege and show to the Court that the defendant distributing companies above named obtain the gas distributed, de-



livered and sold by them to the consumers in the several cities in which they are doing business from plaintiffs as hereinbefore alleged; that said gas was originally furnished by the Kansas Natural Gas Company to said distributing companies under and pursuant to certain supply-contracts of record in this court in said creditors' suit and foreclosure suit upon which this bill is dependent as aforesaid; that said contracts have never been adopted by plaintiffs, but gas has been delivered pursuant to the established system of doing business prior to the appointment of plaintiffs as Receivers; that said contracts are improvident, wasteful and destructive of the estate in the hands of plaintiffs and the custody of the District Court of Montgomery County, Kansas, and this Court, and are a legal and equitable fraud upon the rights of the creditors of the Kansas Natural Gas Company; that said contracts were made and entered into by the parties thereto at a time when it was thought that an abundant supply of gas for cooking, lighting, heating, power and manufacturing purposes was available in and north of the northern part of Montgomery County, Kansas; that subsequent developments have demonstrated the necessity of carrying and transporting said gas from points far distant south of said location and from the state of Oklahoma; that the Kansas Natural Gas Company and these complainants have long been unable to furnish gas in sufficient quantities to enable said distributing companies to sell the same for manufacturing, power and boiler purposes, or even in sufficient quantities to sell the same for extensive domestic heating in the winter time; that contrary to public opinion, neither said Kansas Natural Gas Company nor said distributing companies nor plaintiffs ever agreed or undertook to furnish an uninterrupted and unlimited supply of natural gas in perpetuity or during the term of any franchise granted by the aforesaid cities or accepted by the aforesaid distributing companies, but it was on the contrary, at the time said contracts were entered into, foreseen, contemplated and provided for that there might and in all probability would be interruptions, shortages and a final failure and end to the supply of natural gas; that by reason thereof, each and all of said contracts contain substantially the following provision:

"However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part (meaning the Kansas Natural Gas Company and its predecessors in title and interest) does not, under this contract, undertake to furnish parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe-lines of the party of the first part and such other resources as the party of the first part shall be able to command, are capable of supplying."

Plaintiffs further allege that at the time said contracts were entered into and franchises granted for the distribution of said gas in the aforesaid cities it was a matter of common knowledge that said

natural gas must be transported from the mid-continent gas field in southern Kansas or from more distant fields; that the grantees of said franchises, to-wit, the aforesaid defendant distributing companies, must of necessity obtain gas by purchase, contract or otherwise from some transportation company carrying gas from said fields; that said distributing companies would be wholly dependent upon such supply company; that said distributing companies could not on their own account contract with said cities or undertake to

66 furnish an uninterrupted, inexhaustible and continuous supply of natural gas under the terms of said franchises or for any given period of time at any given rate or schedule of rates; that by reason thereof, one of said franchises under which a large percentage of the total supply and distribution of natural gas was undertaken by the Kansas Natural Gas Company and these complainants expressly provides as follows:

"That should the supply of natural gas obtainable by the grantees reasonably accessible be at any time during the life of said ordinance inadequate to warrant them in continuing to supply natural gas under the terms of said ordinance, said grantees shall not be longer required so to do."

That all of said ordinances were passed by said cities and accepted by said distributing companies with full knowledge of the foregoing facts and the conditions and provisions of said supply-contracts.

That by reason of the premises, plaintiffs and said Kansas Natural Gas Company and said distributing companies are no longer warranted in continuing to supply Natural Gas to said distributing companies for distribution and sale under said supply-contracts and under the terms and conditions of said ordinances.

Plaintiffs further allege that the defendant cities above named are municipal corporations, duly organized and existing under the statutes of the states of Kansas and Missouri, as indicated from their respective titles aforesaid; that natural gas is furnished by plaintiffs and distributed and sold as aforesaid in each and all of said defendant cities, under and pursuant to certain ordinances granting to said distributing companies the right to the use of the public ways of said cities therefor; that said cities have heretofore exercised the govern-

67 mental power of rate regulation by the passage of certain ordinances purporting to establish, regulate and fix the price and rate for the sale of natural gas in said several cities; that certain of said ordinances are in excess of powers conferred upon said cities by the State legislatures and all of said ordinances and the rates therein established and fixed are unreasonable, non-compensatory and confiscatory of the estate and property in the custody of plaintiffs and this court and the District Court of Montgomery County Kansas, and an interference with interstate commerce; that said cities are now claiming the governmental power of rate regulation and the right and power to fix, regulate determine and establish the rates, charges and compensation which plaintiffs shall receive for the natural gas furnished by them, that said cities and their respective mayors, city counselors, common councils and commissions are and have been for more than three years prior to the commencement of

this action conducting or threatening injunctions, prosecutions and municipal police regulations, all with the purpose, design and intent to regulate, control and fix the price at which plaintiffs may sell natural gas furnished by them; that all of said acts, threats, ordinances and prosecutions and threatened prosecutions are an interference with interstate commerce conducted and carried on by plaintiffs, and usurpation and abuse of power by said defendant cities; that unless and except this Honorable Court shall restrain and enjoin said cities and their respective officers from prosecuting suits against complainants and the defendant distributing companies aforesaid, who deliver their gas to consumers thereof, plaintiffs and said distributing companies will be subjected to a multiplicity of suits, injunctions and prosecutions in State and municipal courts and subjected to great and irreparable damage, loss and expense, and will be without remedy in the premises.

68 Wherefore, plaintiffs pray:

(a) That said order of the Public Utilities Commission of the State of Kansas of December 10, 1915, be declared void as confiscatory, non-compensatory and unremunerative, in violation of the Constitution and laws of the United States.

(b) That the defendants S. M. Brewster, as Attorney General of the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as the Public Utilities Commission of the State of Kansas, and H. O. Castor, as Attorney for said Public Utilities Commission of the State of Kansas, be enjoined from enforcing against plaintiffs said order of December 10, 1915, as to any of the penalty statutes provided in connection therewith for the non-observance of the orders of said Public Utilities Commission.

(c) That the defendants, S. M. Brewster, as Attorney General of the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as the Public Utilities Commission of the State of Kansas, and H. O. Castor as Attorney for said Public Utilities Commission of the State of Kansas be enjoined from in any manner or form interfering with plaintiffs putting in reasonable rates until such time as some lawful authority approves a lawful schedule of rates.

(d) That subpoena issue out of this honorable Court directed to all defendants requiring and commanding them, and each of them, to appear in this cause on a day certain and answer the several allegations in this Bill of Complaint contained, answer under oath being hereby expressly waived.

(e) That the defendants John T. Barker, as Attorney-General of the State of Missouri, William G. Busby as Counsel of the Public Service Commission of Missouri, and the defendants John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw and Eugene

69 McQuillan, as members of the Public Service Commission of the State of Missouri, be enjoined from enforcing against plaintiffs said orders of suspension or any of the penalty statutes in connection therewith for the non-observance of the orders of said Public Service Commission and also from in any manner or form interfering with plaintiffs putting in reasonable rates until

such time as some lawful authority approves a lawful schedule of rates.

(f) That the defendants, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as the Public Utilities Commission of the State of Kansas, be commanded to consent to and approve the putting into force and effect immediately by these plaintiff Receivers of reasonable rates and charges.

(g) That each, every and all of the defendants above named, and their respective officers, attorneys and counselors and agents, and their respective mayors, common councils, city attorneys, city councilors and representatives, and their successors in office, be restrained and enjoined from commencing, instituting or prosecuting in any other court or tribunal any suit or proceeding to litigate any of the matters herein complained of, arising or growing out of any of the transactions and matters herein alleged between these plaintiffs, or between the defendants, or either or any of them, until the final determination of this suit.

(h) That the defendant distributing companies and the defendant cities herein be restrained and enjoined from enforcing the contracts above referred to and from interfering with plaintiffs establishing and maintaining reasonable rates to consumers in Kansas and Missouri until reasonable rates are established by some competent authority, and from putting into effect the rates provided in Exhibit "F" and similar rates for cities in Missouri.

70 (i) Therefore, may it please your Honor to grant to plaintiffs a writ of injunction directed to the said Joseph L. Bristow, C. F. Foley and John M. Kinkel, members of the Public Utilities Commission of the State of Kansas, S. M. Brewster, Attorney-General of the State of Kansas, and to the said H. O. Castor, Attorney of the Public Utilities Commission of the State of Kansas, John T. Barker, as Attorney-General of the State of Missouri, William G. Busby as Counsel of the Public Service Commission of Missouri, and the defendants, John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw and Eugene McQuillan, as members of the Public Service Commission of the State of Missouri, and said defendant distributing companies and said defendant cities, their officers, agents, representatives, attorneys and counselor, to do and perform all things herein ordered and directed by this Court.

(j) That pending the final determination of the issues raised herein, said defendants, and each of them, their officers, agents, representatives and employees, be temporarily restrained and enjoined from doing any of the acts or things complained of herein and for which relief is demanded.

(k) Plaintiff prays for such other and further relief in the premises as to this Honorable Court may seem equitable and just.

JOHN M. LANDON,

R. S. LITCHFIELD,

By JOHN H. ATWOOD,

ROBERT STONE

GEO. T. McDERMOTT, AND

CHESTER I. LONG,

*Their Solicitors.*

71     STATE OF KANSAS.  
          *Montgomery County, ss:*

John M. Landon being first duly sworn, on his oath deposes and says:

That he is one of the plaintiffs in the above entitled cause, that he has read the foregoing Bill of Complaint, knows the contents thereof, and the facts stated therein are true.

JOHN M. LANDON.

Subscribed and sworn to before me this 23rd day of December, 1915.

[SEAL]

WALTER S. SICKELS,  
Notary Public.

My commission expires September 24, 1916.

72     Exhibit A, being "Creditors' Agreement," so-called dated 12/17/14 and filed 12/29/14, is omitted.

73                     EXHIBIT "B."

*Rates Provided by Franchises in Principal Cities Supplied by Kansas Natural Gas Company and Rates in Effect Prior to December 10, 1915.*

Kansas City, Missouri, franchise No. 33887, dated September 27th, 1906, provides for the following rates:

25 cents from December 1, 1906 to December 1, 1911.

27 cents from December 1, 1911 to December 1, 1916.

30 cents from December 1, 1916 to October 1, 1936.

With privilege of adding a penalty of 10 per cent. to delinquent bills, and of making a minimum charge when amount consumed is less than 50 cents.

The 27-cent rate has been in effect since December 1, 1911.

Kansas City, Kansas, franchise No. 6051 dated December 14, 1904, provides for the following rates:

25 cents from October 1, 1905 to October 1, 1907.

28 cents from October 1, 1907 to October 1, 1908.

29 cents from October 1, 1908 to October 1, 1909.

30 cents from October 1, 1909 to October 1, 1910.

35 cents from October 1, 1910 to October 1, 1925.

With privilege of adding a penalty of 2 cents per 1,000 cubic feet to delinquent bills, and of making a minimum charge when amount consumed is less than 50 cents.

This franchise also contains a provision that the rates shall not be higher at any time than the rates in Kansas City, Missouri.

The 25-cent rate is still in effect in Kansas City, Kansas.

74 Leavenworth, Kansas, Agreement of May 16th, 1905, provides for the following rates:

25 cents from January 1, 1906 to January 1, 1908.

30 cents from January 1, 1908 to January 1, 1911.

35 cents from January 1, 1911 to January 1, 1926.

Letter of October 10, 1907, provides that they may sell gas at the rates prevailing in Kansas City, Missouri.

The 25-cent rate is still in effect in Leavenworth.

Atchison, Kansas, franchise No. 2527, dated June 10, 1905, provides for the following rates:

30 cents from April 1, 1906 to April 1, 1911.

35 cents from April 1, 1911 to April 1, 1936.

With privilege of adding 10 per cent to delinquent bills, and of making a minimum charge when amount consumed is less than 50 cents.

The agreement of July 12, 1905, provides that gas shall not be sold at any time at rates higher than in Leavenworth, Kansas, and St. Joseph, Missouri.

The 25-cent rate is still in effect in Atchison.

Tonganoxie, Kansas, Agreement of November 2, 1905, provides for the following rates:

25 cents from November 1, 1905 to November 1, 1907.

40 cents from November 1, 1907 to November 1, 1925.

With privilege of adding 10 per cent to delinquent bills.

The 25-cent rate is still in effect in Tonganoxie.

Lawrence, Kansas, Ordinance No. 95 approved April 8, 1904, provides for the following rates:

25 cents from October 16, 1905 to October 16, 1907.

75 30 cents from October 16, 1907 to October 16, 1925.

With privilege of charging a penalty of 3 cents per thousand on delinquent bills.

The 25-cent rate still in effect in Lawrence.

Topeka, Kansas, Agreement of January 5, 1905, provides for the following rates:

25 cents from December 1, 1905 to December 1, 1907.

30 cents from December 1, 1907 to December 1, 1910.

35 cents from December 1, 1910 to December 1, 1925.

With privilege of charging a penalty of 3 cents per thousand on delinquent bills.

The 25-cent rate still in effect in Topeka.

Ottawa, Kansas, Agreement of September 30, 1905, provides for the following rates:

25 cents from December 1, 1905 to December 1, 1910.

30 cents from December 1, 1910 to December 1, 1925.

Ten per cent penalty allowed on delinquent bills—and may make minimum charge when bills are less than 50 cents.

The 25-cent rate still in effect in Ottawa.

Baldwin, Kansas, Agreement of July 10, 1905, provides for the following rates:

25 cents from October 1, 1905 to October 1, 1907.

30 cents from October 1, 1907 to October 1, 1925.

Ten per cent penalty allowed on delinquent bills.

The 25-cent rate still in effect at Baldwin.

The foregoing are the principal towns on our northern system, with the exception of St. Joseph, Missouri. All of the smaller towns which we supply through the Union Gas & Traction Company, have franchises which provided for a rate of 25 cents net for the

76 first two years after the gas is turned into the lines, and thereafter, 30 cents net, with the privilege of adding a penalty of 10% on delinquent bills.

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## EXHIBIT "C."

*Schedule of Rates in Effect on January 1, 1911 (Kansas).*

Independence . . . . .	.20	Baldwin . . . . .	.25
Elk City . . . . .	.25	Lawrence . . . . .	.25
Coffeyville . . . . .	.20	Topeka . . . . .	.25
Liberty . . . . .	.25	Tonganoxie . . . . .	.25
Altamont . . . . .	.25	Leavenworth . . . . .	.25
Oswego . . . . .	.25	Atchison . . . . .	.25
Columbus . . . . .	.25	Wellsville and LeLoup . . . . .	.25
Scammon . . . . .	.25	Edgerton . . . . .	.25
Weir City . . . . .	.25	Gardner . . . . .	.25
Galena and Empire . . . . .	.25	Lenexa . . . . .	.25
Cherokee . . . . .	.25	Merriam and Shawnee . . . . .	.25
Pittsburg . . . . .	.25	Kansas City . . . . .	.25
Parsons . . . . .	.25	Olathe . . . . .	.25
Thayer . . . . .	.25	Ft. Scott . . . . .	.30
Colony . . . . .	.25	Moran . . . . .	.30
Welda . . . . .	.25	Bronson . . . . .	.30
Richmond . . . . .	.25	Caney . . . . .	—
Princeton . . . . .	.25	(Not now supplied)	
Ottawa . . . . .	.25		

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Exhibit E, being Order and Opinion of Public Utilities Commission of Kansas in State of Kansas v. Cities of Independence et al., No. 541, filed 4/1/13, is omitted.



## EXHIBIT "F."

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City.	Company.	Present joint rate.	Changed joint rate.	Present minimum bill.	Changed minimum bill.
Independence	Kansas National Gas Co.	20	20	20	40
Elk City	Elk City Oil and Gas Co.	25	25	20	50
Coffeyville	Coffeyville Gas & Fuel Co.	20	20	20	40
Liberty	Liberty Gas Co.	25	25	..	50
Altamont	American Gas Co.	25	30	..	60
Oswego	American Gas Co.	25	30	..	60
Columbus	American Gas Co.	25	30	..	60
Scannon	American Gas Co.	25	30	..	60
Weir City	Weir City Gas Co.	25	30	50	60
Galena and Empire	American Gas Co.	25	30	..	60
Cherokee	American Gas Co.	25	30	..	60
Pittsburg	Home Light, Heat, Water and Power Co.	25	30	..	60
Parsons	Parsons Gas Co.	25	30	..	60
Thayer	O. A. Evans & Co. (Thayer Gas Plant)	25	30	..	60
Colony	Union Gas & Traction Co.	25	35	..	70
Welda	Union Gas & Traction Co.	25	35	..	70
Richmond	Union Gas & Traction Co.	25	35	..	70
Princeton	Union Gas & Traction Co.	25	35	..	70
Ottawa	Ottawa Gas & Electric Co.	25	35	..	70
Baldwin	Union Gas & Traction Co.	25	37	..	74



Lawrence .....	Citizens Light, Heat & Power Co.....	25	37	14
Topeka .....	Consumers Light, Heat & Power.....	25	37	14
Tonganoxie .....	Tonganoxie Gas & Electric Co.....	25	37	14
Leavenworth .....	Leavenworth Light, Heat & Power Co.....	25	40	80
Atchison .....	Atchison Rly., Light & Power Co.....	25	45	90
Wellsville and LeLoup..	Union Gas & Traction Co.....	25	37	14
Edgerton .....	Union Gas & Traction Co.....	25	37	14
Gardner .....	Union Gas & Traction Co.....	25	37	14
Lenexa .....	Union Gas & Traction Co.....	25	37	14
Merriam and Shawnee..	Union Gas & Traction Co.....	25	37	14
Kansas City .....	Wyandotte Co. Gas Co.....	25	37	14
Olathe .....	Olathe Gas Co.....	25	37	14

"Service for Fort Scott, Moran and Bronson, Kan., will be discontinued except delivery of gas at the gate of the pipe line of the Fort Scott and Nevada Water, Light, Heat and Power Co. Pipe Line (called Gunn Pipe Line) at or near Carlyle, Kan., at the flat rate of 18 cents per M. feet.

"Two cents per thousand cubic feet will be added to the bills but shall be deducted from the bills of all consumers who pay their bills on or before the 10th day of the succeeding month in which the service is rendered.

**"Changed Rules and Practices.**

"(1) All gas supplied by the receivers will be measured at the gates of the distributing company's plants, and the distributor will be charged with and required to account and pay for all gas delivered, less  $12\frac{1}{2}$  per cent allowed as a maximum normal leakage, at the schedule rate, until December 31, 1915, and 10 per cent thereafter.

"(2) The Distributor shall receive and retain all benefits from minimum bills and forfeited discounts, and shall stand loss of bad accounts."

80       Exhibit G, being Opinion and Order of Public Utilities Commission of Kansas in *State of Kansas v. Cities of Independence, et al.*, No. 541, filed 7/10/13, is omitted.

Exhibit H, being Opinion of Public Utilities Commission of Kansas in *John M. Landon v. Cities of Lawrence, et al.*, filed 7/16/15, is omitted.

Exhibit I, being Findings of Fact, Injunction and Journal Entry in *State of Kansas v. Independence Gas Co., et al.*, No. 13,476, in the District Court of Montgomery County Kansas, filed 8/25/15, is omitted.

81       Exhibit J, being Petition of John M. Landon and R. S. Litchfield for rehearing in *Landon et al. v. Cities of Lawrence et al.*, No. 1035, before the Public Utilities Commission of Kansas, filed 10/6/15, is omitted.

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## EXHIBIT "K."

Before the Public Utilities Commission of the State of Kansas.

JOHN M. LANDON and R. S. LITCHFIELD, Receivers for Kansas Natural Gas Company, a Corporation, Complainants,

VS.

THE CITIES OF LAWRENCE, TOPEKA, KANSAS CITY, LEAVENWORTH, Atchison, Oakland, Merriam, Olathe, Edgerton, Le Loup, Princeton, Welda, Fort Scott, Parsons, Pittsburg, Weir, Columbus, Altamont, Coffeyville, Mound City, Elk City, Tonganoxie, Baldwin, Rosedale, Lenexa, Gardner, Wellsville, Ottawa, Richmond, Colony, Thayer, Galena, Cherokee, Scammon, Oswego, Liberty, Caney, Mound Valley, Independence, and Redfield;

The Lawrence Citizens Light & Power Company,  
The Consumers Light, Heat & Power Company,  
L. G. Treleven, Receiver of The Consumers Light, Heat & Power Company,

The Wyandotte County Gas Company,  
Willard J. Breidenthal and John F. Overfield, Receivers for the Wyandotte County Gas Company,

The Leavenworth Light, Heat & Power Company,

The Atchison Railway, Light & Power Company,

The Home Light, Heat & Power Company,

The Kansas Gas & Electric Company,

The O. A. Evans Company,

The Tonganoxie Gas & Electric Company,

Central Gas Company,

The Coffeyville Gas & Fuel Company,

The Union Gas & Traction Company,

The Weir Gas Company,

The Ottawa Gas & Electric Company,

The Elk City Gas & Oil Company,

The Parsons Natural Gas Company,

The American Gas Company,

The Fort Scott Gas Company,

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The Olathe Gas Company,

The Liberty Gas Company,

Fort Scott & Nevada Light, Heat, Water & Power Company,

The Central Gas Company,

Gunn Pipe Line Company,

The Moran Gas Company, and

The Kansas Farmers Gas Company, Respondents.

## Docket 1035.

Submitted October 27, 1915; Decided December 10, 1915.

## Appearances:

Robert Stone, Chester I. Long, T. S. Salathiel, for Complainants.  
R. J. Higgins, for the City of Kansas City, Kan.  
Ferry, Doran & Dean, for The Consumers Light, Heat & Power Company.  
J. W. Dana, for The Wyandotte County Gas Company.  
E. E. Sapp, for The American Gas Company.  
Edward C. Gates, for The Fort Scott Gas & Electric Company.  
H. O. Caster, Fred S. Jackson, for the Commission.

*Opinion on Rehearing.*

## By the COMMISSION:

An opinion, embodying findings of the Commission in this case, was rendered on July 16, 1915. For reasons then stated no order was issued. On August 7, following some litigation growing out of the opinion and findings, a petition for rehearing, covering about twenty-two typewritten pages, was filed by complainants.

This petition sets forth many alleged errors in the calculations made and in the conclusions reached in the findings. Owing  
84 to the numerous assignments of error, it is impracticable to consider them in detail: in fact, such consideration is wholly unnecessary, as a great deal of new testimony was introduced upon the rehearing, and the entire matter is now considered de novo.

Regarding many of the matters complained of there was no evidence in the record. Touching others the evidence was of such a character as to necessarily and obviously lead to slight inaccuracies in the calculations made, as well as in the conclusions reached; but, based upon the evidence then before the Commission, it is not at all apparent that any substantial error was made in either the calculations made or in the conclusions at which the Commission arrived.

It is alleged by the complainant that no provision was made in the opinion and findings for payment of a reasonable return upon any investment which may have been represented by the capital stock. However, it was plainly stated to the Commission at the hearing that no return was asked for upon the stock investment of the company; that all that was desired was sufficient income to fairly carry out the provisions of so-called "Creditor's Agreement." This agreement provides that:

"\* \* \* creditors and lienholders against the property devoted to public use in said business, consent to the deferring of their right to foreclose and assert their several claims against said property, legal and equitable, and to have execution therefor, only upon the condition that their said investments and claims be returned, with interest,

within said six-year period, or so much thereof as will properly secure the return of the balance."

The Commission, basing its conclusions upon the evidence then before it, endeavored only, as requested by complainants to  
85 provide for carrying out the terms of this agreement.

In this connection attention is called to the statements in the record upon the original hearing made by the attorney for complainants:

"Commissioner Foley: I might say that my understanding is here that nothing was claimed for the capital stock so far as this rate fixing purpose is concerned. I do not know whether I am correct or not.

"Mr. Salathiel: We are not contending that the Kansas Natural Gas Company's stock does not represent value. It will be our contention it does, but we have made the statement that we are not asking the Commission to fix a rate that will allow a dividend on the stock."

In the discussion of the various phases of this question reference was made and consideration given to the insufficient supply of gas in many of the cities. The fact was developed that the supply during cold weather is inadequate to meet the demands of consumers, and that during a certain period each year the public, so far as it depends upon gas for fuel, is subject to great inconveniences and often to some suffering occasioned by lack of gas when it is most needed. The claim has been repeatedly made that such failure of supply is owing to the inadequacy of price. The testimony shows that by reason of the insufficiency of the transportation facilities of the complainants it is impossible to supply, regardless of the price, their consumers with sufficient fuel during the "peak load" periods when the temperature is low. This fact is conceded by the officers of the company. No price that could be fixed by the Commission would  
86 enable complainants to keep their customers properly supplied during the periods of the greatest demands.

The angle from which the question before the Commission was considered upon the original presentation—namely, from the standpoint of the Creditors' Agreement—was chosen in conformity with the wish of complainants, as expressed upon the hearing and, as has been stated, at least one important factor, ordinarily and properly taken into account in rate-making investigations, was, at complainants' suggestion, ignored. Criticism may properly be directed against the Commission for accepting the suggestions of the complainant in this respect. As the method then adopted in dealing with the problem proved very unsatisfactory to complainants, we will now endeavor to consider the subject in harmony with the rules recognized by courts and commissions as properly applicable in rate-making controversies.

#### The Fair Value of the Property.

One of the first and most imperative essentials in rate-making is the fixing of a fair present value upon the property of the utility

whose rates are under consideration, used and usable in the public service.

The complainants' plant has been in operation several years—a portion of it since 1905—and the principal additions were made between that date and 1910. Considering the plant as a whole a fair average date for the investment is January 1, 1907. It appears to have been successful as a revenue producer for several years, and in the opinion of the Commission it yet is successful in that respect. No complaint seems to be made of the inadequacy of its income until the failure of the gas supply in the company's wells and  
87 in territory immediately adjoining its then existing pipe lines.

In attempting to determine the present value of the complainants' plant for rate-making purposes, we have endeavored to follow the principles laid down in the leading and most frequently cited authorities upon this subject. They are clearly outlined in *Knoxville v. Knoxville Water Company*, reported in 12 U. S., page 1, from which the following quotation is taken:

"Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that, at the end of any given term of years, the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation, at least, its plain duty to the public.

"If a different course were pursued the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or stocks. This course would lead to a constantly increasing variance between present value and bond and stock capitalization,—a tendency which would inevitably lead to disaster either to the stockholders or to the public, or both. If, however, a company fails to perform this plain duty and to exact sufficient returns to keep the investment unimpaired, whether this is the result of unwarranted dividends  
88 upon overissues of securities, or of omission to exact proper prices for the output, the fault is its own. When, therefore, a public regulation of its prices comes under question, the true value of the property then employed for the purpose of earning a return can not be enhanced by a consideration of the errors in management which have been committed in the past."

And in *San Diego Land & Town Company v. Jasper et al.*, reported in 189 U. S., 47 Law Ed. 894, it is said:

"It no longer is open to dispute that, under the Constitution, what the company is entitled to demand in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public."

Aside from the physical value of the plant, ascertained by a consideration of the use which is now made of it, complainants claim a going value of \$4,792,430. In the consideration of this question of going value as a separate item, it must not be forgotten that this property has been in the hands of receivers for between three and four years. That the plant, with the business attached, is worth much more than it would be without such business connections, may be freely conceded. Without its existing business, its distributing contracts, its customers, its established sources of supply, it would constitute, practically, only an accumulation of junk. The present value of the plant has been ascertained and determined as an entirety, taking into consideration the fact that it is a going concern in actual and successful operation. In fixing this value we have taken into account the fact that the plant is in operation, with more customers than it can properly serve.

89 Overhead charges, including engineering, taxes and interest during construction, were also taken into consideration by the Commission in its valuation of complainants' property.

#### Life of the Gas Field.

One exceedingly important factor in the valuation of this plant is the probable length of life of the gas fields which furnish the supply transported by its lines and sold in its markets. In the original opinion in this case, in compliance with the views of the complainants, and for the purpose of computations then made, the life of the gas fields which might furnish fuel to be carried through those pipe lines was arbitrarily fixed at six years from January 1, 1915; but in that opinion this language was used:

"\* \* \* The entire business is so speculative in character, the extent of the supply is so uncertain, the other factors entering into the problem are so numerous, so indefinite and so intangible that nothing more than a rude approximation of the amortization period of complainants' system can be made. We have, therefore, adopted, for the present purposes, the estimate of the life expectancy of the plant made by those who prepared the Creditors' Agreement."

Based upon the history of the gas fields, their present condition and output, the existence of recent important discoveries of gas in marketable and paying quantities in the gas field of Kansas and Oklahoma known as the mid-continent field, it is the view of this Commission that the source of supply will not be exhausted within twenty years from January 1, 1907, and that the property of the  
90 company will have value for the purpose of gas transportation for that period or more.

Upon the evidence before the Commission it is convinced that there is now an abundance of gas readily procurable within a reasonable distance from the company's lines; that during all the time of complainants' control of the company's property this condition has existed; that they have had at all times, and have now, means at their command sufficient to enable them to procure sources of abundant supply; but that, on account of a lack of reasonable business fore-



sight and prudence, and on account of inefficiency of management, no supply adequate to the demands of their customers has been obtained.

### The Producing Property.

For several years after commencing business the Kansas Natural Gas Company was a producing as well as a transporting and distributing utility. Primarily, it transported, distributed and marketed chiefly the production of its own wells and leaseholds, although it at all times purchased some gas from other producers. For some years past, however, it has purchased a major part of the gas carried and distributed through its lines, the volume of its own production diminishing accordingly.

In order to establish a fair present valuation upon the property of the company and to properly allocate the operating and other expenses it is deemed just and necessary to separate the production from the transportation and distribution branch of the business, and to consider each upon its own basis.

The total valuation of the company's property, found from the entire testimony, as of January 1, 1915, is \$8,994,811.03. This includes all the property used and useful in production as well  
91 as that used in transportation and distribution. Allocating this value upon the basis of its use there should be a separation of the property used for transportation from that used for production purposes. We therefore deduct from the whole the value of that property used only for production. This requires the elimination of the following items:

Wells .....	\$605,539.20
Leaseholds .....	1,126,359.34
Drilling and pulling tools.....	3,660.00
Warehouses, tools used in connection with wells....	56,379.53
Proper proportion of overhead expenses.....	119,267.32
Total deductions .....	\$1,911,205.39
Gross valuation .....	\$8,994,811.03
Deduct value of property used for production purposes	1,911,205.39
Value of property used and useful for transportation and distribution purposes .....	\$7,083,605.64

### Allocate to Each State its Share of Property.

The company's lines, compressors and certain other property are used in transporting gas to the existing markets in both Kansas and Missouri. That gas is, of course, mixed in the pipe lines, and is drawn off at the most convenient point where the lines pass through or near a city served. The fair present value of the property used and useful in the service of the public for transportation and dis-

tribution purposes has been ascertained to be \$7,083,605.64. As this property is used in serving the gas markets in both Kansas and Missouri its value should properly be divided upon some equitable basis according to the service furnished to each of those states.

The Supreme Court of the United States, in *Simpson v. Shepherd*, 230 U. S. 352, 57 L. Ed. 1511, appears to have furnished a guide to the proper rule in cases of this character.

"The total value of the property of an interstate carrier within a state, independently of revenue, should be divided as between its interstate and intrastate business in such state, when testing the reasonableness of state regulation of its intrastate rates, according to the use that is made of the property, assigning to each business that proportion of the total value of the property which will correspond to the extent of its employment in that business." (10th paragraph of syllabus in *Simpson v. Shepherd*, *supra*.)

"When rates are in controversy it would seem to be necessary to find a basis for division of the total value of the property independently of revenue, and this must be found in the use that is made of the property. That is, there should be assigned to each business that proportion of the total value of the property which will correspond to the extent of its employment in that business." (*Ibid.*, 57 L. Ed., page 1566.)

It therefore becomes necessary to determine the extent of the employment of complainants' property in Kansas as compared with the extent of such employment in Missouri.

In ascertaining the value of the plant which should be allocated to each state upon the basis of its use, a complete analysis of the use of the property was made. The value of such portions of the plant as were used exclusively for the purpose of supplying gas to customers in Kansas was allocated and charged directly to the account of this State. A similar course was pursued in relation to service facilities required and used only in Missouri. The value of such portions as were used for the purpose of furnishing gas to the markets of both states was divided, in the case of each line, between the two states in the proportion that the volume of gas transported through such line and distributed in each state, respectively, bears to the entire volume passing through such line.

The value of headquarters, including the building and lot at Independence, and the overhead charges and expenses, interest during construction, taxes and organization cost, furniture, general stock, garage, etc., aggregating \$463,803.23, has been distributed among the Company's several divisions on the basis of the proportion that the value of each division bears to the value of the whole, and in this manner is divided between Kansas and Missouri in proportion to its use.

The method employed and the result obtained in allocating to each state its proper share of the value of the plant used in transportation and distribution is shown by the following table I. From this it appears that of the total value of \$7,083,605.64, the sum of \$3,221,379.49, or 45.48 per cent, should be allocated and charged to Kansas and \$3,862,226.15, or 54.52 per cent, to Missouri.

Division.	Total plant investment, present physical value.	Gas used in Kansas.	Per cent.	Gas used in Missouri.	Per cent.	Value of plant allocated to Kansas on basis of use.	Value of plant allocated to Missouri on basis of use.
Field .....	\$2,186,293.00	8,240,556	49.86	8,286,727	50.14	\$1,969,040.82	\$1,096,162.18
Southern Trunk, Main Line.....	470,988.55	931,183	49.13	1,380,215	59.87	189,007.62	281,980.73
Southern Trunk, Branch Lines.....	119,547.26	.....	.....	.....	.....	119,547.26	.....
Southern Trunk, Branch Lines.....	74,983.17	.....	.....	.....	.....	.....	74,983.17
Northern Trunk, Graham to Ottawa.....	2,191,219.59	5,453,451	44.96	6,897,512	55.04	985,172.33	1,206,047.26
Northern Trunk, meters, real estate, etc.....	22,073.56	.....	.....	.....	.....	22,073.56	.....
Northern Trunk, Branch Lines.....	50,410.62	.....	.....	.....	.....	50,410.62	.....
Northern Trunk, Ottawa to Kansas City.....	658,188.16	1,035,679	22.91	5,705,267	77.09	150,790.91	507,397.25
Northern Trunk, Ottawa to Kansas City, Branch Lines.....	18,606.45	.....	.....	.....	.....	15,114.55	3,551.90
Northern Trunk, Ottawa to Topeka "Y," Main Line.....	139,251.00	2,334,294	67.25	1,136,808	32.75	93,652.85	45,598.15
Northern Trunk, Ottawa to Topeka "Y," Branch Lines.....	3,458.42	.....	.....	.....	.....	3,458.42	.....
Northern Trunk, Topeka Branch.....	127,174.28	.....	.....	.....	.....	127,174.28	.....
Northern Trunk, Topeka "Y," to Atchison "Y," Main Line.....	273,502.85	1,232,722	52.02	1,136,808	47.98	142,276.18	131,226.67
Northern Trunk, Topeka "Y," to Atchison "Y," Branch Lines.....	15,565.97	.....	.....	.....	.....	5,565.97	.....
Atchison "Y," to St. Joe, Mo.....	234,719.33	.....	.....	.....	.....	.....	234,719.33
Atchison "Y," to Atchison, Kansas.....	65,856.19	.....	.....	.....	.....	65,856.19	.....
Joplin District .....	280,559.51	.....	.....	.....	.....	.....	280,559.51
Independence Distribution .....	83,835.38	.....	.....	.....	.....	83,835.38	.....
Elk City and Independence Supply.....	27,422.55	.....	.....	.....	.....	27,422.55	.....
Totals .....	\$7,083,605.64	.....	.....	.....	.....	\$3,221,279.49	\$3,862,326.15
						Or 45.48%	Or 54.52%

## The Earnings and Cash Investment.

Having ascertained, as a fundamental factor, the value of the property and plant allocated to Kansas on the basis of its use, a resume of the operations of the company since commencing business, will, perhaps, be enlightening.

It seems proper to set aside from the earnings of the company a sum that will provide a return upon, and an ultimate amortization of, the investment in leases and wells.

In estimating the value of its leases, the company is entitled to be allowed, at its wells, the same price for its gas that it was obliged to pay to other producers, under similar conditions. In determining the value of its leases and wells, the mining properties should be credited with their net earnings, and thus this portion of the business, which is highly speculative, is placed upon a determinable basis.

On account of the presence of the leakage factor, it is not sufficient to deduct the amount of gas purchased from that sold, and conclude that the difference is the volume of production. When applied to a long period, during the greater portion of which accurate measurements were not made and no accurate reports recorded, the conclusion must, to some extent be an estimate.

From the testimony of the company's officers, from computations based upon measurements taken during a limited period, and from all the circumstances and evidence, the Commission has allowed in this calculation thirty-five per cent upon the gross amount of leakage and waste. This leakage we believe to be excessive and unnecessary, but because of the bad condition of the company's lines it possibly amounted to that figure, and while not justifying such waste, we accept it in this instance.

The following table shows the actual cash invested from new capital and from earnings, during each of the years, both for the transportation and production property. By the production side of the account is meant the amount invested in leases and gas-well material. Attention is called to the fact (which appears from the company's books, but is not disclosed by the table) that while the investment in transportation and distribution property is \$11,926,812.97, and in production property \$4,113,563.46, a total of \$16,040,376.43, only \$12,369,250 is new capital. The remainder, \$3,671,126.43, was derived from earnings. As a general proposition, for rate-making purposes, investment from earnings is not entitled to be considered upon the same basis as new investment; but for the purposes of this investigation, allowance is made for this investment exactly the same as for new capital.

Table No. 2.—Kansas Natural Gas Company.

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*Property Statement Showing the Investment and Property at the Close of Each Year, Together with Accrued Depreciation and Net Investment, and Divided as Between Transportation and Production Property.*

	Property account.	Investment.	Less accrued depreciation at rate of 5.116% per annum. (Accumulated.)	Investment, less accrued depreciation each year.
Transportation.				
July 1, 1905,	\$6,357,478.32 ( $\frac{1}{2}$ year equals for 1 year)	\$3,178,736.16	\$162,624.30	\$3,016,114.86
1906	.....	6,919,980.31	516,650.49	6,403,329.82
1907	.....	7,081,176.07	878,923.46	6,202,252.61
1908	.....	9,266,149.14	1,352,979.65	7,913,169.49
1909	.....	9,642,505.22	1,846,290.22	7,796,215.00
1910	.....	11,506,458.47	2,434,960.61	9,071,497.86
1911	.....	11,601,907.18	3,028,514.17	8,573,393.01
1912	.....	11,723,851.33	3,628,306.39	8,095,544.94
1913	.....	11,823,096.29	4,233,175.98	7,589,920.31
1914	.....	11,926,812.97	4,843,207.33	7,083,605.64
Total for the period, .....		\$94,670,676.14	\$22,925,632.60	\$71,745,043.54

Production property.		Rate 11.70% per annum.	
July 1, 1905, ½ year equals for 1 year			
1906	\$1,251,268.83	\$146,398.44	\$1,104,870.39
1907	2,741,414.47	467,143.94	2,274,270.53
1908	2,758,321.63	789,867.57	1,968,454.06
1909	2,822,372.11	1,120,085.11	1,702,287.00
1910	2,845,454.82	1,453,003.32	1,392,451.50
1911	3,559,635.72	1,869,480.70	1,690,155.02
1912	4,241,551.88	2,365,742.27	1,875,809.61
1913	4,174,627.10	2,854,173.64	1,320,453.46
1914	4,146,067.38	3,339,263.52	806,803.86
	4,113,563.46	3,820,550.45	293,013.01
Total for the period	\$32,654,277.40	\$18,225,708.96	\$14,428,568.44
Total for the period combined	\$127,324,953.54	\$41,151,341.56	\$86,173,611.98
Add working capital, 9½ years at \$200.00 per year			1,900,000.00
			\$88,073,611.98
Average investment per year for 9½ years			\$9,270,906.50
1914.		Less accrued depreciation.	Present value.
Transportation	Investment.		
Production	\$11,926,812.97	\$4,843,207.33	\$7,083,605.64
	4,113,563.46	3,820,550.45	*293,013.01
Total	\$16,040,376.43	\$8,663,757.78	\$7,376,618.65

\*Covers cost of material in wells and that portion of warehouse stock assigned to production.

98 As the investment in the property used and useful for transportation and distribution purposes amounted January 1, 1915, to \$11,926,812.97, and its value as of that date was \$7,083,605.64, depreciation therefore to the amount of \$4,843,207.33 must be provided for out of the earnings.

*Value of the Leaseholds.*

Regarding the production side of the property, the earnings from this branch of the business during 1914 scarcely exceeded the expenses of operation. Therefore, it may be fairly considered that the leaseholds have no present value, based upon past earning capacity, and that the only value remaining in the production property, beyond a speculative one, is represented by material now in the wells and warehouses, which on December 31, 1914, amounted to \$263,013.01. The balance of the property investment, therefore, amounting to \$3,820,550.45, must be amortized during the period prior to December 31, 1914, and charged against the earning of that period.

The foregoing table shows the total investments of the company of every character up to December 31, 1914, also the depreciation that should be provided for out of earnings, and the present value upon which it is entitled to earn a fair return.

We will now consider the results of the operations from the beginning of business until December 31, 1914, embodying a division between production and transportation, in the following table:



Table No. 3.—Kansas Natural Gas Company.

Summary of Operations from the Beginning of Business April 15, 1913, to December 31, 1914.

	Income.	Total.	Production.	Transportation and distribution.
Gas sales .....		\$30,629,066.07		\$30,629,066.07
Oil sales .....		166,261.94	8106,261.94	
Dividends received from gas interests owned in Oklahoma .....		462,800.73	462,800.73	
Gas produced* .....		6,023,792.16	6,023,792.16	
Rents .....		27,523.19		27,523.19
Water .....		2,450.86		2,450.86
Profit on material sold .....		62,274.55		62,274.55
Total operating revenue .....		\$37,974,259.50	\$6,652,944.83	\$30,721,314.67
Operating Expenses:				
Gas purchased .....		\$3,438,506.90		\$3,438,506.90
Gas expense, Oklahoma field .....		350,368.77	8467,105.53	83,373.24
Gas produced .....		6,023,792.16		6,023,792.16
Gas expenses and taxes .....		7,959,964.04	3,056,111.37	4,903,852.67
Uncollectible accounts; gas .....		344,302.85		344,302.85
Oil expense .....		104,690.73	104,690.73	
Taxes: Kansas City Pipe Line† .....		261,910.16	2,173.85	259,736.31
Maintaining organization: Kansas City Pipe Line .....		1,434.11		1,434.11
Taxes: Marnet Mining Company .....		50,472.14		50,472.14
Maintaining organization: Marnet Mining Company .....		4,362.05		4,362.05
Total operating expenses and taxes .....		\$18,740,123.01	\$3,650,171.48	\$15,109,952.43
Net operating income .....		\$18,634,135.59	\$3,022,773.35	\$15,611,362.24

\*For the purpose of this statement, this item is treated both as a revenue and expense.

†Divided on basis of 1914 taxes.

Table No. 3.—Continued.

Other Income:	Income.	Total.	Production.	Transportation and distribution.
Dividends .....		\$30,800.00		
Interest .....		205,467.21		
Profit on first mortgage bonds purchased for sinking fund .....		53,798.75		
Profit on second mortgage bonds purchased for sinking fund .....		5,277.45		
Sundry .....		5,773.44		
Total other income .....		\$301,116.85		
Total income .....		\$18,935,252.44		
Deductions from Income:				
Uncollectible accounts: financial .....		\$40,096.82		
Interest on Kansas City Pipe Line bonds .....		1,510,231.00		
Interest on Marinet Mining Company Bonds .....		220,083.50		
Interest on Kansas Natural bonds .....		3,093,808.94		
Interest on Kansas Natural debt .....		443,795.26		
Bond expense .....		14,416.85		
Premium on bonds purchased for sinking funds .....		214,364.03		
Total deductions from income .....		\$5,556,796.40		
Net corporate income .....		\$13,378,456.04		

100 *Summary of Operations from Beginning of Business to December 31, 1914.*

	Total.	Production.	Transportation.
Net operating income (as shown by Table No. 3) .....	\$18,634,135.50	\$3,022,773.35	\$15,611,362.24
Less accrued depreciation (as shown by Table No. 1) ..	8,053,537.78	3,820,550.45	4,843,027.33
Net operating income, less depreciation .....	9,970,377.81	1,797,777.10	10,768,154.91
Average net operating income per year for 9½ years .....	1,049,513.40	.....	.....
Average annual investment (as shown by Table No. 1) ..	9,270,000.50	.....	.....
Which is equal to an average annual return on the investment of .....	11.32%	.....	.....

The capital was all supplied from the sale of bonds, or in other words, borrowed money, except that supplied from earnings, and the investors were willing to accept 6%, as the money was borrowed at that rate. This company therefore had a surplus after paying 6% on its investment as follows:

Net earnings .....	9,970,377.81	.....	.....
6% on \$88,073,611.98 .....	5,284,416.70	.....	.....
Surplus .....	\$4,685,961.11	.....	.....

D. Indicates deficit.

### Transportation the Chief Business.

It will be noted that the total net operating income for the period under consideration is \$18,634,135.59, and of this amount \$3,022,773.35 is assigned to production and \$15,611,362.24 is assigned to transportation, which includes two distributing plants.

Referring to table No. 2, it will be seen that it is necessary to provide for depreciation on production property \$3,820,550.45, and when this is deducted it leaves a deficit in the production branch of the business of \$797,777.10. This branch of the business not only paid no return, but the earnings were insufficient to amortize the investment. It may be claimed that an excessive amount has been charged to depreciation, but in view of the fact, as already stated, that 101 in 1914 the gas produced on the company's property just about paid the expenses of production, it would appear that the entire investment in leases should be eliminated. The conclusion is inevitable that the leases were not worth anything above the cash investment, in reality not worth that amount, and that, in addition to the stock issued, excessive sums were paid for them in cash.

It will be further noted that the transportation branch of the business, after providing for \$4,843,207.33 depreciation (as per table No. 2), and also for \$797,777.10 deficit in the production branch of the business, shows a net return of \$9,970,377.81. This is equal to a return of 11.32 per cent per annum on the entire investment in both branches of the business for the full period of nine and one-half years. In this connection it should be remembered that all of the money invested in this property was obtained from the sale of six per cent bonds or from the earnings of the company.

In estimating revenue for future reasonable requirements, some definite basis of calculation must be adopted, and rates should be predicated upon the needs thus shown. The Commission has based such estimates and calculations upon the report of operation for 1914, the last complete year of operation.

### Summary of 1914 Business.

In the following table, No. 4, is given a summary of the operations for 1914, with a division between production and transportation. As the property used in supplying natural gas to consumers in Kansas is all that can properly be considered in establishing rates within its borders, it becomes necessary to assign to this state a proper proportion of earnings, expenses and value of the property 102 used, and this has been done on the basis of use.

The volume of gas sold, together with that used in compressor stations in 1914, was 18,199,544 thousand cubic feet. To meet this demand, which is net, a much larger volume must be furnished at the wells. In its calculations, the company has assumed a loss of five per cent in the field lines and ten per cent in the trunk lines. The loss in distributing lines should not exceed, on the aver-

age, twenty per cent, and in fact the distributing loss from all causes should be reduced far below this allowance. However, computations have been made upon the assumption that of gas received into the field lines, ninety-five per cent was either marketed or delivered to trunk lines and compressors; that of the quantity delivered to trunk lines, ninety per cent was either marketed from them or delivered to distributing systems; and of the quantity delivered to distributing systems, eighty per cent was delivered to consumers.

## Statement of Results of Operations for the Year 1914, with Division Between Production and Transportation.

Income.	Total.	Production.	Transportation.
Gas sales .....	\$2,726,173.29	.....	\$2,726,173.29
Gas produced as shown on Table No. 2* .....	358,896.09	\$358,896.09	.....
Oil .....	42,667.51	42,667.51	.....
Rents .....	5,136.05	.....	5,136.05
Water .....	182.55	.....	182.55
Profit on material sold .....	459.31	.....	459.31
Operating income .....	\$3,133,514.80	\$401,563.60	\$2,731,951.20
Expenses:			
Gas purchased .....	\$742,210.79	.....	\$742,210.79
Gas produced* .....	358,896.09	.....	358,896.09
Expenses, Oklahoma field .....	\$99,401.77	.....	.....
Operating Expenses and Taxes .....	741,888.11	307,659.24	533,630.64
Receivership expenses .....	137,463.11	26,709.08	110,754.03
Oil expenses .....	36,285.90	36,285.90	.....
Uncollected gas accts. ....	12,555.07	.....	12,555.07
Taxes, Kansas City Pipe Line. ....	33,568.27	280.00	33,288.27
Taxes, Marnet Mining Company. ....	10,497.35	.....	10,497.35
Maint. organization, Marnet Mining Co. ....	690.20	.....	690.20
Total oper. expenses. ....	\$2,173,456.66	\$370,934.22	\$1,802,522.44
Net corporate income. ....	960,058.14	30,629.38	929,428.76

\*These figures are shown both as a revenue and expense for the purpose of this table. Other figures used in column headed "total" are taken from the exhibits filed in this case. Figures under "production" and "transportation" are the Commission's.

## Other Income:

Interest .....	\$51,414.94
Sundry .....	312.86

Total income ..... \$1,011,785.94

## Deductions from Income:

Interest on Kansas City Pipe Line bonds	\$164,050.50
Interest on Marnet Mining Company...	32,236.67
Interest on Kansas Natural bonds.....	254,781.90
Interest on current debt.....	381.16
Premium on bonds purchased for sinking fund .....	9,166.67
	<u>\$460,616.90</u>

Net operating income..... \$551,169.04

## Sinking Fund:

Marnet Mining Company.....	\$206,820.00
Kansas City Pipe Line .....	518,833.34
Included in "property rentals" on Kansas Natural Gas books.....	\$725,653.34
Deficit as shown on statement.....	<u>\$174,484.30</u>



104      Commenting briefly upon some features of the immediately preceding table, the company's figures show a deficit of \$174,-484.30, but this is after deducting from net earnings the sum of \$460,616.90 for interest on bonds and expenses in connection with the same, and the further sum of \$725,653.34 for retiring that amount of the principal of bonds. Neither of these items is proper to be included in expenses and can not be considered when calculating a return on the value of the property used and useful in the conduct of the business, but are given to show the disposition made of the net income from operation, which amounted to \$960,058.14, not including depreciation. It should be further stated that there was an expense of \$28,663.90 for taxes upon a large sum of money on hand before the distribution under the terms of the Creditors' Agreement. This should be deducted for future estimate, as it will not be necessary to provide that item again.

There is also included receivership expenses at \$137,463.11. This sum covered a period of about two years, during which there were unusually heavy expenditures because of litigation. It is unnecessary to provide such a large sum for future requirements. When this company was operated under the direction of its own officers, their salaries, for performing services similar to those performed by the receivers and their attorneys, were as follows:

President .....	\$15,000.00	per year.
General manager .....	12,000.00	" "
Attorney .....	5,200.00	" "
Add for their expenses .....	7,800.00	" "
<hr/>		
Total .....	\$40,000.00	per year.

105      This would seem to be ample under ordinary conditions and is the sum used in the estimate for future needs.

#### Estimates of Future Revenues.

In the former opinion the Commission authorized the following net rates: Domestic gas in Montgomery county, 20 cents per thousand cubic feet; in counties outside of Montgomery county, not supplied by the Gunn pipe line, 28 cents per thousand; in counties supplied by the Gunn pipe line, 30 cents, and for all boiler gas 12½ cents per thousand.

For reasons apparent at this time we believe that the domestic rate in Montgomery county should have been correspondingly increased as it was in other counties, and that it should be 23 instead of 20 cents per thousand.

Basing the future needs of the company upon the 1914 business, and using the rates provided in the former opinion with the change in Montgomery county suggested, we find the estimated revenues as follows:

Table No. 5.—Kansas Natural Gas Company.

*Statement of Estimated Revenue and Requirements for the Ensuing Year Based on 1914 Figures, Revised, as Previously Explained, for the State of Kansas.*

Requirements.	Transportation.	Kansas.
23,671,445 M cubic feet gas at 4c.....	\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation.....	510,536.14	223,245.11
Receivership expenses.....	32,228.00	14,093.30
Uncollectible gas accounts.....	12,555.07	6,359.14
Taxes, Kansas City Pipe Line.....	32,288.27	16,860.51
Taxes, Marnet Mining Company.....	10,497.35	5,316.91
Maintaining organization, Marnet Mining Company.....	690.20	349.59
Total .....	\$1,626,652.83	\$780,269.57
*Present value of transportation property, \$7,083,605.64; depreciation on basis of twelve years.....	\$590,300.00	\$268,468.44
Requirements exclusive of a return on property investment.....	\$2,216,952.83	\$1,048,738.01
*Return on present value.....	\$7,083,605.64	
Add for working capital.....	200,000.00	
Total .....	\$437,016.35	\$198,755.00
	\$2,653,969.18	\$1,247,493.01

\*The division of these items between Kansas and Missouri has been made on the basis of the use of the property as shown in Table 1.

## Estimated Revenue.

Gas sales, 1914 .....	\$1,192,089.82
†Gas used in compressor stations (on basis of use) .....	31,737.70
Total .....	<u>\$1,223,827.52</u>
Estimated revenue from proposed increase rates .....	171,513.63
Total .....	<u>\$1,395,341.15</u>
Total estimated revenue from Kansas .....	1,048,738.01
Deduct requirements as above .....	
Estimated net revenue .....	<u>\$346,603.14</u>
Which is equal to a return of 10.46% on the present value \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,605.64, or	
Total estimated revenue for Kansas .....	\$1,395,341.15
Less requirements including a 6% return .....	<u>1,247,493.01</u>
Surplus .....	<u>\$147,848.14</u>

†This item is placed here to balance an equal sum included in the expenditures. It is a bookkeeping entry

Regarding the requirements shown in the foregoing table, provision is made for procuring 25,671,445 thousand cubic feet at a price of four cents per thousand cubic feet on the selling basis. The average price is taken from the actual purchase in 1915. As 107 the price in 1914 averaged 3.93 cents, and for the first nine months of 1915 was four cents, the allowance of four cents is deemed reasonable.

We have provided \$590,300 for the annual depreciation, which is the amount required to fully amortize the entire investment during the estimated life of the property. In addition to this, \$200,000 is allowed for working capital, and interest at six per cent per annum is computed on this sum. After allowing a return of six per cent upon that portion of the value of the property allocated to Kansas, and providing for all of the above requirements an annual net surplus of \$147,848.14 remains.

This means that after completely amortizing the remainder of the investment that was not amortized prior to December 31, 1914, the investors will receive a net return of 10.46 per cent per annum on their money while invested.

In providing for depreciation, nothing has been deducted for the salvage value of the property at the end of its estimated life nor has anything been deducted for the warehouse stock assigned to the transportation branch of the business. In the computations, it has been assumed that the entire plant, including the warehouse stock, will be wiped out at the end of the twenty-year period. This, of course, is an assumption. At that time, it may still be a valuable going concern, or it may be junk. Time only can determine that fact. But in either event, it will have cost the owners nothing.

#### A Summary.

To summarize, the foregoing tables show: That up to December 31, 1914, those who put their money in this property received a net return of 11.32 per cent per annum, after depreciation was 108 fully provided for. This left the sum of \$7,376,618.65 as the remaining investment. Returns upon this amount and its ultimate amortization must depend upon the future revenues. In estimating what these revenues may be we have taken the business of 1914 as a basis. The business of the company for that year was not so good as it had been during prior years nor was it so favorable as during the first nine months of 1915. Upon this conservative basis, however, the estimates show that the owners will, during the estimated life of the company, receive back every cent that they have put into the property from all sources and a net return of 10.46 per cent per annum on their money while invested. All of such money having been obtained from the sale of six per cent bonds or from the earnings of the company.

It clearly appears that this company, with the rates now in force is making handsome returns on the invested capital.

In the former opinion, however, the Commission authorized an increase of three cents per thousand cubic feet for domestic gas in

the territory outside of Montgomery county and that not supplied by the Gunn pipe line. That supplied by the Gunn pipe line was fixed at 30 cents and a rate of  $12\frac{1}{2}$  cents per thousand cubic feet for boiler gas.

This was a substantial increase over the prevailing prices. There was grave doubt as to whether increasing the rate for domestic gas above 25 cents per thousand cubic feet would result in an increased revenue; but the weight of the evidence is that such increase could be made without material loss of business, and the Commission is of the opinion that it will increase the revenues of the company.

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### The Rates Authorized.

In the last hearing there was no evidence submitted that indicated a necessity for any increase in the rates over those provided in the former opinion, except in the domestic rate for Montgomery county. We have, therefore, concluded that the following net rates should be authorized:

For domestic gas in Montgomery county, 23 cents per thousand cubic feet except at Elk City, where the present rate of 25 cents is to remain; boiler gas in said county 10 cents per thousand cubic feet.

In all other counties except those supplied by the Gunn pipe line 28 cents per thousand cubic feet; in the counties supplied by the Gunn pipe line, the present rate of 30 cents per thousand cubic feet; and on all boiler gas, except in Montgomery county,  $12\frac{1}{2}$  cents per thousand cubic feet.

In the opinion of the Commission the per cent of return provided on the capital in the foregoing estimates is excessive. But to enable the company, beyond any doubt, to have abundant funds on hand to make all necessary extensions of its lines and to obtain a sufficient supply of gas for its patrons, it has authorized these rates, which under normal and ordinary conditions, judging the future by the past, will provide such returns. But to provide any higher rates in our opinion, would be unjustified and an imposition upon the public.

We realize that the estimates as to the future revenue of a business of this character are necessarily more or less uncertain. The discovery of productive gas fields adjacent to the company's pipe lines is possible. This would greatly reduce the cost of gas and render the rates provided excessive. Or the expense of obtaining the gas may materially increase, so as to make greater revenues necessary.

Such contingencies depend upon future developments.

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If any such contingencies shall arise, or if after the rates authorized have been fairly tested they do not bring adequate returns or if expensive extensions of its pipe lines make necessary the investment of additional capital the Commission will gladly consider any evidence that may be submitted to it that would justify further changes.

Its purpose is to carefully protect the rights of invested capital in this property, and at the same time properly guard the interests of the public.

### Minimum Bills.

Touching the question of minimum monthly rates and charges, it is believed that the minimum bill for monthly service should be uniform throughout the territory served; that each consumer should be required to pay for service and readiness to serve a monthly minimum of fifty cents; that the complainants should receive their contract share of all collections; for gas actually delivered and the residue of the minimum bill where there is any, shall be retained by the distributing company. Collection rules and the rules relating to loss arising from uncollectible accounts should remain as at present until further order.

The Commission adheres to its views heretofore expressed to the effect that the furnishing of so-called "free gas" to cities, though in compliance with ordinances, is a species of patent discrimination against customers who are required to pay scheduled rates and should be promptly discontinued.

An order will issue in accordance with the findings herein made.

### 111 Review of Company's Legal Difficulties.

Before closing this opinion we believe it is proper to give a brief résumé of the controversies, legal and otherwise, that have placed this company in its present situation. The records of the courts and the reports of the accountant for the Commission show that on July 13, 1910, suit was brought by the Independence Power and Manufacturing Company and others in the district court of Montgomery county, Kansas, asking for the specific performance of a certain contract which the Independence Power and Manufacturing Company had entered into with one of the predecessors of the Kansas Natural Gas Company, whereby the manufacturing company, or its predecessor was to be furnished gas for a certain time at two cents per thousand cubic feet and after that time at three cents per thousand cubic feet.

This suit also asked for a mandatory injunction compelling the Kansas Natural Gas Company to furnish this gas. T. S. Salathiel, O. P. Ergenbright and Henry C. Solomon were attorneys for the plaintiff and the temporary injunction asked by them was allowed July 13, 1910, by Judge Flannelly. The price of gas so furnished, however, to be fixed on the final determination of the case.

The gas company immediately removed the case to the United States district court for the district of Kansas, and thereupon filed a demurrer to the petition of the manufacturing company, which Judge John C. Pollock sustained. This was in August 1910. Chester I. Long was then employed as an attorney by the manufacturing company, and Mr. Solomon apparently retired from the case.

On May 13, 1911, the case was dismissed without prejudice by the attorneys for the plaintiff.

112 It appears that the attorneys for the manufacturing company, or some of them, then appeared before John S. Daw-

son, attorney-general of Kansas, and suggested to him the bringing of a suit of ouster against the Kansas Natural Gas Company, alleging that it was a trust and doing business in violation of the anti-trust law of the state.

The attorney-general, in the name of The State of Kansas, filed such a suit on January 5, 1912; and he employed as special assistant attorney-general, Chester L. Long, T. S. Salathiel and O. P. Ergenbright, all of whom were attorneys for the Independence Manufacturing Company, and who had failed in the Federal court to establish the claim of the manufacturing company against the gas company. In the meantime, on October 9, 1912, certain bondholders, doubtless preferring that if a receiver were appointed it be done by the Federal court rather than by Judge Flannelly, who had granted the injunction in favor of the manufacturing company, applied to Judge Pollock for the appointment of receivers for the gas company. This he did on October 9, 1912. Judge Flannelly also appointed receivers on February 15, 1913.

#### Two Sets of Receivers Fight for the Property.

Then proceeded the litigation between the two sets of receivers for the possession of the property, which ultimately resulted in the state receivers' obtaining such possession after approximately a year's litigation. The Federal court directed its receivers to turn over the property to Judge Flannelly's receivers, allowing the Federal receivers and their attorneys \$100,379.21 as fees, expenses and compensation for services they had performed while the property was in their possession, and directed them to retain \$50,000 for contingencies, which they still have. The remainder of the money and property was turned over to the state receivers.

On February 15, 1913, immediately after Judge Flannelly appointed the state receivers, he authorized them to employ Chester L. Long, T. S. Salathiel and O. P. Ergenbright, all of whom had been attorneys for the manufacturing company, as attorneys for the receivers; and also on the same date he authorized the appointment of John S. Dawson, attorney-general, who had brought the ouster suit, and John H. Atwood, of Kansas City, as additional attorneys for the receivers. Other attorneys were employed at later dates.

So it appears in the evolution of events, that Judge Flannelly, who granted the temporary injunction asked for by the manufacturing company to compel the gas company to furnish it gas under the contract heretofore referred to, which was set aside by the Federal court upon the petition of the attorney-general, placed the gas company in the hands of a receiver under the state antitrust law, and at once authorized the receivers which he appointed to employ the attorneys of the manufacturing company, and John S. Dawson, the attorney-general, as attorneys for the receivers.

During the first year of the management of the gas company by



the receivers, he authorized the receivers to pay fees to these attorneys as follows:

John S. Dawson, \$8,325; Chester I. Long, \$13,325; T. S. Salathiel, \$13,325; O. P. Ergenbright, \$13,325; and John H. Atwood, \$13,500.

Some time after the appointment of the state receivers, a claim was filed in the receivership proceedings by the manufacturing company against the Kansas Natural Gas Company and its predecessors for the fulfillment of the contract for gas at two 114 cents per thousand cubic feet. It appears that it has since been proposed by the representatives of the manufacturing company to withdraw this claim on the payment of \$150,000.

On December 17, 1914, an effort was made to settle all controversies between the creditors of the gas company, the Federal and state receivers and Judge Flannelly's court in an agreement known as the "Creditors' Agreement." In the conference that resulted in this agreement there appeared for the State of Kansas, John S. Dawson, attorney-general; for the bondholders and creditors were S. S. Mehard, Randall Morgan, Chas. Flood Smith, J. W. Dana, and others, and for the receivers F. J. Fritch, T. S. Salathiel, O. P. Ergenbright, John H. Atwood and Chester I. Long, attorneys. In this agreement appears the following provision:

"Upon due notice and opportunity to be heard, the court shall determine the rights of the Independence Manufacturing and Power Company."

So it appears that the manufacturing company was able by this agreement to keep alive its claim against the gas company, which the Federal court had decided was not valid; and it is left to Judge Flannelly, who originally granted the temporary injunction for the manufacturing company and appointed the state receivers, to determine what sums shall be given to that company.

The attorneys for the state receivers have been allowed, for services rendered during the years 1913 and 1914, \$65,900, and it is stated in the testimony in the case that the claims for the year 1915 have not yet been allowed. What such additional allowances may be no one but the court knows. None of the attorneys referred to have yet receipted in full for their fees.

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## Lawyers' Fees.

During the pendency of this litigation there has been \$227,667.87 expended for both Federal and state receivers' salaries and expenses, including attorneys' fees; and it is proposed now by the present receivers to continue the administration of the affairs of this company for six years or indefinitely.

From the evidence it clearly appears that the Kansas Natural Gas Company was not put in the hands of the receivers because of any financial embarrassment that beset it. From 1905 to 1914, covering a period of about nine years, the company earned net 11.32 per cent on its investment.

The suit that resulted in the appointment of the receivers was brought by the attorney-general under the antitrust law in the name of the State, and that proceeding is still pending under that caption.

The administration of the property by the receivers has been disastrous to the company and its patrons. The litigation between the state and Federal receivers was exceedingly expensive and demoralizing to the business of the company. That was immediately followed by long, persistent and expensive litigation by the state receivers for increased rates.

#### Revenues Wasted.

In the meantime, while the receivers were engaged in this litigation and wasting the revenues of the company, its leaseholds were exhausted and they neglected to make proper effort to obtain an additional supply of gas necessary to meet the demands of the company's markets. Leases that were available for them were

116 obtained by other companies operating in the same field.

Now these receivers find themselves with an insufficient quantity of gas to supply the demands of their lines. They have large facilities for marketing gas, but not a sufficient supply of gas.

This is not because there is not an abundance of gas available, as there is to-day a larger supply of natural gas in the Mid-continent field in sight than at any period of its history. Other companies have obtained wells in this field and are furnishing their patrons in Kansas with an abundant supply at rates less than those fixed by the Commission for the Kansas Natural Gas Company.

The Wichita Natural Gas Company is fully supplying Wichita, Hutchinson and other cities in Central Kansas and Oklahoma with gas at 12½ cents for boiler and 27 cents for domestic uses, and has made no request to this Commission for an increase of rates.

There is every reason to believe that if the Kansas Natural Gas Company, under the receivership, had been competently and efficiently managed, it would to-day be able to supply all of the cities on its lines with a reasonable supply of gas with a fair profit at the rates which have prevailed in the past. But instead of doing this they have wasted their time and the resources of the company in legal controversies and excessive and in many instances unnecessary receivership expenses.

It is now proposed, apparently, from the testimony in this case, to continue the administration of the affairs of this corporation in the same way in the future for years. As heretofore stated, this company was placed in the hands of receivers not because of its insolvency, but upon a suit brought by the state against it for the violation of the antitrust law.

#### 117 Property Should Be Given Back to Owners.

It is the opinion of the Commission that if the present owners of the property could satisfy the state authorities that they will operate the company in harmony with the laws of the state, and the

affairs of the receivership could be wound up promptly and the property turned over to the owners, it would be able soon to fully supply its patrons with all the gas they require. But, if this is not done, unless the receivers completely change their methods of administration, a sufficient supply will not be furnished.

We believe that the best interests of this property and the public would be served by turning it over to its rightful owners, and requiring them to administer its affairs in a lawful manner.

JOSEPH L. BRISTOW, *Chairman;*

JOHN M. KINKEI,

*Commissioners.*

*Dissenting Opinion on Rehearing.*

By FOLEY, *Commissioner*:

The writer regrets to feel himself obliged to differ from his colleagues in the conclusions reached upon this matter. To set forth the grounds upon which this difference of opinion rests appears wholly unnecessary. Cordially agreeing with much of the reasoning and many of the conclusions embodied in the opinion, the evidence has, nevertheless, wrought in my mind a conviction that the best interests of both the complainants and the gas-consuming public require a somewhat higher rate for gas than that provided by the order issued.

118 My judgment is that the net rate for domestic gas marketed in Montgomery county should be twenty-five cents per thousand cubic feet; that, to consumers served by that portion of the line and its off-shoots between Montgomery county and the Gunn line junction in Allen county the rate should be twenty-eight cents net; and that to all consumers in Kansas served by the Gunn line or by complainants' line north of the Gunn line junction a net rate of thirty cents should be charged. This is the present rate in Moran, Bronson and Fort Scott.

Conceding, if need be, that the past management of the company's property by the receivers has not been either efficient or economical and that excessive sums have been needlessly spent in litigation, those matters are now, in my judgment, beyond the control of this Commission. As stated by the Interstate Commerce Commission in an early case, "the law deals with the actual situation."

Complainants ask a net rate of thirty-seven cents per thousand cubic feet for all gas delivered for domestic consumption in Kansas outside of Montgomery county. So high a rate would probably defeat its purpose—the augmentation of revenue. Under past and existing service conditions it is doubtful whether any rate in excess of thirty cents net would increase the company's income much, if at all.

It is almost axiomatic that a public utility, in order to earn a maximum of revenue, must furnish service reasonably satisfactory to its patrons. This class of service is not now, and has not for some time been supplied by complainants. They confess themselves un-

able to supply the public demand during "peak load" periods in cold weather. In other words, when the public needs the service worst it fails. The quality of such service may be likened to that furnished by a bank which fails a depositor when he is in the sorest financial straits, or by a crowded street car, which on account of inability to perform further service leaves an intending passenger shivering upon a bleak corner during a driving storm.

While the value of the service to the consumer is not an accepted measure of the proper rate to be charged, yet it seems reasonable that the character and efficiency of the service affect the value of that actually rendered, and would be proper factors to consider in establishing a rate.

The pipe line serving Kansas City, Topeka and other northern territory is conceded to be inadequate for the transportation of a sufficient supply of gas in cold weather. A compressor station which was formerly operated at Scipio, near Garnett, and which was very essential to the proper service of customers north of that point, was dismantled, removed and reinstalled in Oklahoma. Altogether, the service in the northern portion of the territory in which the company markets its gas is very inefficient and unsatisfactory.

Nevertheless, under existing conditions, and taking into consideration all the facts and circumstances disclosed by the evidence, I entertain the belief that the rates should be increased substantially to the extent above indicated.

C. F. FOLEY.

At a Regular Session of the Public Utilities Commission of the State of Kansas, Held at Its Office in Topeka, Kan., This 10th Day of December, A. D. 1915.

Joseph L. Bristow, John M. Kinkel, C. F. Foley, Commissioners.

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Docket 1035.

JOHN M. LANDON, and R. S. LITCHFIELD, Receivers for Kansas Natural Gas Company, a Corporation, Complainants,

vs.

THE CITIES OF LAWRENCE, TOPEKA, KANSAS CITY, LEAVENWORTH, Atchison, Oakland, Merriam, Olathe, Edgerton, Le Loup, Princeton, Welda, Fort Scott, Parsons, Pittsburg, Weir, Columbus, Altamont, Coffeyville, Mound City, Elk City, Tonganoxie, Baldwin, Rosedale, Lenexa, Gardner, Wellsville, Ottawa, Richmond, Colony, Thayer, Galena, Cherokee, Scammon, Oswego, Liberty, Caney, Mound Valley, Independence, Redfield;

THE LAWRENCE CITIZENS LIGHT & POWER COMPANY,  
THE CONSUMERS LIGHT, HEAT & POWER COMPANY,

L. G. TRELEAVEN, Receiver of The Consumers Light, Heat & Power Company,

THE WYANDOTTE COUNTY GAS COMPANY,  
 WILLARD J. BREIDENTHAL and JOHN F. OVERFIELD, Receivers for the  
 Wyandotte County Gas Company,  
 THE LEAVENWORTH LIGHT, HEAT & POWER COMPANY,  
 THE ATCHISON RAILWAY, LIGHT & POWER COMPANY,  
 THE HOME LIGHT, HEAT & POWER COMPANY,  
 THE KANSAS GAS & ELECTRIC COMPANY,  
 THE O. A. EVANS & COMPANY,  
 THE TONGANOXIE GAS & ELECTRIC COMPANY,  
 CENTRAL GAS COMPANY,  
 THE COFFEYVILLE GAS & FUEL COMPANY,  
 THE UNION GAS & TRACTION COMPANY,  
 THE WEIR GAS COMPANY,  
 THE OTTAWA GAS & ELECTRIC COMPANY,  
 THE ELK CITY GAS & OIL COMPANY,  
 THE PARSONS NATURAL GAS COMPANY,  
 THE AMERICAN GAS COMPANY,  
 THE FORT SCOTT GAS COMPANY,  
 THE OLATHE GAS COMPANY,  
 THE LIBERTY GAS COMPANY,  
 FORT SCOTT & NEVADA LIGHT, HEAT, WATER & POWER COMPANY,  
 THE CENTRAL GAS COMPANY,  
 GUNN PIPE LINE COMPANY,  
 THE MORAN GAS COMPANY, and  
 THE KANSAS FARMERS GAS COMPANY,  
 Respondents.

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*Order.*

This case being at issue upon the complaint and application for rehearing, and the responses filed, and having been duly heard and submitted by the parties, October 27, 1915, and full investigation of the matters and things involved having been had, and the Commission having on this 10th day of December, 1915, made and filed its opinion containing its findings of fact and conclusions thereon, which said opinion is hereby referred to and made a part thereof;

It is Therefore by the Commission Ordered, that the complainants are authorized to file with the Public Utilities Commission and collect the following schedule of net rates for the sale of natural gas by them, or through their distributing companies, to the public in the state of Kansas, to wit:

For domestic gas in Montgomery county, except Elk City, 23 cents per thousand cubic feet; for domestic gas in Elk City, 25 cents per thousand cubic feet; for boiler gas in Montgomery county, 10 cents per thousand cubic feet; for domestic gas in all other counties and cities other than those supplied by the Gunn Pipe Line, 28 cents per thousand cubic feet; and to all consumers supplied by the Gunn Pipe Line, 30 cents per thousand cubic feet; and for all boiler gas, except in Montgomery county, 12½ cents per thousand cubic feet.

It is further ordered, that the parties hereto be authorized and per-

mitted to make a minimum charge of 50 cents per month, per subscriber, for readiness to serve; that the complainants receive their contract share of the collections for gas actually delivered, and the residue of the minimum bill, when there is any, shall go to the distributing company. Collection rules and the rules relating to loss arising from uncollected accounts shall remain as at present until further ordered.

122 It is further ordered, that the parties hereto are hereby authorized and permitted to discontinue the furnishing or supplying of so-called free gas to cities, notwithstanding it may be furnished in compliance with ordinances or franchise agreements.

That the parties hereto are further authorized and permitted to discontinue the furnishing or supplying of free gas to any person or corporation for any reason whatsoever.

This order shall become operative and effective within thirty days after the service of a duly certified copy thereof.

By order of the commission.

CARL W. MOORE, *Secretary*.

O. K.

JOSEPH L. BRISTOW,

JOHN M. KINKEL,

C. F. FOLEY,

*Commissioners*.

123 Exhibit L, being map and explanation as to the life of the fields, filed with the Bill of Complaint but not attached to it, is omitted.

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#### EXHIBIT "M."

*Schedule Showing Changes in Rates and Joint Rates for Natural Gas Supplied by John M. Landon and R. S. Litchfield, as Receivers for Kansas Natural Gas Company.*

#### Notice to Consumers and Distributing Companies:

Take notice that on and after the December, 1915 meter readings, at or near the close of the month of December, after the filing of this schedule with the Public Utilities Commission, John M. Landon and R. S. Litchfield, as Receivers of Kansas Natural Gas Company, and the distributing companies, hereinafter named, will change the rates and joint rates for natural gas now in effect, and will thereafter charge and collect from domestic and gas engine consumers of natural gas at the several places hereinafter named, the following rates and joint rates, to-wit:

City.	Company.	Present joint rate.	Changed joint rate.	Present minimum bill.	Changed minimum bill.
Independence, Kan.	K. N. G. Gas Co.	.20	.23	.20	.50
Elk City, Kan.	Elk City Oil and Gas Co.	.25	.25	.20	.50
Coffeyville, Kan.	Coffeyville Gas and Fuel Co.	.20	.23	.20	.50
Liberty, Kan.	Liberty Gas Co.	.25	.23	...	.50
Altamont, Kan.	American Gas Co.	.25	.28	...	.50
Oswego, Kan.	American Gas Co.	.25	.28	...	.50
Columbus, Kan.	American Gas Co.	.25	.28	...	.50
Seammon, Kan.	American Gas Co.	.25	.28	...	.50
Weir City, Kan.	Weir City Gas Co.	.25	.28	...	.50
Galena and Empire, Kan.	American Gas Co.	.25	.28	.50	.50
Cherokee, Kan.	American Gas Co.	.25	.28	...	.50
Pittsburg, Kan.	Home Light, Heat and Power Co., Kansas and Electric Co., lessee	.25	.28	...	.50
Parsons, Kan.	Parsons Gas Co.	.25	.28	...	.50
Thayer, Kan.	O. A. Evans & Co. (Thayer Gas Plant),...	.25	.28	...	.50
Colony, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Welda, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Richmond, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Princeton, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Ottawa, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
	Ottawa Gas and Electric Co.	.25	.28	...	.50
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Baldwin, Kan.	Union Gas and Traction Co.	.25	.28	...	.50



City.	Company.	Present joint rate.	Changed joint rate.	Present minimum bill.	Changed minimum bill.
Lawrence, Kan.	Citizens Light, Heat and Power Co.	.25	.28	...	.50
Topeka, Kan.	Consumers Light, Heat and Power Co.	.25	.28	...	.50
Fort Scott, Kan.	Fort Scott Gas and Electric Co.	.30	.30	...	.50
Moran, Kan.	Fort Scott and Nevada Light, Water, Heat and Power Co.	.30	.30	...	.50
Bronson, Kan.	Fort Scott and Nevada Light, Water, Heat and Power Co.	.30	.30	...	.50
Tonganoxie, Kan.	Tonganoxie Gas and Electric Co.	.25	.28	...	.50
Leavenworth, Kan.	Leavenworth Light, Heat and Power Co.	.25	.28	...	.50
Atchison, Kan.	Atchison Railway, Light and Power Co.	.25	.28	...	.50
Wellsville and LeLoup.	Union Gas and Traction Co.	.25	.28	...	.50
Edgerton, Kan.	Union Gas and Traction Co.	.25	.28	.50	.50
Gardner, Kan.	Union Gas and Traction Co.	.25	.28	.50	.50
Lenexa, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Merriam and Shawnee, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Kansas City, Kan.	Wyandotte County Gas Company.	.25	.28	...	.50
Olathe, Kan.	Olathe Gas Co.	.25	.28	...	.50

"Boiler gas" for use under boilers, for making steam for power purposes at ten cents (10c.) per thousand cubic feet in Montgomery County, Kansas, and at twelve and one-half cents (12½c.) per thousand cubic feet at all points in Kansas outside of Montgomery County; provided, that the receivers will supply boiler gas only when, in their judgment, such use will not affect the domestic service. Gas used for purposes, or in a manner different than as herein provided, shall carry the domestic rate of the locality where used.

Two cents per thousand cubic feet will be added to the bills, but shall be deducted from the bills of all consumers who pay their bills on or before the 10th day of the succeeding month in which the service is rendered.

All gas heretofore furnished to any person, firm, corporation or municipality, without compensation, commonly called "free gas," is discontinued, and all such users heretofore using "free gas," shall be required to pay for gas furnished in the future for the uses for which said "free gas" was used, at the domestic rate herein provided for the city or locality wherein such gas is used; provided, that where

gas is used for street lighting purposes, a charge will be made  
126 for one thousand cubic feet of gas per month for each lamp having a single burner where gas is turned off during daylight hours, and for two thousand cubic feet left burning during the daylight hours; and a similar charge for each additional burner.

The foregoing schedule of rates and joint rates is made and filed by said receivers under protest against the establishment and enforcement thereof, but in obedience to, in compliance with, and only because of, the order of the Public Utilities Commission of Kansas, made and entered on the 10th day of December, 1915; the grounds for this protest are, that said order of the Public Utilities Commission of Kansas, is null and void because the business conducted by said receivers in the states of Kansas, Oklahoma and Missouri, is interstate commerce, and said order an attempted regulation thereof; that as to the gas produced in Kansas, said rates are inadequate, insufficient, unremunerative, noncompensatory, confiscatory, wrongful and unlawful, and will not yield sufficient revenue to pay a fair return on the property employed in said service, and will deprive said receivers and all persons having rights therein, of property without due process of law, and imposes a burden upon the interstate commerce conducted by said receivers; that as to the gas produced in Oklahoma and sold in Kansas, such rates are inadequate, insufficient, unremunerative, noncompensatory, confiscatory, wrongful and unlawful, and the enforcement thereof an interference with interstate commerce.

JOHN M. LANDON,  
R. S. LITCHFIELD,  
*Receivers for Kansas Natural Gas Co.*

127 Consent is hereby given this — day of December, 1915, to put the foregoing schedule of rates into effect at the time in this schedule provided.

THE PUBLIC UTILITIES COMMISSION,

By ———, *Chairman.*

Attest:

———, *Secretary.*

128 At a Regular Session of the Public Utilities Commission for the State of Kansas, Held at its office in Topeka, Kansas, This 28th Day of December, A. D. 1915.

Joseph L. Bristow, John M. Kinkel, C. F. Foley, Commissioners.

Docket 1035.

In the Matter of the Application for Approval of the Schedule Showing Changes in Rates and Joint Rates for Natural Gas Supplied by John M. Landon and R. S. Litchfield, as Receivers for Kansas Natural Gas Company, and of the Rules and Regulations Therewith Filed.

*Order.*

Be it Remembered that on this 28th day of December A. D. 1915, the application for approval of the schedule showing changes in rates and joint rates for natural gas supplied by John M. Landon and R. S. Litchfield, as Receivers for Kansas Natural Gas Company, and of the rules and regulations therewith filed, came duly on for consideration and order by the Commission, and the Commission, upon consideration thereof and being duly advised in the premises, finds that said schedule of rates and joint rates as filed, and the rules and regulations therewith filed, shall be approved with the modification of one of said rules as hereinafter set forth.

The Commission further finds that the proviso in relation to "boiler gas" and its use should be modified so as to read as follows:

"Provided, that the receivers will supply boiler gas to all users thereof upon application and without discrimination only when in their judgment such use will not affect the domestic service."

It is therefore by the Commission considered and ordered; that the said schedule showing changes in rates and joint rates  
129 for natural gas supplied by John M. Landon and R. S. Litchfield as Receivers for the Kansas Natural Gas Company and the rules and regulations therewith filed as above modified be and they hereby are ratified, approved and confirmed.

By order of the Commission.

(Signed)

CARL W. MOORE, *Secretary.*

O. K.

JOSEPH L. BRISTOW,

JOHN M. KINKEL,

C. F. FOLEY,

*Commissioners.*

Filed in the District Court on Dec. 29, 1915. Morton Albaugh, Clerk.

130 In the District Court of the United States for the District of Kansas, First Division.

Equity.

No. 136-N.

JOHN M. LONDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al., Defendants.

*Separate Answer of Kansas Natural Gas Company.*

For its answer to the complaint of the plaintiffs herein and for affirmative relief against its co-defendants hereinafter asked and prayed for, Kansas Natural Gas Company alleges:

(1) That it is a corporation organized and existing under and by virtue of the laws of Delaware, and is a citizen of Delaware and is authorized to do business in Oklahoma and Missouri.

(2) Said defendant, Kansas Natural Gas Company, refers to the bill of complaint of plaintiffs herein, and to each and every paragraph thereof, and adopts the same as its own, and makes the same a part of this its answer by reference as if fully set out herein. That the matter and amount in controversy herein exceeds, exclusive of interest and costs, the sum and value of Three Thousand dollars (\$3,000.00).

(3) This defendant further answering, alleges that a long time prior to the filing of Equity Cause No. 1351 entitled, John L. McKinney et al. v. Kansas Natural Gas Company, and Equity Cause No. 1-N Entitled, The Fidelity Title & Trust Company v. Kansas Natural Gas Company and the Delaware Trust Company now pending in this court, this defendant was the owner of certain pipelines,

131 compressor stations, leases for oil and gas, leaseholds, oil and gas wells, field and gathering lines, and equipment for drilling and equipping oil and gas wells in the states of Oklahoma and Kansas, and the owners of the pipelines in the State of Missouri, and the owners of leases on certain pipelines, compressor stations, gas wells and equipment owned by the Marnet Mining Company, and certain other pipelines, compressor stations, leases, gas wells and equipment owned by Marnet Mining Company, a corporation of West Virginia, and the Kansas City Pipe Line Company, a corporation of New Jersey, which it held and used in carrying on its business under certain lease contracts, copies of which are among the files in Equity case No. 1351 and Equity Case No. 1-N above referred to, and which are made a part of this answer by reference.

(4) That since its organization as a corporation, to-wit in 1904, this defendant was engaged in the business of producing, transporting and selling natural gas, and in operating pipelines therefor in the States of Oklahoma, Kansas and Missouri, and carrying on other activities incidental to the said business, and said business was conducted up to the 9th day of October, 1912, when receivers were appointed by this honorable court for all the property of this defendant situated in the States of Kansas, Oklahoma and Missouri.

That pipelines, compressor stations, leases, oil and gas wells, and instrumentalities used by this defendant, including those owned by it and those leased from Marnet Mining Company and the Kansas City Pipe Line Company, in carrying on its said business, are so constructed, connected and related that they can be operated only as a unit.

132 (5) That at the time of the appointment of receivers for the property and assets of this defendant by this honorable court, the property of this defendant was incumbered by two certain trust deeds, one to the The Fidelity Title & Trust Company, as trustee, given to secure \$4,000,000 of the first mortgage bonds of this defendant, of which at said time, there remained unpaid \$1,600,000; and a certain other trust deed in favor of the Delaware Trust Company, upon which there remained unpaid \$2,267,000 of said mortgage bonds; that at said time there was a trust deed upon the property of the Kansas City Pipe Line Company leased to this defendant, in favor of the Fidelity Trust Company, upon which there was then unpaid \$2,500,000 first mortgage bonds; that at said time there was a trust deed upon the property of Marnet Mining Company leased to this defendant, upon which there remained unpaid \$547,000 of first mortgage bonds; that this defendant had assumed and agreed to pay the said bonds secured by trust deeds upon the property of the Kansas City Pipe Line Company and Marnet Mining Company aforesaid, under the terms of said lease and agreements hereinbefore referred to, and made a part of this answer.

(6) That on December 17, 1914, this defendant joined with its several creditors and stockholders in making and executing the "Creditors' Agreement" referred to in paragraph V of the bill of complaint herein, by and through its president, Mr. Eugene Mackey. A copy of said "Creditors' Agreement" is attached to the bill of complaint herein as "Exhibit A," and is hereby referred to and made a part of this answer by reference as if fully set out herein.

133 That at the time of entering into said "Creditors' Agreement," the bonds of this defendant, secured by trust deeds aforesaid, were in default, and said trust deeds were subject to foreclosure, and were in the process of foreclosure; that certain of the bonds of Marnet Mining Company were in default, and the trust deeds securing the same were subject to foreclosure; that certain of the bonds of the Kansas City Pipe Line Company were in default, and a trust deed securing said bonds was subject to foreclosure; that one of the purposes, advantages and benefits to be accomplished by the making of said "Creditors' Agreement," was to procure an extension of the time for the payment of said bonds of this defendant,

and the bonds of Marnet Mining Company and the Kansas City Pipe Line Company above referred to, and to prevent the filing of foreclosure suits for foreclosing said trust deeds, and to stay the prosecution of the said equity suits 1351 and 1-N above referred to, which were pending to foreclose the mortgages on this defendant's property.

That said "Creditors' Agreement" provided for the extension of the time for the payment of all said bonds, including those in process of foreclosure in said equity suits over a period of six (6) years, from January 1, 1915, and provided for the payment and retirement of one-sixth ( $1/6$ ) of each of said first mortgage bonds each year.

That it was further provided in said "Creditors' Agreement" that "The creditors and lienholders of Kansas Natural Gas Company and The Kansas City Pipe Line Company, consent that \$500,000.00 may be reserved during the year 1915 out of current earnings for said year, and \$200,000.00 annually, thereafter, during the receivership, for extension, betterments and additional gas supply; the same to be expended only by order of court after notice to the creditors or their committee and opportunity to be heard, and upon condition that the properties are being operated upon a compensatory rate;"

134 That it is necessary in order to provide funds with which to meet the maturing obligations of the said several creditors of Kansas Natural Gas Company, and comply with the terms of the said "Creditors' Agreement" for the payment of the same within the six year period, that additional gas supply be provided sufficient to carry on said business during the six year period provided, and it is necessary in order to procure said gas supply, to make extensions of pipelines to new gas fields and to new gas wells, and to construct and equip compressor stations; that large sums of money will be required to procure such additional gas supply greatly in excess of the sums of money provided in said "Creditors' Agreement." That unless said extensions are made and funds provided for meeting the terms of said "Creditors' Agreement," to wit the payment of one-sixth of the first mortgage bonds of Kansas Natural Gas Company, Kansas City Pipe Line Company and Marnet Mining Company each year, said "Creditors' Agreement" will become forfeited and void, and the parties thereto released from the obligations and terms thereof, and will be put in statu quo and permitted to prosecute said equity suits, and to institute actions to foreclose their respective claims, and the property of this defendant will thereby be wasted and sacrificed by forced sale, and the usefulness and utility of the pipeline system operated by the complainants as receivers, will be destroyed by separate foreclosure and sale, and by the failure to procure gas supply sufficient to operate the same.

135 (7) This defendant, further answering says that the rates fixed by the Public Utilities Commission of Kansas, defendant, and as indicated by the Public Service Commission of Missouri, defendant, as in the bill of complaint alleged, will not afford plaintiffs revenue sufficient to meet the accruing bond payments and the interest upon the bonds, and provide a gas supply for the six year period provided in said "Creditors' Agreement." That un-

less a compensatory and remunerative rate is established by some competent authority, or the said Public Utilities Commission of Kansas and the Public Service Commission of Missouri, defendants, are restrained from interfering with the plaintiffs, establishing and putting into effect reasonable rates, said plaintiff or this defendant will not be able to perform the terms, conditions and covenants of the "Creditors' Agreement," and make the bond payments as therein provided, and the terms of said "Creditors' Agreement" will become breached and each of the parties thereto will be released from the obligations thereof, and placed in statu quo, free to institute foreclosure suits and to prosecute the causes now pending to final judgment, foreclosure and sale of the properties of this defendant, to the great loss and detriment of this defendant and its stockholders. That the failure and refusal of said Public Utilities Commission of Kansas and the Public Service Commission of Missouri to authorize or establish compensatory rates in which plaintiffs may sell natural gas in the States of Kansas and Missouri, is jeopardizing the property rights, interests and securities of this defendant, and of its stockholders and bondholders, by preventing complainants from earning revenue sufficient to enable them to meet their obligations as fixed by said "Creditors' Agreement," thereby exposing the said properties to foreclosure or forced sale.

136 (8) That the rates fixed by the Public Utilities Commission of Kansas, defendant, and at which gas might be sold in Kansas, are inadequate, unremunerative and confiscatory, and the enforcement of said rates and the employment of this defendant's property in carrying on said business at said rates, is wasting the property of this defendant, and this defendant is being deprived of its property without compensation, and without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(9) That the property of this defendant owned and leased aforesaid, now in the possession and control, and being operated by the complainants as receivers, in carrying on the business of producing and purchasing gas in Oklahoma, and transporting the same to Kansas and Missouri, and the purchasing and producing gas in Kansas, and selling the same in Missouri, is an instrumentality of interstate commerce, and the business in which the said properties are employed aforesaid, and carried on by the plaintiff herein, is commerce between the states, and is interstate commerce and not subject to the jurisdiction, control or interference of the Public Utilities Commission of Kansas nor the Public Service Commission of Missouri.

(10) That said orders of said defendants, the Public Utilities Commission of Kansas and the Public Service Commission of Missouri, prescribing rates and regulating the use of said property, and in refusing to permit defendants to make reasonable rates, are unlawful and void, and an interference with interstate commerce, and in violation of Section Eight (8) Article One (1) of the Constitution of the United States.



(11) That this defendant is without an adequate remedy at law.

137 Wherefore, the premises considered, this defendant prays the justment and decree of this court granting the relief prayed in plaintiff's bill of complaint, and permanently restraining and enjoining the defendants, and each of them, from interfering with plaintiff's putting into effect reasonable rates for the sale of gas in Kansas and Missouri, until such time as some competent authority shall establish reasonable, renumeration and compensatory rates, and this defendant will ever pray.

KANSAS NATURAL GAS COMPANY,

By V. A. HAYS, *President*,

By T. S. SALATHIEL,

O. P. ERGENBRIGHT,

*Solicitors,*

Filed in the District Court on March 6, 1916.

MORTON ALBAUGH, *Clerk.*

138 The leases between Kansas Natural Gas Company and Marnet Mining Company, The Kansas City Pipe Line Company and others referred to in the foregoing Answer are omitted. "Creditors' Agreement" so-called, referred to in the foregoing Answer is also omitted.

139 *Chancery Subpoena.*

UNITED STATES OF AMERICA,

*District of Kansas, ss:*

The United States of America to Deerfield, Missouri; Nevada, Missouri; Car Junction, Missouri; Oronogo, Missouri, and Joplin, Missouri, Greeting:

This is to command you and every of you, that you appear before the Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, to answer the Bill of Complaint of John M. Landon and R. S. Litchfield, as Receivers of The Kansas Natural Gas Company this day filed in the Clerk's office of said Court in said City of Topeka, to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the District of Kansas to Execute.

Witness, the Hon. John C. Pollock, Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, this 26th day of January, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

*Deputy Clerk.*

*Memorandum.*

The above-named defendants are notified that unless they file their answer or other defense in the Clerk's office of said Court, at the City of Topeka aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the Bill of Complaint may be taken pro confesso and a decree entered accordingly.

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

*Deputy Clerk.*

140

*U. S. Marshal's Return.*

DISTRICT OF KANSAS, ss:

Received the within writ Feb. 7 *th*, 1916, and executed the same as follows, to wit: Served on the within named Hugh McIndoe, as City of Joplin, C. B. Roney as Mayor of Carl Junction, C. K. Geer, as Mayor of Oronogo, E. A. Dulin, as Mayor of Nevada and Mr. Wilkerson, Mayor of Deerfield.

W. A. SHELTON,

*U. S. Marshal,*

By VIRGIL H. MYERS, *Deputy.*

Fees .....	2.50
Expense .....	5.70
	<hr/>
Total .....	8.20

[Endorsed:] No. 136-N. District Court United States, District of Kansas. John M. Landon and R. S. Litchfield, Receivers of the Kansas Natural Gas Company, vs. The Public Utilities Commission of the State of Kansas et al. Chancery Subpoena. Returnable Feb. 15th, A. D. 1916. Morton Albaugh, Clerk. F. L. Campbell, Deputy Clerk. Filed Feb. 6th, A. D. 1916. Morton Albaugh, Clerk. ———, Deputy Clerk. John H. Atwood, Chester I. Long, Robert Stone, Geo. T. McDermott, Comp'ts Sols.

141

*Chancery Subpoena.*

UNITED STATES OF AMERICA,

*District of Kansas, ss:*

The United States of America to John T. Barker, as Attorney General of the State of Missouri; William G. Busby, as Counsel of the Public Service Commission of the State of Missouri; The Public Service Commission of the State of Missouri; John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw, and Eugene McQuillan, as the Public Service Commission of the State of Missouri; Fidelity Trust Company, a corporation; Kansas City Pipe Line Company, a corporation; St. Joseph Gas Co.; The Kansas City Gas Co.; The Carl Junction Gas Co.; The Oronogo Gas Co.; The Joplin Gas Co.; The Cities of St. Joseph, Mo.; Weston, Mo.; Kansas City, Mo.; Deerfield, Mo.; Nevada, Mo.; Carl Junction, Mo.; Oronogo, Mo., and Joplin, Mo., Greeting:

This is to command you and every of you, that you appear before the Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, to answer the Bill of Complaint of John M. Landon and R. S. Litchfield, as Receivers of The Kansas Natural Gas Company this day filed in the Clerk's office of said Court in said City of Topeka, to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Western District of Missouri to Execute.

Witness, the Hon. John C. Pollock, Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, this 30th day of December, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

*Deputy Clerk.**Memorandum.*

The above-named defendants are notified that unless they file their answer or other defense in the Clerk's office of said Court, at the City of Topeka aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the Bill of Complaint may be taken pro confesso and a decree entered accordingly.

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

*Deputy Clerk.*

142

*U. S. Marshal's Return.*

DISTRICT OF KANSAS, ss:

Received the within writ January the 4th, 1916, and executed the same as follows, to wit: Served on the within named Wm. G. Busby as Counsel of the Public Service Commission of the State of Missouri, The Public Service Commission of the State of Missouri, John M. Atchison, Edwin J. Bean, John Kennish, Howard B. Shaw and Eugene McQuillan, as the Public Service Commission of the State of Missouri, by reading the within writ to the above named defendants in Cole County, State of Missouri on this the 5th day of January, 1916.

I further certify that I served the within writ on John T. Barker Attorney General of the State of Missouri, by reading the same to the within named John T. Barker on the 6th day of January, 1916, in Cole County, State of Missouri.

W. A. SHELTON

*U. S. Marshal Western District of Mo.,*

By GEO. A. SMITH,

*Dep. U. S. Marshal Western District of Missouri.*

[Endorsed:] No. 136-N. District Court United States, District of Kansas. John M. Landon et al. vs. The Public Utilities Commission of the State of Kansas et al. Chancery Subpoena. Returnable January 19th, A. D. 1916. Morton Albaugh, Clerk. F. L. Campbell, Deputy Clerk. Filed Jan. 13, A. D. 1916. Morton Albaugh, Clerk. ———, Deputy Clerk. John H. Atwood, Robert Stone, Geo. T. McDermott, and Chester I. Long, Compts. Sols.

143

*Chancery Subpoena.*

UNITED STATES OF AMERICA,

*District of Kansas, ss:*

The United States of America to John T. Barker, as Attorney General of the State of Missouri; William G. Busby, as Counsel of the Public Service Commission of the State of Missouri; The Public Service Commission of the State of Missouri; John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw, and Eugene McQuillan, as the Public Service Commission of the State of Missouri; Fidelity Trust Company, a corporation; Kansas City Pipe Line Company, a corporation; St. Joseph Gas Co.; The Kansas City Gas Co.; The Carl Junction Gas Co.; The Oronogo Gas Co.; The Joplin Gas Co.; The Cities of St. Joseph, Mo.; Weston, Mo.; Kansas City, Mo.; Deerfield, Mo.; Nevada, Mo.; Carl Junction, Mo.; Oronogo, Mo., and Joplin, Mo., Greeting:

This is to command you and every of you, that you appear before the Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, to

answer the Bill of Complaint of John M. Landon and R. S. Litchfield, as Receivers of The Kansas Natural Gas Company this day filed in the Clerk's office of said Court in said City of Topeka, to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Western District of Missouri to Execute.

Witness, the Hon. John C. Pollock, Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, this 30th day of December, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

MORTON ALBAUGH, *Clerk*,

By F. L. CAMPBELL,

*Deputy Clerk.*

*Memorandum.*

The above-named defendants are notified that unless they file their answer or other defense in the Clerk's office of said Court, at the City of Topeka aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the Bill of Complaint may be taken pro confesso and a decree entered accordingly.

MORTON ALBAUGH, *Clerk*,

By F. L. CAMPBELL,

*Deputy Clerk.*

144

*U. S. Marshal's Return.*

WESTERN DIVISION,

*Western District of Missouri:*

I hereby certify that I executed this writ by reading same to Henry L. Jost, Mayor of Kansas City, Missouri, E. L. Brundrett, President of the Kansas City Gas Co. and H. C. Flower, President of the Fidelity Trust Co., Kansas City, Missouri.

All done in Jackson County, Missouri this 14th day of January, 1916.

After making diligent inquiry I fail to find any officers of The Kansas City Pipe Line Company in this district.

Marshal's Fees: 3 Services \$6.00.

W. A. SHELTON,

*U. S. Marshal,*

By A. D. CROCKETT, *Deputy.*

[Endorsed:] No. 136-N. District Court United States, District of Kansas. John M. Landon et al. vs. The Public Utilities Commission of the State of Kansas et al. Chancery Subpoena. Returnable January 19th, A. D. 1916. Morton Albaugh, Clerk. F. L. Campbell, Deputy Clerk. Filed January 19th, A. D. 1916. Morton Albaugh, Clerk. ———, Deputy Clerk. John H. Atwood, Robert Stone, Geo. T. McDermott and Chester L. Long, Comp'ts' Sols.

Clerk. Filed January 19th, A. D. 1916. Morton Albaugh, Clerk.  
 ———, Deputy Clerk. John H. Atwood, Robert Stone, Geo. T.  
 McDermott and Chester I. Long, Compt's' Sols.

115

*Chancery Subpoena.*

UNITED STATES OF AMERICA,

*District of Kansas, ss.:*

The United States of America to John T. Barker, as Attorney General of the State of Missouri; William G. Busby, as Counsel of the Public Service Commission of the State of Missouri; The Public Service Commission of the State of Missouri; John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw, and Eugene McQuillan as the Public Service Commission of the State of Missouri; Fidelity Trust Company, a corporation; Kansas City Pipe Line Company, a corporation; St. Joseph Gas Co.; The Kansas City Gas Co.; The Carl Junction Gas Co.; The Oronogo Gas Co.; The Joplin Gas Co.; The Cities of St. Joseph, Mo.; Weston, Mo.; Kansas City,

Mo.; Deerfield, Mo.; Nevada, Mo.; Carl Junction, Mo.; Oronogo, Mo., and Joplin, Mo., Greeting:

This is to command you and every of you, that you appear before the Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, to answer the Bill of Complaint of John M. Landon and R. S. Litchfield, as Receivers of The Kansas Natural Gas Company this day filed in the Clerk's office of said Court in said City of Topeka, to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Western District of Missouri to Execute.

Witness, the Hon. John C. Pollock, Judge of the District Court of the United States of America for the District of Kansas, at the City of Topeka, in said District, this 30th day of December, in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.]

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

*Deputy Clerk.**Memorandum.*

The above-named defendants are notified that unless they file their answer or other defense in the Clerk's office of said Court, at the City of Topeka aforesaid, on or before the twentieth day after service of the above writ (excluding the day of service), the Bill of Complaint may be taken pro confesso and a decree entered accordingly.

MORTON ALBAUGH, *Clerk,*

By F. L. CAMPBELL,

*Deputy Clerk.*

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*U. S. Marshal's Return.*

DISTRICT OF KANSAS, ss:

St. Joseph, Missouri,

January 6, 1916.

We the undersigned hereby accept service of the within Subpoena in Chancery.

E. MARSHAL,

*Mayor of St. Joseph, Mo.*

Jany. 6th, 1916—2:10 P. M.

ST. JOSEPH GAS CO.,

By V. ELBEIT, *Gen. Mgr.*

Jan. 6th, 1916.

JOHN THORN,

*Mayor City of Weston, Mo.*

1-7-1916.

I do hereby certify I executed this writ by reading same to E. Marshal, Mayor of St. Joseph, and to V. Elbeit, President of the St. Joseph Gas Co. and John Thorn, Mayor of Weston, Mo. All done in their business offices in the St. Joseph Division of the Western District of Missouri this 7th day of Jan. 1916.

W. A. SHELTON,

*U. S. Marshal.*W. T. WHEELER, *Deputy.*

[Endorsed:] No. 136-N. District Court United States, District of Kansas. John M. Landon et al. vs. Public Utilities Commission of the State of Kansas et al. Chancery Subpoena. Returnable January 19th, A. D. 1916. Morton Albaugh, Clerk. ———, Deputy Clerk. Filed Jany. 19, A. D. 1916. Morton Albaugh, Clerk. ———, Deputy Clerk. John H. Atwood, Robert Stone, Geo. T. McDermott, and Chester I. Long, Comp'ts' Sols.



147 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS  
et al., Defendants.

*Answer of the Wyandotte County Gas Company.*

Now comes the defendant, The Wyandotte County Gas Company,  
and in answer to the bill of complaint filed herein, avers and states  
the following facts, to-wit:

I.

Defendant admits the statement of facts in paragraph numbered  
I of the bill.

II.

Defendant admits the statement of facts in paragraph numbered  
II of the bill, except the allegation that the "pipe-lines of the Kan-  
sas City Pipe Line Company are of little or no use unless they be oper-  
ated in conjunction with the balance of the system of the Kansas  
Natural Gas Company," as to which averment this defendant is  
without knowledge, and leaves plaintiffs to make such proof thereof  
as they may be advised is material.

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III.

Defendant admits the statement of facts in paragraph numbered  
III of the bill.

IV.

Defendant admits the statement of facts averred in paragraph  
numbered IV of the bill.

V.

Defendant admits that on December 17, 1914, the stipulation or  
Creditors' Agreement attached to plaintiffs' bill of complaint was  
executed by the parties thereto, as stated in paragraph numbered V  
of the bill of complaint, and that natural gas is delivered to the  
consumers in Kansas City, Kansas, by this defendant as a distribut-

ing company under a written contract, and that the amount paid by the consumers for natural gas purchased as measured by his meter is divided between the plaintiffs and this defendant in payment of the services rendered by each according to the percentages set out in said contract, as alleged in said paragraph of the bill; as to the remaining averments thereof, this defendant is without knowledge and leaves plaintiffs to such proof as they may be advised is material.

#### VI.

Defendant admits the statement of facts in paragraph numbered VI of the bill.

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#### VII.

Defendant admits the statement of facts in paragraph numbered VII of the bill.

#### VIII.

Defendant admits the statement of facts in paragraph numbered VIII of the bill.

#### IX.

Defendant is without knowledge of the averments in paragraph numbered IX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

#### X.

Defendant is without knowledge as to the averments in paragraph numbered X of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

#### XI.

Defendant admits that the plaintiffs filed with the Public Utilities Commission of Kansas the schedule marked Exhibit "M" to the bill, as alleged in paragraph XI of the bill of complaint; as to the remaining averments of said paragraph, this defendant is without knowledge and leaves plaintiffs to such proof as they may be advised is material.

#### XII.

Defendant is without knowledge of the averments alleged in paragraph numbered XII of the bill, and leaves the plaintiffs to such proof as they may be advised is material.

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## XIII.

Defendant is without knowledge of the averments alleged in paragraph numbered XIII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XV.

Defendant is without knowledge of the averments alleged in paragraph numbered XV of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XVI.

Defendant is without knowledge of the averments alleged in paragraph numbered XVI of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XVII.

Defendant is without knowledge of the averments alleged in paragraph numbered XVII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XVIII.

Defendant is without knowledge of the averments alleged in paragraph numbered XVIII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XIX.

Defendant is without knowledge of the averments alleged in paragraph numbered XIX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

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## XX.

Defendant admits that the demands of the consumers are increasing in Kansas City, Kansas, and with such increased demand the problem of supplying the additional gas and also the amount heretofore furnished is a serious one; as to the remaining averments of paragraph numbered XX of the bill, this defendant is without knowledge, and leaves plaintiffs to such proof as they may be advised is material.

## XXI.

Defendant is without knowledge of the averments alleged in paragraph numbered XXI of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXII.

Defendant is without knowledge of the averments alleged in paragraph numbered XXII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXIII.

Defendant is without knowledge of the averments alleged in paragraph pumbered XXIII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXIV.

Defendant is without knowledge of the averments alleged in paragraph numbered XXIV of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

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## XXV.

Defendant is without knowledge of the averments alleged in paragraph numbered XXV of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXVI.

Defendant is without knowledge of the averments alleged in paragraph numbered XXVI of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXVII.

Defendant is without knowledge of the averments alleged in paragraph numbered XXVII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXVIII.

Defendant admits the statement of facts in paragraph numbered XXVIII of the bill.

## XXIX.

Defendant is without knowledge of the averments alleged in paragraph numbered XXIX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXX.

Defendant is without knowledge of the averments alleged in paragraph numbered XXX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

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## XXXI.

Defendant admits that the rates and prices it is permitted to charge and collect from consumers in Kansas City, Kansas, are non-compensatory and confiscatory of the property of this defendant used and useful in the service of the public in the distribution and sale of natural gas; and as to the remaining averments of paragraph numbered XXXI of said bill, this defendant is without knowledge, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXXII.

Defendant is without knowledge of the averments alleged in paragraph numbered XXXII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXXIII.

Defendant admits the statement of facts in paragraph numbered XXXIII of the bill; but whether the contracts referred to therein are improvident, wasteful and destructive of the estate in the hands of plaintiffs and the custody of the District Court of Montgomery County, Kansas, and this Court; and whether said contracts are a legal and equitable fraud upon the rights of the creditors of the Kansas Natural Gas Company; and whether said contracts have never been adopted by the plaintiffs, this defendant is without knowledge and leaves plaintiffs to their proofs; but defendant avers that the supply-contract existing between this defendant and the Kansas Natural Gas Company, providing for the supply of natural gas to this defendant, has never been disavowed.

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## XXXIV.

Defendant, The Wyandotte County Gas Company, further states that it has an interest in the subject of the action and arising out of the transactions which are the subject matter of the plaintiffs' suit set forth in the bill of complaint; that it also has an interest adverse to the plaintiffs and to certain defendants therein necessary to a proper and complete determination of the cause; and for its counterclaim against the plaintiffs and the defendants, Kansas Natural Gas Company and George Sharritt, Receiver of the Kansas Natural Gas Company appointed by this court, states the following facts, to-wit:

That the defendant, The Wyandotte County Gas Company, is a corporation, duly organized and existing under and by virtue of the laws of the state of Kansas; and is engaged in the business of distributing and selling natural gas to the cities of Kansas City, Kansas, and Rosedale, Kansas, and their inhabitants, under and pursuant to the following described ordinances of said cities granting the use of the public streets for such purpose.

That on or about September 1, 1903, the mayor and councilmen of Kansas City, Kansas, duly passed, approved and caused to be published Ordinance No. 5637 of said city, entitled "An ordinance providing for the supplying of the City of Kansas City, Kansas, and its inhabitants with manufactured gas by the Wyandotte Gas Company, its successors and assigns, and repealing all ordinances in conflict herewith;" that said ordinance was duly accepted by the Wyandotte Gas Company, and thereafter duly assigned, sold, transferred and conveyed to The Wyandotte County Gas Company, and 155 said ordinance and all the franchises, rights and privileges therein granted are now owned and held by The Wyandotte County Gas Company; that said ordinance and franchises provided for the construction, maintenance and operation of a manufactured gas plant in the City of Kansas City, Kansas, and the furnishing of manufactured gas to said city and its inhabitants for a period of thirty years at the rate and price of \$1.00 per thousand cubic feet; a true and correct copy of said Ordinance No. 5637 is hereto attached, marked Exhibit "A" and made a part hereof.

That soon thereafter, on the advent of natural gas and on or about December 13, 1904, the mayor and councilmen of Kansas City, Kansas, duly passed, approved and caused to be published Ordinance No. 6051 of said city, entitled "An ordinance relating to, and providing for the supplying of the City of Kansas City, Kansas, and its inhabitants, with natural gas by the Wyandotte Gas Company, its successors and assigns;" that said ordinance and the franchises, rights and privileges therein granted *was* thereupon duly accepted by the Wyandotte Gas Company, and *was on* or about November, 1908, duly assigned, sold, transferred and conveyed to The Wyandotte County Gas Company, and said company is now the owner and holder of said ordinance and the franchises, rights and privileges therein granted.

That said ordinance provided that natural gas should be furnished "for lighting, heating, power and manufacturing purposes;" that the general domestic rates should commence at 25 cents per thousand cubic feet and increase from time to time to 35 cents per thousand cubic feet, and that the rates and charges for the natural gas 156 furnished and sold for power and manufacturing purposes might be determined by "special contracts with consumers at less than the general rates then in force, based upon the amount of gas used and the conditions of the contract;" that for the purpose of supplying said natural gas to the city and its inhabitants, the grantee might use its existing mains, pipes, reservoirs, holders and appliances, and temporarily "be relieved of any obligation to supply manufactured gas;" and said ordinance further provided that, "should the grantee find at any time hereafter during the life of this franchise, that the supply of natural gas at points contiguous to the mains from which it obtains its supply, or in the natural gas fields of southeastern Kansas, is inadequate to warrant it in continuing to supply natural gas under the terms of this ordinance, it shall not be longer required so to do, but may proceed to furnish and supply manufactured gas in accordance with the terms and

provisions of said Ordinance No. 5637;" a true and correct copy of said Ordinance No. 6051 is hereto attached, marked Exhibit "B" and made a part hereof.

That on or about March 21, 1905, the mayor and councilmen of the City of Rosedale, Kansas, duly passed, approved and caused to be published Ordinance No. 295 of the City of Rosedale, entitled "An Ordinance granting to R. A. Long and T. N. Barnsdall, their successors and assigns, for a period of twenty years, the right to acquire, lay, maintain, repair, replace, relay and remove mains and pipe lines and all necessary regulators and appliances for the transportation of natural and manufactured gas to, in and through the

City of Rosedale, Kansas; together with the additional right  
157 to use all streets, avenues and public grounds of the City of Rosedale, Kansas, for the purpose of laying mains and pipes to supply and deliver to the said City and the inhabitants thereof gas for manufacturing, heating, illuminating and all other purposes for which natural or manufactured gas is, or may be used, during said period;" that said ordinance was duly accepted by the grantees and has been since assigned, sold, transferred and conveyed to The Wyandotte County Gas Company and said company is now the owner and holder of said ordinance and all the franchises, rights and privileges therein granted.

That said franchise provides for the furnishing of natural gas for "manufacturing, heating, illuminating and all other purposes, natural or manufactured gas may be used," and fixes a schedule of general domestic rates commencing at 35 cents per thousand cubic feet and increasing from time to time to 50 cents per thousand cubic feet, with a proviso that the rates charged for said natural gas should never exceed the rates charged and collected in Kansas City, Kansas; a true and correct copy of said ordinance being hereto attached, marked Exhibit "C" and made a part hereof.

That The Wyandotte County Gas Company obtains its natural gas from the Kansas Natural Gas Company and its Receivers, under and pursuant to a certain contract in writing dated February 1, 1906, and entered into by and between The Kansas City Pipe Line Company, a corporation, and the Wyandotte Gas Company, a corporation, which said contract has been duly assigned by the Kansas City Pipe Line Company to and assumed by the Kansas Natural Gas Company, and by the Wyandotte Gas Company to and assumed by

The Wyandotte County Gas Company; a true and correct  
158 copy of said contract is hereto attached, marked Exhibit "D" and made a part hereof.

Defendant states and shows to the Court that the whole project, plan and undertaking of the natural gas business of plaintiffs and defendants originally contemplated, undertook and provided for the furnishing, supply and sale of natural gas by defendant for three purposes, to-wit: First, lighting and cooking; second, domestic heating; third, boiler, power and manufacturing purposes; that the transportation lines and system of the Kansas Natural Gas Company and the distributing system of The Wyandotte County Gas Company were designed and constructed to that end; that the aforesaid fran-



chises contemplated and provided for the sale of gas for said three purposes; that said franchises purported to fix schedules of rates for the sale of natural gas for domestic lighting, cooking and heating and consented to the sale of said natural gas for boiler, power and manufacturing purposes at special contract rates; that the aforesaid supply-contract contemplated and provided for the furnishing, distribution and sale of said natural gas for said three purposes, and made specific reference to said franchise ordinances and the purposes for which said natural gas was to be furnished, distributed and sold; that said contract set forth that the Kansas Natural Gas Company and its associates were the owners of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the state of Kansas to the City of Kansas City, Kansas, and that it was desirous of entering into a contract with defendant's predecessor for the transportation and supply of natural gas to said company; that the Wyandotte Gas Company was the owner of the aforesaid franchise ordinance in Kansas City, Kansas, granting the use of the public streets for the distribution of natural gas, said ordinance being referred to in said supply-contract and marked

Exhibit "1" and made a part thereof; that said Wyandotte 159 Gas Company was expecting to secure other franchise ordinances elsewhere in Wyandotte County, Kansas; and that:

"The party of the first part (Kansas Natural Gas Company) hereby agrees that it will, during the period of said ordinance, \* \* \* supply and deliver \* \* \* at a pressure of twenty (20) pounds at the point of delivery above mentioned (city limits), natural gas in such amount as will at all times fully supply the demand for all purposes of consumption as provided in this contract, for the consideration hereinafter mentioned. However, as the production of the gas from the wells and the conveying of it from long distances is subject to accidents, interruptions and failures, the party of the first part does not under this contract undertake to furnish the party of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the party of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the party of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

"It is hereby agreed between the parties hereto that the party of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city of Kansas City, Kansas, or elsewhere in Wyandotte County, at lower rates than those specified in said ordinances.

"In order to protect the domestic trade, however, the party of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be

furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the party of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the party of the second part agrees that any contract it makes to furnish gas to manufacturers shall contain provisions by which the party of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

160 "So long as the party of the first part is able to supply the same, the party of the second part agrees to buy from the party of the first part all the gas it may need to fully supply the demand for domestic consumption in the said city of Kansas City, Kansas, or elsewhere in Wyandotte County, and to pay to the party of the first part for the natural gas which it shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of its gross receipts from the sale of such natural gas in said city of Kansas City or elsewhere in Wyandotte County, and thereafter a sum equal to sixty-two and one-half per cent of such gross receipts."

Defendant states and shows to the Court that the franchise contracts existing between The Wyandotte Gas Company and the city of Kansas City, Kansas, and the city of Rosedale, Kansas, were exhibited and referred to in said supply-contract and made a part thereof, and that said franchise ordinances and said supply-contract must be read and construed together as constituting the agreement of the parties relative to the furnishing and supplying of natural gas and the purposes therefor, and that so read and construed, the said Kansas Natural Gas Company contracted, agreed and undertook to supply, furnish and deliver to the Wyandotte Gas Company, and its successors and assigns, "natural gas for lighting, heating, power and manufacturing purposes" in Kansas City, Kansas, and "for manufacturing, heating, illuminating and all other purposes for which natural or manufactured gas is or may be used" in Rosedale, Kansas, during the period and life of said franchises, and "at a pressure of twenty pounds at the point of delivery," "at or near the city limits of Kansas City, Missouri," and "in such amount as will at all times fully supply the demand for all purposes of consumption as provided in this contract" and said ordinances included

161 therein by reference.

Defendant further avers that, at a very early point in the history of the natural gas business, the Kansas Natural Gas Company failed and defaulted in its undertaking to furnish to this defendant a sufficient supply of natural gas to meet the demands therefor for power, boiler and manufacturing purposes as aforesaid, or upon a competitive price and basis with other fuels used for like purposes; that soon thereafter the said company commenced to default in fur-

nishing a sufficient quantity of gas and at sufficient pressure to fully supply the demand for domestic heating; that such failure and default has continued and increased in amount and duration from winter to winter from 1910 to the present time; that in the year 1910, The Wyandotte County Gas Company was supplied and therefore enabled to sell 1,596,285 thousand cubic feet of natural gas for power, boiler and manufacturing purposes at special contract rates; that the supply for such purpose decreased until 1913, after which time this defendant has received and been permitted to sell at special contract rates no power, boiler or manufacturing gas whatever; that in the winter of 1910-11, this defendant was furnished and enabled to sell on maximum demand days 13 million cubic feet of natural gas for domestic lighting, cooking and heating purposes; that the decrease and diminution in supply has continued until in the winter of 1915-16 this defendant is receiving and enabled to furnish and sell only 4 million cubic feet on maximum demand days; that the demand for said natural gas is very great and the number of consumers applying and meters installed is constantly increasing and the supply furnished by plaintiffs is constantly waning.

162 That the amount of natural gas furnished defendant by the Kansas Natural Gas Company and its Receivers, from year to year since the beginning of the natural gas business, for manufacturing, boiler and power purposes, sold at special contract rates, and the price per thousand cubic feet and the gross receipts therefor and the net income therefrom to this defendant is shown by the following table:

Table 1.

Year.	M. c. f.	Rate.	Gross rec'ts.	Net income.
1907....	1,196,989	8¢	\$100,169.20	\$37,563.45
1908....	1,072,209	10¢	107,265.68	40,224.63
1909....	409,338	$\left\{ \begin{array}{l} \text{1st 200 M. 25¢} \\ \text{balance.. 10¢} \end{array} \right\}$	41,475.49	15,553.31
1910....	1,596,285		163,804.72	61,426.77
1911....	657,637		70,355.97	26,383.49
1912....	85,401		10,405.80	3,902.17
1913....	25,882	12½¢	3,155.25	1,183.22
1914....	None.			
1915....	None.			

That the amount of natural gas furnished by the Kansas Natural Gas Company and its Receivers, from year to year, since the beginning of the natural gas business, for domestic purposes, sold by this defendant, and the price per thousand cubic feet and the gross receipts therefor and the net income therefrom to this defendant is shown by the following table:

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Table 2.

Year.	M. c. f.	Rate.	Gross rec'ts.	Net income.
1907.....	1,374,943	25¢	\$350,129.90	\$131,298.71
1908.....	1,608,850	25¢	400,798.39	150,299.40
1909.....	1,642,520	25¢	416,245.11	156,091.92
1910.....	1,799,513	25¢	457,886.00	171,707.25
1911.....	1,965,511	25¢	496,670.45	186,251.42
1912.....	1,864,142	25¢	474,889.76	178,083.66
1913.....	1,536,963	25¢	392,068.59	147,025.72
1914.....	1,462,621	25¢	373,958.14	140,234.30
1915.....	1,564,382	25¢	400,252.61	150,094.73

and that the sales of domestic gas per meter in service per year has been as follows:

Year.	Gas.	Cash.
1907.....	118,140	\$30.09
1908.....	121,216	30.24
1909.....	116,748	29.59
1910.....	118,846	30.25
1911.....	117,954	29.81
1912.....	110,301	28.10
1913.....	90,707	23.14
1914.....	83,644	21.39
1915.....	87,830	22.21

164 And the gross income from domestic and power gas per meter in service has been as follows:

Year.	Cash.
1907.....	\$38.67
1908.....	38.58
1909.....	32.57
1910.....	41.11
1911.....	34.01
1912.....	28.72
1913.....	23.32
1914.....	21.39
1915.....	22.21

Defendant states and shows to the Court that by reason of the premises, it has lost all of its power, boiler and manufacturing natural gas business; that it has lost the major portion of its domestic heating and furnace natural gas business, and that it has lost a very considerable portion of its domestic lighting and cooking business; all by reason of the failure and default of the Kansas Natural Gas Company and its Receivers to furnish, supply and deliver to this defendant an adequate, efficient and sufficient supply of

165 natural gas to meet the demands therefor, as per the terms, conditions and provisions of said supply-contract and the franchises referred to therein and made a part hereof.

Defendant further alleges and shows to the Court that the volume of business done and obtainable by it upon the supply of natural gas furnished by plaintiffs is wholly inadequate and insufficient to afford a fair return upon the reasonable value of the defendant's property used and useful in the service of the public at the rates and charges now in force in said cities; that said supply-contract was entered into and said franchises accepted, and the domestic rates therein set forth were put into effect and undertaken by this defendant, upon the representations and inducement of the Kansas Natural Gas Company and upon said contract that said company, its successors and assigns, including plaintiffs herein, would furnish an adequate and sufficient supply of natural gas to enable this defendant to furnish and sell the same in efficient and sufficient quantities for lighting, cooking, domestic heating, power, boiler and manufacturing purposes; that by reason of the failure and default of said company and its Receivers so to do, this defendant has heretofore and is now sustaining great and irreparable loss and damage; that its income from the limited sales of said scant supply of natural gas is only sufficient to pay current operating expenses and taxes with nothing for renewal reserve for depreciation, or for interest and business profits.

166 Defendant further alleges that its plant and distribution system is so located upon the Kansas Natural system, and said system is so constructed, maintained and operated, that in periods of extreme cold weather when the demand for heating and furnace gas is very great, the other cities and distributing companies upon the system receive from the mains of the Kansas Natural Gas Company a far greater proportion of the total supply of natural gas than they do in moderate weather; that by reason thereof, there is but little gas furnished this defendant in proportion to the number of meters in use in other cities and the number of meters in use in Kansas City, Kansas, and Rosedale, Kansas; that by reason thereof, in the year 1915 the returns for domestic sales from the meters in use in other cities ran as high as \$37.75 per meter per year, while the returns for domestic sales from the meters in Kansas City, Kansas, and Rosedale amounted to only \$22.21 per meter per year, resulting in an inequitable apportionment and distribution of the available supply of natural gas and preferential and discriminatory service in favor of the consumers in other cities as against the consumers in Kansas City, Kansas, and Rosedale, Kansas.

A table showing the number of meters in use, the sale per meter, the rate and the return per meter during the year 1914 in the various cities on the system of the Kansas Natural Gas Company is as follows:

Table.

City.	Number of meters.	Sales per meter.	Rate.	Return per meter.
Joplin .....	5,517	112,000	25¢	\$28.00
Leavenworth .....	3,543	113,000	25¢	28.25
Lawrence .....	3,432	139,000	25¢	35.00
Topeka .....	11,241	90,000	25¢	22.50
Parsons .....	3,367	147,000	25¢	37.75
Atchison .....	2,524	105,000	25¢	26.25
Kansas City, Kansas	17,709	83,644	25¢	21.39

Defendant avers that the Kansas Natural Gas Company and its Receivers have continued to sell power and boiler gas in other cities in southeastern Kansas and Missouri since they have refused to permit this defendant to sell power and boiler gas in Kansas City, Kansas, and Rosedale, Kansas; that by reason thereof, the returns of this defendant have been greatly diminished and reduced and said company has been discriminated against in favor of other companies, cities, localities and consumers in that respect.

Defendant further avers that said Kansas Natural Gas Company and its Receivers have from time to time held out inducements and promises to this defendant that it and they would be able  
 168 from time to time to furnish a better service and increased supply of natural gas; that by reason thereof, this defendant has borne and endured the losses and damages aforesaid, but can no longer afford so to do.

Defendant further states that by reason of the terms of said supply-contract providing for the proportionate division of the gross receipts for the sale of said natural gas, and the character and conduct of the business and the constant uncertainty and fluctuating amount of natural gas which the plaintiffs and said Kansas Natural Gas Company from time to time furnish to this defendant to meet the demands of its consumers, this defendant is unable to state, compute, estimate or determine either the volume of business that it is or will be able to do from time to time, or the price that it is or will be required to pay for the natural gas furnished to it by said Kansas Natural Gas Company and its Receivers; that the rates, charges and business of this defendant are subject to the control of the Public Utilities Commission of Kansas; and that by reason of the premises this defendant is unable to ascertain and determine the proper rate to the consumers and is unable to make or present a case to the Public Utilities Commission of the State of Kansas upon a sound basis either as to the cost of the natural gas to it or the amount of natural gas obtainable or the service that this defendant can promise its consumers; upon which cost, amount of gas and service alone the Public Utilities Commission of Kansas would be able to find the cost of distributing said gas and the reasonable, fair and proper rate to be charged the ultimate consumer.

169 That in the early part of 1913, this defendant filed before the Public Utilities Commission of the State of Kansas a petition for leave to raise its rates sufficient to afford it a fair return upon the value of its property used and useful in the service of the public; that said petition and a vast volume of evidence thereon was heard by the Commission, said matter taken under advisement, and has never yet been decided, for the reason that it became involved and complicated with the application of the Kansas Natural Gas Company and its Receivers for an increase in rates, now pending in this court and cause for review.

That by reason of the premises, it is necessary, to the end that this defendant may no longer be required to operate its property at a loss, that the said Kansas Natural Gas Company and its Receivers be required to furnish an adequate and sufficient supply of gas for all the purposes named in said contract, to-wit: lighting, cooking, domestic heating, boiler, power and manufacturing purposes.

Defendant further states and shows to the Court that it has no other main, adequate, full or complete remedy at law; that its rights and interests are embraced and involved in the cause of action set forth in the plaintiffs' bill of complaint; that it has an interest in the subject of the action and the relief demanded, and that it has an interest adverse to the plaintiffs and to certain of the defendants:

Wherefore, the premises considered, the defendant, The Wyandotte County Gas Company, prays this Honorable Court that the plaintiffs, the Kansas Natural Gas Company, and the defendant,

170 George F. Sharritt, as Receiver of the Kansas Natural Gas Company, be ordered and required to furnish, supply and

deliver to this defendant at or near the corporate limits of Kansas City, Kansas, at a pressure of twenty pounds, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in said contract and the franchise made a part thereof by reference, to-wit: for lighting, cooking, domestic heating, power, boiler and manufacturing purposes; and for a uniform and equitable apportionment and distribution of said gas; and for such other and further relief as to this Honorable Court may seem equitable and just; and for its costs herein expended.

J. W. DANA,

*Solicitor for The Wyandotte County Gas Company.*

STATE OF KANSAS,

*County of Wyandotte, ss:*

E. L. Brundrett, being first duly sworn, deposes and says that he is the President of The Wyandotte County Gas Company; that he has read and knows the facts set forth in the foregoing Answer, and that the statements of fact therein made and contained are true, except such as are stated on information and belief, and as to such this affiant believes them to be true; and further affiant saith not.

E. L. BRUNDRETT.



Subscribed and sworn to before me this 8 day of Feb. 1916.

[SEAL.]

INEZ M. VORIS,

*Notary Public.*

My Commission expires Nov. 11, 1918.

Filed in the District Court on March 9, 1916, Morton Albaugh,  
Clerk.

171 Exhibit A, being Ordinance No. 5637 of Kansas City, Kansas, "Manufactured gas franchise," dated 9/1 '03, is omitted.

Exhibit B, being Ordinance No. 6051 of Kansas City, Kansas, "Natural gas franchise," dated 12/13/04, is omitted.

Exhibit C, being Ordinance No. 295 of Rosedale, Kansas, "Natural gas franchise," dated 3/21 '05, is omitted.

Exhibit D, being Gas-Supply-Contract between The Kansas City Pipe Line Company and Wyandotte Gas Company, dated 2/1 '06, is omitted.

172 In the District Court of the United States for the District of  
Kansas, First Division,

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS;  
S. M. Brewster, as Attorney-General of the State of Kansas, et al.,  
Defendants.

*Separate Answer of S. M. Brewster, as Attorney-General of the State  
of Kansas.*

Said defendant, S. M. Brewster, as attorney-general of the State of Kansas, now and at all times hereafter saving and reserving to himself all and all manner of benefits and advantages of exceptions which may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the plaintiffs' said bill of complaint contained, for answer thereunto or unto so much or such parts thereof as this defendant is advised that it is material or necessary for him to make answer unto, answering says:

That this answer is divided into three principal parts, the first consisting of such defenses in point of law as arise upon the face of the bill of complaint on account of lack of jurisdiction of this court; of misjoinder; and of insufficiency of fact to constitute a valid cause of action in equity, as hereinafter more particularly appears, and upon which this defendant will ask for a hearing before the final hearing of this cause upon the facts; and second, a statement in answer to the averments of said bill of complaint, and a denial

of such matters as are denied by this defendant; and third, a statement of affirmative matters which it is averred by this defendant constitute defenses to the bill of complaint of the plaintiffs herein.

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First.

## I.

Said defendant avers that this court is without jurisdiction of this cause for the reason that there is in this cause no controversy between citizens of different states in that said plaintiffs and many of said defendants, including this defendant, are citizens, residents and inhabitants of the State of Kansas; and for the further reason that this cause does not arise under the constitution or laws of the United States, or treaties made under their authority, in this, that the only grounds for the jurisdiction of this court attempted to be set forth in said bill of complaint are—

(a) That said bill of complaint is dependent upon and ancillary to the causes entitled John L. McKinney et al. v. Kansas Natural Gas Company, No. 1351, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, No. 1-N, now pending in this court;

(b) That the order of December 10, 1915, of the Public Utilities Commission of the State of Kansas deprives said plaintiffs of property without due process of law, in violation of the fourteenth amendment to the constitution of the United States; and

(c) That the rates fixed by said order are a burden upon and an interference with interstate commerce carried on by said plaintiffs.

And this defendant avers that none of said federal questions are presented by said bill for the reason that—

(a) Said bill of complaint is not dependent upon or ancillary to said causes No. 1351 and No. 1-N, for the reason that said plaintiffs bring said bill of complaint as receivers appointed by the district court of Montgomery county, Kansas, and, as alleged in said bill, by order of said court, and as such receivers said plaintiffs are strangers to said cases pending in this court, and have no standing or right to file a bill of complaint dependent upon or ancillary to said cases; and that while said John M. Landon and R. S. Litchfield, as alleged in said bill of complaint, have been appointed ancillary receivers of the circuit court for the eighth judicial circuit of property in the eastern district of Oklahoma and the western district of

Missouri, the rates fixed by said order do not affect the transactions or business of said ancillary receivers in Missouri or Oklahoma;

(b) That said order of December 10, 1915, does not deprive plaintiffs of property without due process of law, in violation of the fourteenth amendment to the constitution of the United States, for the reason that none of the property referred to in said bill of complaint is the property of said plaintiffs; that plaintiffs are merely officers of the court, having neither the title to nor the possession of said property; and for the further reason that plaintiffs have, as alleged in said bill of complaint, voluntarily filed with said Public

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Utilities Commission of the State of Kansas the schedule of rates authorized by said order of December 10, 1915, and have since charged said rates and accepted the benefits of said order; and that under chapter 238 of the Session Laws of Kansas of 1911 said rates became, when they were filed by said plaintiffs, the authorized rates of said plaintiffs, which could be changed only with the consent of said Public Utilities Commission, and said plaintiffs have not applied to said Commission for its consent to change said rates or to file different rates;

(c) That said order of December 10, 1915, does not impose a burden upon or constitute an interference with interstate commerce for the reason that the rate fixed in said order is the rate to be charged for the sale of gas, which is in itself a commodity, and is not a transportation charge; and that said plaintiffs, as receivers appointed by the district court of Montgomery county, Kansas, who operate only in the State of Kansas, receive said gas at the Kansas state line and mingle the same with gas produced in Kansas, and sell the same through distributing companies to consumers, and that the rate fixed by said order is the rate to be charged to such consumers. That said order does not affect the rate to be charged for gas in Missouri, and in no wise affects interstate commerce; and that, as hereinafter more fully pointed out, it has been decided and adjudicated between said plaintiffs and the State of Kansas that the production and sale of gas in the manner in which it is produced and sold by plaintiffs does not constitute interstate commerce.

Further answering, this defendant avers that said plaintiffs are estopped to claim that said order of said Public Utilities Commission of the State of Kansas is void for the reason that it imposes  
175 a burden upon interstate commerce, because, by the stipulation, a copy of which is attached to plaintiffs' bill of complaint herein as Exhibit A, and the validity and binding effect of which this defendant does not admit, which stipulation was signed by said plaintiffs, it is provided in paragraph three as follows:

"All parties hereto consent and agree that the receivers of this court, for and on behalf of and in the name of the legal and equitable owners of said property, may, as expeditiously as possible and whenever deemed advisable by the court, make such application and showing to the Public Utilities Commission of the State of Kansas, and other public authorities, as may to the court and its receivers be deemed proper; and all parties hereto hereby tender to the court and the receivers all the aid, assistance, and information in their possession and under their control for the purpose of said application and hearing."

That thereupon said plaintiffs voluntarily filed with said Public Utilities Commission their application for authority to increase their rates, all as alleged in said bill of complaint, and that the action of the Utilities Commission complained of herein was taken upon said application, and that plaintiffs, having invoked the jurisdiction of said Commission, are now estopped to question its jurisdiction.

## II.

This defendant above named, further answering the bill of complaint of the plaintiffs herein, avers that said bill of complaint shows upon its face that there is a misjoinder of causes of action herein, for that the plaintiffs in paragraphs I to XX, both inclusive, of their bill of complaint, as well as in paragraphs XXVIII to XXXIII, inclusive, of said bill of complaint, have attempted to set forth facts which constitute causes of action and averments of law and fact which the said plaintiffs intended as grounds for relief in equity against this answering defendant, based on a certain order made by the Public Utilities Commission for the State of Kansas on December 28, 1915, allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory and that all proceedings prior and relative to the establishment thereof are illegal and void.

176 This defendant, further answering, avers that in the paragraphs of plaintiffs' bill of complaint after paragraph XX, including the said paragraphs XXVIII to XXXIII, heretofore mentioned, plaintiffs aver and set forth that because the pipe lines and other property of the Kansas Natural Gas Company extend into Oklahoma and Missouri the same should be treated as a whole or as one unit, and that the character of its business is wholly interstate and not of a local character in Kansas; and that said Commissions of the States of Kansas and Missouri are jointly interested in allocating the value of the property used in such States for supplying gas, for the purpose of determining what is a legal charge or rate thereon for service; and that in paragraph XXI of said bill of complaint it is averred that the Public Service Commission of the State of Missouri has determined that it will allow no rate or charge for supplying gas in the western cities of Missouri higher than is charged in the eastern cities of Kansas, and that said Public Service Commission of the State of Missouri has suspended certain rates sought to be put into operation by the plaintiffs herein as receivers of the said Kansas Natural Gas Company; and it is averred in paragraphs XXII to XXVII of said bill of complaint that the aforesaid acts of the Missouri Public Service Commission are unlawful and confiscatory, and that because said facts so averred in the said paragraphs after paragraph XX of said bill of complaint show that the causes of action and grounds for relief in equity attempted to be set forth as against the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri, and their several attorneys and officers, are related to each other and of joint interest and concern to the plaintiffs and this defendant; but this answering defendant avers that said pretended causes of action are not related to each other to any extent that would allow them to be joined in one bill of complaint in this court, and that the Public Service Commission of the State of Missouri is not responsible for nor interested in any way in any action of the Public Utilities Commission for the

State of Kansas or its attorneys and officers, and that this answering defendant has no common interest in the cause, or causes, of action, or the subject, or subjects, of the action, or the relief demanded in said bill of complaint, as to the causes of action attempted to be set up in the paragraphs succeeding paragraph XX of said bill of complaint, except paragraphs XXVIII to XXXIII, both inclusive, which constitutes a resumé of previous averments and statements made directly against this answering defendant in paragraphs I to XX of said bill, both inclusive, and constitute mere conclusions of law, and that there are no other averments or allegations in said bill of complaint which show that said causes of action, or any other causes of action attempted to be set forth in plaintiffs' bill of complaint, or any other of the several causes of action and grounds for complaint, can be properly joined in one bill of complaint in this court; and this defendant asks that upon hearing of the points of law so arising upon the face of the bill of complaint that said bill of complaint, for this reason, be dismissed against this answering defendant because of said misjoinder of causes of action therein.

This defendant above named, further answering the bill of complaint herein, avers that it does not appear from said bill of complaint why the Hon. John T. Barker, as attorney-general of the State of Missouri, is made a party to said bill of complaint, except upon the theory of law that it is the official duty of said attorney-general, under the general laws of said State, as its chief law officer, to enforce the laws thereof and all legal orders made by the Public Service Commission of the State of Missouri establishing rates for public service corporations and public utilities, and this answering defendant, therefore, refers to paragraph I of this answer as to the nature of the causes of action alleged against the Public Utilities Commission for the State of Kansas and its attorneys and officers, and makes the same a part of this paragraph of his answer, and further avers that there is a misjoinder of action as to this answering defendant and the said defendant John T. Barker as attorney-general of the State of Missouri, and asks that upon the hearing as to the points of law arising on the face of said bill of complaint it be determined that there is a misjoinder of causes of action for the reasons alleged in said paragraph I of this answer, and that for this reason this bill of complaint be dismissed as against this answering defendant.

This defendant above named, further answering the bill of complaint of the plaintiffs herein, avers that said bill of complaint shows upon its face that there is a misjoinder of causes of action herein, for that the plaintiffs, in paragraphs I to XX, both inclusive, of their bill of complaint, as well as in paragraphs XXVIII to XXXIII, inclusive, of said bill of complaint, have attempted to set forth facts which constitute causes of action and averments of law and fact which the said plaintiffs intended as grounds for relief in equity against this answering defendant, based on a certain order made by the Public Utilities Commission for the State of Kansas on December 28, 1915,

allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory, and that all proceedings prior and relative to the establishment thereof are illegal and void.

This answering defendant further avers that in paragraph XXXIII of the plaintiff's bill of complaint it is averred and set forth that the Kansas Natural Gas Company, prior to the appointment of the plaintiff receivers herein, had been delivering gas to certain distributing companies in Kansas and in Missouri under and by virtue of certain written contracts made by the said Kansas Natural Gas Company with said distributing companies, and certain contracts which are alleged to be typical ones are set forth and described in the said paragraph of the bill of complaint; and it is further averred that said contracts were made the basis of certain franchises granted by the defendant cities in the States of Missouri and Kansas to said distributing companies and to the Kansas Natural Gas Company, for the purpose of delivering and distributing gas in said Missouri and Kansas cities, and that said cities, both in Missouri and in Kansas, are attempting to regulate, control and fix the price at which the plaintiff may sell natural gas furnished by them to their patrons in violation of said contracts; and it is further averred and set forth that said contracts are illegal and unreasonable and should be set aside and the plaintiffs relieved from complying with the terms thereof, both as to

the Kansas cities and towns situated in the State of Missouri.

179 This answering defendant further avers that this defendant has no common interest in the cause of action or the subject thereof, or the relief demanded, based on the facts averred in said paragraph XXXIII of the bill of complaint as to the defendant cities in the State of Missouri, and that neither in said paragraph XXXIII nor in any other part of the bill is it disclosed that the plaintiffs are entitled to any relief in equity against the cities and distributing companies of the State of Missouri in which this answering defendant is interested or in any way related, and this defendant asks that upon the hearing of the points of law so arising upon the face of the bill of complaint that it be held that there is a misjoinder of causes of action as to the matters herein set forth, and that the bill of complaint for this reason be dismissed as against him.

#### IV.

The defendant, further answering, avers that it is disclosed upon the face of said bill of complaint that there is no controversy arising between the plaintiffs and this answering defendant, under the laws, constitution or treaties of the United States, that the plaintiffs are residents of the State of Kansas, deriving their authority to institute actions in courts of law from the courts and the laws of the State of Kansas, and that this court is therefore without jurisdiction to consider and determine the matters attempted to be set out in said bill of complaint; and this defendant further states that it appears upon the face of said bill of complaint that the rates complained of therein

were put into effect voluntarily by the plaintiffs and that they can not be heard in this case to aver that the same are confiscatory and illegal.

## V.

This defendant, further answering the bill of complaint of the plaintiffs herein, avers that said bill of complaint reveals upon its face that this court is without jurisdiction to hear and determine the pretended causes of action therein averred, for the reason that it appears from said bill that the plaintiffs are not without adequate relief in the due course of law for any rights or remedies due them or for the redress of any wrongs complained of under the laws and the statutes of the State of Kansas, and that said plaintiffs have  
180 not pursued the remedies provided for them by said laws, and that therefore said bill of complaint fails to show any equitable cause for relief in favor of the plaintiffs and against this answering defendant.

## VI.

This defendant, for his further defense, avers that the bill of complaint and the record in this case reveal that the plaintiffs can not recover and are not entitled to the relief prayed for in said bill of complaint, on the grounds that the plaintiff receivers are engaged wholly in interstate commerce and that the properties of said company are instrumentalities of interstate commerce and not subject to the local law of the State of Kansas, the police power thereof, and not within the jurisdiction of the defendant Public Utilities Commission of said State, for the following reasons, to wit:

First, that it appears from said bill of complaint that said receivers were appointed in a proceeding had in the district court of Montgomery county, Kansas, upon a petition filed by the Honorable John S. Dawson, attorney-general of said State, January 5, 1912, against the Kansas Natural Gas Company et al., which said petition and all the files and proceedings of said case, to wit, No. 13476, are made a part of the bill of complaint and the record in this case, at paragraph 3 thereof; that said suit was begun by the attorney-general of the State of Kansas for the purpose of enforcing the criminal laws and the other statutes of Kansas imposing penalties against persons and corporations who, being engaged in local business in said State, had formed or entered into combinations with others in said local business in the restraint of trade or for the purpose of securing a monopoly therein, as well as for other purposes more fully set out in said bill of complaint at paragraph 4 thereof, and that said petition contained the following allegations, to wit:

"That plaintiffs allege that the above-named defendants, the Kansas Natural Gas Company, a corporation, et al., and each of them, have entered into a series of unlawful arrangements, contracts, agreements, trusts, combinations with each other in violation of the laws of the State of Kansas with a view to prevent, and are done to prevent, full and free competition in the production and sale of natural gas



181 within the State of Kansas, which product is an article of domestic raw material produced in large quantities in Montgomery county, Kansas, and elsewhere in southern Kansas, and is an article of trade and commerce, and is an aid to commerce, which arrangements, contracts, agreements, trusts and combinations are in restriction and restraint of the full and free operation of divers and various lines of legitimate business authorized and permitted by the laws of the State of Kansas, and are a perversion, misuse and abuse of the corporate powers and privileges granted to them, and each of them, by the State of Kansas, as above set forth, and all of which is more particularly set forth as follows:"

That said petition, after alleging the purchase of the Independence Gas Company, a corporation, and The Consolidated Gas, Oil and Manufacturing Company, a corporation, by the defendant Kansas Natural Gas Company, contained the following allegation:

"That said The Independence Gas Company and The Consolidated Gas, Oil and Manufacturing Company, defendants, were at all times mentioned herein public service corporations of the State of Kansas and were without authority under the law to sell and dispose of their entire properties, franchises and means of performance of their duties to the public in and about the production, transportation, delivery and sale of natural gas to the inhabitants of the State of Kansas; \* \* \* and the said Kansas Natural Gas Company, defendant, in pursuance of said unlawful, wrong agreement, understanding, arrangement, purpose and intent, has ever since been and is now in exclusive possession and control, and claims to own all gas, gas leases, franchises and property of every kind and character, as aforesaid, that were used, owned and employed by said other corporations, defendants, and said partnership, in and about the production, transportation, distribution, delivery and sale of natural gas to the said inhabitants of the State of Kansas, but such possession and control by said Kansas Natural Gas Company, defendant, is merely as agent or trustee."

To which petition the Kansas Natural Gas Company, May 21, 1912, filed its answer, in which it denied each and every, all and singular, the allegations and averments of the said petition, and this defendant avers that thereupon an issue was joined in said case as to whether the said Kansas Natural Gas Company was engaged in domestic or intra-state commerce in the State of Kansas, and that whether, being so engaged, it had violated the laws of the state made in con-  
182 formerly to and in pursuance of its police power prohibiting combinations in restraint of said trade.

This defendant further avers that a trial of said issue was had with the other issues of said cause, beginning September 30, 1912. The attorney-general for the State of Kansas, as attorney for the plaintiff in said cause, in defining the issues of said case, made the following statement:

"These defendants are charged civilly with perversion of their corporate privileges because they have entered into a combination and trust to prevent competition in the production, distribution and sale of natural gas, which product is an article of domestic raw

material, an article of trade and commerce and an aid to commerce in this state."

The attorney for the defendant The Kansas Natural Gas Company in said cause, in his opening statement, said:

"We particularly deny that anything that is shown or that will be shown has any of the elements of a combination or trust or monopoly. I don't care to add anything further, but the questions to be read will show in detail, I think, more accurately than I could say it, just exactly what has transpired."

This defendant further avers that on the trial of said cause the Hon. T. J. Flannelly, judge of said court, who presided at said trial, determined all of the issues arising upon the pleadings and statements of the defendants against the contentions of the Kansas Natural Gas Company, and held and determined it to be guilty of violating the laws and police regulations of the State of Kansas made for the purpose of prohibiting trusts and combinations in domestic commerce, and in passing upon the particular question raised by said pleadings as to whether said company was engaged in domestic commerce and had made a combination in restraint of said trade, the said Hon. T. J. Flannelly, in his opinion and findings filed in said cause, said:

"Is the defendant, the Kansas Natural Gas Company, a monopoly and has it and other defendant corporations entered into a trust and combination to prevent competition in the production, distribution and sale of natural gas?"

"Section 5185, General Statutes of Kansas (chap. 257, Laws of 1889) provides:

"That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this State, or in the product, manufacture, or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorneys' or doctors' fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void."

"This act was followed by the act of 1897, which the supreme court of the State of Kansas, in the case of State v. Lumber Company, 83 Kan. 399, said was intended by the legislature to supplement, not repeal, the law of 1889.

"In section 5142, General Statutes of Kansas, 1909, being section 1 of chapter 265, Laws of 1907, the legislature defines a trust as follows:

"A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes:

First, to create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State. Second, to increase or reduce the price of merchandise, produce or commodities or to control the cost or rates of insurance. Third, to prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce. Fourth, to fix any standard or figures whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State. Fifth, to make or enter into or execute or carry out, any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure; or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted com-

184 petition among themselves or others in transportation, sale or manufacture of any such article or commodity; or by which they shall agree to pool, combine or unite any interests they have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected.'

"Section two of the same act provides:

"All persons, companies or corporations within this State are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise, in any trust as defined in section 1 of this act.'

\* \* \* \* \*

"The decisions of the United States supreme court with reference to the national antitrust act have direct force and application in interpreting our own antitrust laws. The statute of this State in regard to monopolies and trusts is as broad in its terms as the Sherman antitrust act.

"That statute (the Sherman act)' says the supreme court of Kansas, 'differs in verbal phraseology but not in essential particular or effect from ours.

"State v. Smiley, 65 Kan. 240.'

"A violation of the Sherman antitrust act itself by a corporation doing business in this State would be a perversion and abuse of its corporate privileges. The laws of the United States, as far as civil suits are concerned, are a part of the State's system of jurisprudence.

"Mondou v. N. Y. H. R. Co., 32 Sup. Ct. 169.

"Clafflin v. Housman, 93 U. S. 130.

"One cannot read this record and examine these contracts, to which attention has been called in the foregoing statement, without reaching the conclusion that the whole purpose and design of the Kansas Natural Gas Company, from the very inception, has been to monopolize the production, transportation, sale and distribution of natural gas in the Kansas field. Not only was it the purpose and design to secure a monopoly, but the plans were successful, the purpose was accomplished, and the Kansas Natural Gas Company to-day almost completely dominates the situation; it practically controls the field of production, the field of transportation and the sale and distribution of natural gas in Kansas."

This defendant avers that the said court thereafter rendered its judgment upon said findings of fact and conclusions of law, and as a part thereof appointed the plaintiff receivers to receive and control the property in controversy herein as the officers of said court; that said judgment is unappealed from and in full force and effect, and that said receivers have acquiesced in the said judgment and the rules of law declared by the said court and acted in conformity therewith, and that therefore and thereby the fact that said corporation, the Kansas Natural Gas Company, was prior to the appointment of said receivers, and said receivers since then as the representatives of said corporation in continuing its said business have been, engaged in local or intrastate commerce and not wholly engaged in interstate commerce, and that the properties controlled by them are therefore not such instrumentalities of interstate commerce as withdraw all business done by the use of said properties in said State of Kansas from the control of the local laws of said State, the police power thereof, or from the jurisdiction of the Public Utilities Commission for the State of Kansas; that said facts having been fully adjudicated by the said court, and the said receivers having acted in conformity therewith and in pursuance of the principles of law followed and announced by the said court, and which thereby became the law of said case, are now estopped and barred from asserting anything contrary thereto in this cause.

This defendant, further answering, avers that as a part of said judgment the plaintiff receivers, John M. Landon and R. S. Litchfield, were directed to appear in the case of John L. McKinney et al. v. The Kansas Natural Gas Company, No. 1351, and Fidelity Title and Trust Company v. Kansas Natural Gas Company et al., No. 1-N in equity, which case is fully referred to and set out in the bill of complaint herein, for the purpose of recovering the control and management of the physical property of the Kansas Natural Gas Company, as is fully set out in the bill of complaint herein at paragraphs 3 and 4, and elsewhere, in said bill; that for the purpose of said appearance in said cause the attorney-general, acting on and in behalf of said receivers and under the direction of the district court of Montgomery county, Kansas, prepared and filed therein a petition for said purposes, which said petition contained the following averment, to wit:

"First, that on January 5, 1912, the State of Kansas, by its attorney-general, brought an action in the nature of quo warranto in the

186 district court of Montgomery county, Kansas, against The Independence Gas Company, The Consolidated Gas, Oil and Manufacturing Company, Kansas corporations, and Kansas Natural Gas Company, a Delaware corporation authorized to do business in Kansas, charging said corporations with misuse, perversion and abuse of their corporate privileges and with having connived and engaged in various illegal combinations in restraint of trade, in violation of the antitrust laws of the State of Kansas, and in violation of the National antitrust laws, which are a part of the civil jurisprudence of the State of Kansas, by which unlawful combinations the said Kansas Natural Gas Company had secured a monopoly of the source of gas supply and a monopoly of the sale and distribution of gas to the people of Kansas, and by which unlawful combination the selling price of gas, a product of domestic raw material, an article of commerce, and an aid to commerce, had been advanced and controlled by the said Kansas Natural Gas Company, and a true copy of the petition filed by the State of Kansas in said action is contained in an abstract filed herewith and made part hereof."

That thereafter the complainant in said cause and the Fidelity Title and Trust Company appeared in said cause and contested the averments of the petition filed by the said attorney-general on and in behalf of the plaintiff receivers herein, and that said John L. McKinney and the Fidelity Title and Trust Company filed, as paragraph 10 of their answer, the following averments, to wit:

"These complainants further allege that although the defendant the Kansas Natural Gas Company, is engaged in operating a pipe line within the State of Kansas for the transportation of natural gas from various sources of supply from localities within the State of Kansas to respective towns and cities within the State of Kansas, the pipe line of said Kansas Natural Gas Company and its system likewise extends into the adjacent States of Missouri and Oklahoma, for the purpose of receiving and transporting gas through its pipe lines to cities in said states, and is therefore an interstate carrier, subject to the act of Congress of February 7, 1887, and its amendments. That by the judgment and order appointing receivers over the property of the Kansas Natural Gas Company by the district court of Montgomery county, State of Kansas, in the proceedings by the State of Kansas instituted by the attorney-general as aforesaid, for a claimed violation of a penal statute of the State, constitute an exertion of the power of the State of Kansas, acting through and under the district court of Montgomery county, Kansas, over interstate commerce, and is invalid and violative of the commerce clause of the constitution of the United States, and the district court of Montgomery county,

187 Kansas, was without jurisdiction to appoint receivers over the property of the Kansas Natural Gas Company in said proceedings by reason of said fact."

And this defendant avers that by the filing of said petition and answer an issue was made in said cause as to whether said Kansas Natural Gas Company at the time of the filing of the petition in the district court of Montgomery county, Kansas, by the State of Kansas through its attorney-general, heretofore referred to, was engaged in

domestic commerce and not engaged wholly in interstate commerce, and whether by reason of said fact the district court of Montgomery county, Kansas, had the right, authority and jurisdiction, because of the violation of the local laws of said Kansas by said corporation, to appoint the plaintiff receivers as the officers of said court to take possession of said property, and whether as such officers they were now entitled to the possession of the property of said Kansas Natural Gas Company as against certain receivers theretofore appointed in the said cause of John L. McKinney et al. v. The Kansas Natural Gas Company, heretofore set out and referred to in this answer and bill of complaint of the plaintiffs.

That said cause came on for trial on June 5, 1913, on said issues of law and fact, before the Hon. John A. Marshall, district judge of the United States sitting as such judge of the district court for the District of Kansas, and after hearing the testimony adduced by the said parties and being fully advised in the premises the court found in favor of the said petitioners, the plaintiffs herein, and against the said John L. McKinney and the Fidelity Title and Trust Company, the complainants in said original action; that as a part of said decision the court filed written findings and a written opinion as to the law controlling said case, and as to this question the court said:

"Under the Kansas antitrust act (Gen. St. 1909, sec. 5146), which provides that every person or corporation within or without the state, violating its provisions within the state, shall be denied the right to do business in the state, and authorizes the enforcement of such provision 'by injunction or other proceeding,' a state court has power to appoint receivers of the property within the state of a foreign corporation charged with violation of the act, and under the state practice such remedy is not precluded because the legal relief of ouster is sought in the action.

188 "The appointment by a state court of a receiver of the property within the state of a foreign corporation engaged in interstate commerce does not amount to an unlawful interference with the right of such corporation to transact interstate commerce." (206 Fed. 777.)

This defendant, further answering, avers that the said John L. McKinney and the Fidelity Title and Trust Company, complainants as aforesaid, excepted to the findings of the court and regularly took their appeal to the circuit court of appeals of the eighth district of the United States in said cause, and that thereafter said cause came regularly on for hearing and was decided by said court December 4, 1913, and it was there held and decided by the honorable circuit court of the said district that the opinion and decision of the district court of the United States, heretofore set forth, should be affirmed, and in determining the questions arising on said appeal the court, speaking by the Hon. Wm. C. Hook, circuit judge, said:

"A foreign corporation engaged in interstate and local commerce may be adjudged guilty of a violation of the antitrust laws of the state, its license to do business in the state may be canceled, and a receiver for all its property therein appointed under the general laws in aid of the enforcement of the judgment; and it is no defense



that such property included instrumentalities used by it in conducting its interstate business, or that the corporation by the same course of conduct has also violated the similar laws of the United States." (209 Fed. 300.)

And again, at pages 306-7, the court further said:

"There remains for consideration the contention that as applied to this case, the antitrust statutes of the State conflict with the Sherman act (act July 2, 1890, c. 647, 26 Stat. 209 [U. S. Comp. St. 1901, p. 3200]), and hence must give way. In this connection it is unimportant that the Kansas Natural Gas Company is a Delaware corporation instead of a corporation of Kansas. The character of its trade and commerce, interstate or local, determines the applicability of the antitrust laws of the nation or state and not the origin of its corporate existence. The term 'interstate corporation' is a convenient colloquialism but hardly accurate. In respect of the contention now being considered, the case would not be different had that company been organized under the laws of Kansas. Nor is it material that it transports some of the gas it deals in from Oklahoma into Kansas and from Kansas into Missouri by pipe lines. By express exemption it is not a common carrier subject to the interstate commerce act (act June 29, 1906, c. 3591 [U. S. Comp. St. Supp. 1911, p. 1284], 34 Stat. 584), sec. 1, even would it matter were it otherwise. The point urged by counsel rests on the fact that the company is engaged in both interstate and local commerce and upon the assertion that the two are so intricately interwoven as to be inseparable. The claim of inseparable intricacy is not tenable. The two kinds of commerce are no more interinvolved than with most railroads of the country and many manufacturing and mercantile concerns. Whatever may be the origin and admixture of the commodity dealt in or the common use of the same plant, equipment, and instrumentalities, the two kinds of commerce are distinguishable. The company is in no better position than if it were an ordinary industrial and mercantile concern of Kansas producing, buying, shipping, and selling, locally and in other states, grains, oils, or other commodities which lose their particular identity in the mass of that which is dealt in. Again, the property and business of the company which are wholly within the State of Kansas are not negligible incidents to which the state antitrust statutes are being forced; much of its property, including that obtained from the other corporations, is located there and much of its business is there transacted. The action of the State of Kansas was directed to the violation of the state statutes. The decree of the state court was expressly confined to the matters within its jurisdiction and subject to the local laws. There was no attempt to enforce the Sherman act."

This defendant therefore further avers that by the aforesaid decisions and holding of the courts it has been fully determined and adjudicated that the plaintiff receivers are engaged in intrastate commerce subject to the local laws and police power of the State of Kansas and the jurisdiction of the Public Utilities Commission for said State, and that the plaintiffs are not engaged wholly in interstate commerce, and that the properties under their control are not instru-



mentalities of interstate commerce of such nature as to deprive the defendants Public Utilities Commission for the State of Kansas of jurisdiction over it, and that said plaintiffs, having acquiesced in said holdings and principles of law announced by the courts in the said cases, and having in this cause alleged that this case is dependent upon and ancillary to the case of John L. McKinney et al. v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N, Equity, as averred in plaintiffs' bill of complaint, paragraph 1, which this defendant in no wise admits, and that said findings and principles of law having become the law of said cases, and of this case, and all of said matters having been fully determined, the plaintiffs are estopped from averring to the contrary herein, and from causing a retrial of said issues in this suit.

### Second.

This defendant, having objected to the jurisdiction of this court arising upon the points of law disclosed upon the face of the bill of complaint, and having moved to dismiss this action for want of such jurisdiction, further answering, says:

### I.

The above-named defendant denies that the bill of complaint herein is dependent upon and ancillary to the causes entitled John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N, Equity, now pending in this court, and further denies that this action is brought for the purpose of protecting the property now in the potential possession of this court in said causes and of enforcing the jurisdiction of this court in said causes.

This defendant specifically denies that the matter and amount in controversy in this cause exceeds the sum or value of \$3000 exclusive of interest and costs.

This defendant specifically denies that the causes of action, if any such be stated in the bill of complaint filed here, arise under the constitution or laws of the United States.

This defendant does not know for what purpose the bill of complaint was filed herein, but nevertheless denies that the Public Utilities Commission for the State of Kansas have fixed rates which are unreasonably low or that are unremunerative, noncompensatory and confiscatory, or which amount to the taking of the property in the possession and control of these plaintiffs without just compensation and without due process of law, or that the Public Utilities Commission for the State of Kansas have issued any order interfering with interstate commerce.

This defendant denies that there is any relationship and acts of the Public Utilities Commission for the State of Kansas, with the

Public Service Commission of the State of Missouri, or the attorneys and counselors of said Commissions, either now or at any  
191 time, such that it is practicable to present here and determine said causes in one suit in this court, but alleges that plaintiffs' pretended causes of action against the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri are wholly different and can not be joined as one cause of action, nor can the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri be joined as parties defendant in the same cause of action, nor are the pretended causes of action against the counsel for the Public Service Commission of the State of Missouri and the attorney for the Public Utilities Commission for the State of Kansas and the attorney-general of the State of Kansas such that they can be joined in one cause of action, nor can the counsel for the Public Service Commission of the State of Missouri and the attorney for the Public Utilities Commission for the State of Kansas and the attorney-general of the State of Kansas be joined in one cause of action such as is attempted in the suit at bar.

## II.

This defendant admits that the defendants Joseph L. Bristow, C. F. Foley and John M. Kinkel are the duly appointed, qualified and acting members of the Public Utilities Commission for the State of Kansas; that the defendant S. M. Brewster is the duly elected, qualified and acting attorney-general of the State of Kansas and the chief law officer of the State of Kansas; that the defendant H. O. Caster is the duly appointed, qualified and acting attorney for the Public Utilities Commission for the State of Kansas. That the defendant members of the Public Utilities Commission for the State of Kansas, and the defendant attorney-general for the State of Kansas, and the defendant attorney for the Public Utilities Commission for the State of Kansas are charged by the laws of the State of Kansas with the duty and obligation of executing and enforcing all of the laws affecting public utilities and other property.

This defendant has no knowledge as to who is the attorney-general of Missouri and who constitute the members and officers of the Public Service Commission of Missouri.

This defendant admits that the defendant Fidelity Title and Trust Company is a corporation duly organized and existing  
192 under and by virtue of the laws of the State of Pennsylvania, and is trustee under a certain first mortgage and supplemental mortgages heretofore executed by the Kansas Natural Gas Company on its property here involved. That said Fidelity Title and Trust Company is complainant in two of the suits pending in this court referred to in the bill of complaint.

This defendant admits that the defendant The Delaware Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is the trustee under

a certain second mortgage executed and delivered by the Kansas Natural Gas Company covering a part of the property here involved. That the said Delaware Trust Company is defendant in one of the suits mentioned in the bill of complaint.

This defendant admits that the Fidelity Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is the trustee under a certain first mortgage and three supplemental mortgages executed and delivered by the Kansas City Pipe Line Company, whose property has been leased to the Kansas Natural Gas Company and is being operated by the plaintiff receivers.

This defendant admits that the Kansas City Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey. That all of the property of said Kansas City Pipe Line Company has heretofore been leased to the Kansas Natural Gas Company and is now, so far as it is situated in Kansas, in the possession of the plaintiff receivers of said Kansas Natural Gas Company, but denies "that said pipe lines of the Kansas City Pipe Line Company are of little or no use unless they be operated in conjunction with the balance of the system of the Kansas Natural Gas Company."

This defendant admits that the Marnet Mining Company is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, that said Marnet Mining Company owns certain property and pipe lines in the State of Oklahoma, which said pipe lines and property form a part of the system of the Kansas Natural Gas Company, but denies "that all of the property of the said Marnet Mining Company is of but little value if separated from the system of pipe lines operated by the Kansas Natural Gas Company."

193 This defendant admits that John F. Overfield is the receiver of the property of the Kansas City Pipe Line Company, as in the bill of complaint alleged.

This defendant admits that the defendant Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and from 1904 to October, 1912, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas. That it has been duly admitted to do business in the State of Kansas as a foreign corporation. That it owns and operates a system, by lease and otherwise, of pipe lines extending from the counties of Rogers, Wagoner and Tulsa, in the State of Oklahoma, northward to the Kansas-Oklahoma State line, and through the State of Kansas into the State of Missouri, with terminals at Joplin, but denies that they have terminals in Kansas City and Nevada, Mo., but admits that they have a line extending to St. Joseph in the State of Missouri, and Atchison, Leavenworth, Topeka, Galena, Pittsburg and Kansas City in the State of Kansas, and other points, which are more fully shown in the map referred to in the bill of complaint and filed with said bill. That since October, 1912, said system of pipe lines has been in the

control of and operated by receivers of said Kansas Natural Gas Company.

This defendant admits the issuance of the order of September 22, 1914, made and entered in the cases of John L. McKinney et al. v. The Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N, Equity, but deny that the said George F. Sharitt is in the possession or control, actually or potentially, of any property involved in this suit by virtue of such order or otherwise.

### III.

This defendant admits that the said John M. Landon and R. S. Litchfield, plaintiffs, are in the actual possession and control of the property of the Kansas Natural Gas Company and the property under lease to it in the State of Kansas, as receivers of said company, appointed by the district court of Montgomery county, Kansas, and admits that the said John M. Landon and R. S. Litchfield are in the actual possession and control of the pipe-line system of the Kansas

Natural Gas Company, including leased lines located in the 194 States of Oklahoma and Missouri, but denies that they are in such possession as ancillary receivers of this court, but alleges that they are in the actual possession of such property in Oklahoma and Missouri, as receivers appointed by the district court of Montgomery county, Kansas.

### IV.

This defendant admits the allegation of the fourth division of the bill of complaint.

### V.

This defendant admits that on the 17th day of December, 1914, the first and second mortgage bondholders of the Kansas Natural Gas Company and the Kansas City Pipe Line Company, the Kansas Natural Gas Company, and the plaintiff receivers, John M. Landon and R. S. Litchfield, and the Marnet Mining Company, entered into a certain agreement and stipulation called "Creditors' Agreement," a copy of which agreement is attached to plaintiffs' bill of complaint as Exhibit A. But this defendant specifically denies that the State of Kansas was a party to or affected by such agreement, and this defendant specifically denies the matter and things set up in said creditors' agreement.

This defendant admits that said Kansas Natural Gas Company, prior to the appointment of receivers, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas, and carrying on its said activities in the States of Oklahoma, Kansas and Missouri; that after the appointment of the receivers by this court said receivers continued and carried on the said business

after the manner the same had been theretofore conducted by Kansas Natural Gas Company, and after the delivery of the property aforesaid to said State receivers they continued to carry on said business theretofore conducted and carried on by said federal receivers and by said Kansas Natural Gas Company.

This defendant specifically denies all other allegations in the fifth subdivision of said bill of complaint, except such as are hereafter in this subdivision specifically admitted.

This defendant alleges that in carrying on said business as aforesaid these plaintiff receivers procured a part of their gas from wells in Wagoner, Rogers and Tulsa counties, Oklahoma, piping  
195 the same northward into and through the gas fields of Kansas, where the same is so commingled in the pipe lines conveying the same with gas produced in Kansas that it is impossible to separate or distinguish that produced in Oklahoma from that produced in Kansas; and, after being so commingled and mixed, it is conveyed northward from city to city throughout the State, and is drawn off by the numerous cities along its lines within the State of Kansas at such times and in such quantities as the individual consumers desire; that the gas in being so transported is, by means of compressor stations, packed into the transportation lines as reservoirs and is at all times subject to be drawn off by the various distributing companies serving the several towns along said pipe line, and when the said gas is drawn off by the said distributing companies from the transportation lines there is no way of telling whether it was produced in Kansas or in Oklahoma, but is drawn off by said distributing companies from the mass of said gas stored in the transportation lines for sale and distribution to the consumers in the various cities.

This defendant specifically denies that only six per cent of the gas delivered to consumers in Kansas is produced in Kansas. This defendant specifically denies that the business carried on and conducted by the plaintiff receivers is the carrying on of business and commerce among different states of the Union, to wit, Oklahoma, Kansas and Missouri, or that the same is exclusively under the control of the Congress of the United States, as confided to it by section 8 of article 1 of the constitution of the United States, and alleges that the business conducted by the plaintiff receivers is subject to the control and regulation of the States of Kansas and Missouri.

That on August 17, 1915, H. O. Caster, as attorney for the Public Utilities Commission for the State of Kansas, filed a suit in mandamus in the Supreme court of the State of Kansas against the plaintiff receivers herein; a copy of the application for such writ is attached to this answer and made a part hereof and marked Exhibit A. That notice was duly had upon the plaintiff receivers, as defendants in such action, and in due time they filed in said court their answer and return; a copy of such answer and return is attached to and made a part of this answer, marked Exhibit B. That, as shown by said  
answer and return, the plaintiff receivers herein, as defend-  
196 ants in said action, allege that the business so conducted by them was the carrying on of business and commerce among the different States of the Union, to wit, Oklahoma, Kansas and Mis-

souri, and that it was exclusively under the control of the Congress of the United States, as confided to it by section 8 of article 1 of the constitution of the United States. Upon hearing duly had in such action and being well advised in the premises, the supreme court of the State of Kansas, in such action, being case No. 20324 of the files of said court, duly filed its opinion (96 Kan. 372) and order, to the effect that the business as conducted by the plaintiff receivers was not the carrying on of business and commerce among the different States of the Union, and was not under the control of the Congress of the United States, but that the same was under the control of the Public Utilities Commission for the State of Kansas; a copy of the opinion of the supreme court of the State of Kansas in such action is attached hereto and made a part of this answer, marked Exhibit C. Such order was not appealed from or reversed and is still in full force and effect.

That this defendant, therefore, alleges that it has been adjudicated in an action wherein these plaintiffs as receivers and the Public Utilities Commission for the State of Kansas were parties, that the business as conducted by the plaintiff receivers was not the carrying on of a business or commerce among the different States of the Union and was not under the control of the Congress of the United States, but that the same was under the control of the Public Utilities Commission of the State of Kansas, and that such question has been fully and finally adjudicated and determined and is res adjudicata as between all the parties to this suit.

## VI.

The defendant admits all of the allegations of fact contained in the sixth subdivision of the bill of complaint herein, except with reference to the alleged orders of this court purported to have been made on December 30, 1912, and on January 4, 1913, with reference to which orders this defendant alleges that this court had no power, authority or jurisdiction to make any such alleged orders; and that if such orders were made, as alleged in said bill of complaint, they were wholly illegal and void; and this court, recognizing that said  
197 orders of December 30, 1912, and of January 4, 1913, were made without jurisdiction and were wholly null and void, has never pretended to enforce the same.

## VII.

This defendant specifically denies each and all of the allegations in the seventh subdivision of plaintiffs' bill of complaint, except such as are in this division of the answer admitted.

This defendant admits that the attorney for the Public Utilities Commission for the State of Kansas, in January, 1913, filed a complaint with the said commission, wherein the Kansas Natural Gas Company and its receivers and the distributing companies were respondents. After a hearing upon such application the Public Utilities Commission for the State of Kansas made and filed its order and opinion, a copy of which is attached to the bill of complaint, marked



Exhibit E. That on April 9, 1915, the plaintiff receivers filed before the Public Utilities Commission for the State of Kansas their complaint and schedule of rates, requesting an order of the Public Utilities Commission permitting them to increase the rates which they might charge for natural gas furnished by them to their consumers in Kansas. A copy of such complaint is attached to this answer as a part — Exhibit A, and a true copy of the original schedule of rates then filed is attached to the bill of complaint, marked Exhibit F. That upon July 16, 1915, after a full hearing upon said complaint, the Public Utilities Commission for the State of Kansas rendered its opinion, a copy of which is attached to the bill of complaint, marked Exhibit H.

That thereafter, in the action pending in the district court of Montgomery county, Kansas, brought by the plaintiff receivers against the Public Utilities Commission et al. as defendants, an order was made by said court overruling the demurrer of the Public Utilities Commission to the petition filed in such case. An appeal was taken from this order to the supreme court of the State of Kansas by the Public Utilities Commission.

That on August 17, 1915, H. O. Carter, as attorney for the Public Utilities Commission for the State of Kansas, filed a suit in mandamus in the supreme court of the State of Kansas against the plaintiff receivers herein and the judge of the district court of Montgomery county, Kansas, to require the said receivers to maintain efficient and sufficient service in the supplying of gas to their customers within the State of Kansas, and to require the said judge of the district court of Montgomery county, Kansas, to vacate and set aside an order making the Public Utilities Commission a party defendant in the action pending in the said district court of Montgomery county, Kansas, wherein the said receivers were appointed to set aside the temporary restraining order issued by the district court of Montgomery county, Kansas, in that action, and to dismiss the suit against the Public Utilities Commission for the State of Kansas.

That the said John M. Landon and R. S. Litchfield made their return and answer in said mandamus case. That on the 22d day of September, 1915, a hearing was had on said mandamus action in the supreme court of the State of Kansas, which said action was consolidated with the appeal taken from the decision of the district court of Montgomery county, Kansas, overruling the said demurrer.

That thereafter, and on the 11th day of October, 1915, the supreme court of the State of Kansas rendered its opinion and final judgment in said actions, which opinion is reported in volume 96 of the Kansas Reports at page 372, and a copy of which said opinion and judgment is hereto attached, marked Exhibit C and made a part hereof. Said judgment has never been appealed from nor reversed, and is still in force and effect.

## VIII.

This defendant denies all of the allegations of fact contained in the eighth subdivision of the bill of complaint, except such as are specifically admitted in this subdivision of the answer.



This defendant admits that on the 7th day of October, 1915, the plaintiff receivers filed with the Public Utilities Commission for the State of Kansas a petition for rehearing, a copy of which is attached to the bill of complaint, marked Exhibit J. That later, and on the 10th day of December, 1915, the Public Utilities Commission for the State of Kansas, after due notice and after a full and final hearing thereon, made and filed its opinion and order, a copy of which is attached to the bill of complaint, marked Exhibit K. (Plaintiffs' bill, 222.)

199 Thereafter, and on the 22d day of December, 1915, the plaintiff receivers acquiesced in said order of said Commission and consented to and accepted the benefits thereof by filing a schedule of rates and rules in accordance with the permission therein given, a copy of which said schedule is attached to the bill of complaint and marked Exhibit M, and hereinafter set out for the convenience of the court. And thereafter, and on the 28th day of December, 1915, the Public Utilities Commission for the State of Kansas made and entered its order approving said schedule of rates and rules, and said schedule of rates became the lawful rates for the sale of gas by said plaintiff receivers within the State of Kansas, and said rules became the lawful rules under which said gas should be supplied. And thereafter the said plaintiff receivers put into force and effect said schedule of rates and have been ever since, and now are, charging rates in accordance with said schedule to their consumers in the State of Kansas, and accepting the benefits of said order of said Public Utilities Commission for the State of Kansas, except that in the cities of Atchison, Topeka, Lawrence and Galena, and at Parsons and Pittsburg, the plaintiffs are failing to observe the said schedule approved by order of the Public Utilities Commission dated the 28th day of December, 1915, as to furnishing free gas to said cities, and in the cities of Independence and Coffeyville plaintiffs are not charging and collecting the rates prescribed in said order from their consumers in said cities.

### IX.

This defendant denies each and all of the allegations in subdivision nine of the bill of complaint filed herein, except such as are admitted in this subdivision of the answer.

This defendant alleges that the opinion and order of the Public Utilities Commission, referred to in said bill of complaint as Exhibit K, were made and entered after a full and complete hearing had before said Commission, and are based upon the evidence there adduced, and that the plaintiff receivers were present by their attorneys at all sessions of said Commission and participated in said hearing and had ample and full opportunity of presenting all evidence which they desired and full opportunity of cross-examining all witnesses, and that no evidence was considered by the  
200 Commission in making the findings of fact contained in said Exhibit K except such evidence as was so produced at said hearing.

This defendant denies that said engineer testified that he did not include going value or going-concern value or any value of the property for the cost of attaching the business or as a going concern, or that said engineer did not allow values for said items, and denies that the fair and reasonable going value of development cost of said plant was on January 1, 1915, or now is \$2,637,400, and denies that the fair and reasonable value of said plant and property was on January 1, 1915, or now is more than the sum of \$11,632,211, and denies that said plaintiffs are entitled to a return of ten per cent upon the investment in said property, and denies that said Commission did not allow any intangible value in connection with said property, and denies that said Commission did not consider more than \$7,083,605.64 as the total value on which plaintiffs were entitled to earn a return, and denies that said Commission allowed no value for leaseholds derived by conveyance from Snyder, Barnsdall and O'Neil, and denies that said leaseholds were at the time of their conveyance of the reasonable value of \$6,000,000, and denies that the life of said plant is only six years from January 1, 1915, and alleges that said Commission in said Exhibit K, in ascertaining the income derived from the production of natural gas, showed said income to be \$6,023,792.16 more than it actually was, but that this fact did not change the net income for the reason that an equal amount was included in the expenses of producing said gas in addition to the actual expense, thereby offsetting said item, and denies that the effect of this was to give the public the benefit of over \$3,000,000 worth of gas without charge, and denies that the reasonable value of gas produced from said leaseholds up to and including December 1, 1914, was in excess of \$6,023,792.16, and denies that said Commission erred in separating the property used in the production of natural gas from the property used in its transportation, and denies that the Commission erred in using 4 cents as the price to be paid for gas to be purchased in the future, and denies that such price will in the future be not less than 6 cents per thousand cubic feet, and denies that the Commission erred in estimating the increased revenue to be obtained on the schedule put in effect after the order of December 10, 1915, and denies that such increased  
201 revenue will be not more than \$75,059.53, and denies that said Commission erred in estimating and fixing the amount of operating expenses and taxes as \$510,536.14, and denies that the true amount required for these purposes is \$800,000 per year, and denies that said Commission omitted any items of operating expenses; and this defendant denies that expenditures for making extensions to new fields are proper items of operating expense, and admits that the same were not included as such in the computations in Exhibit K, and denies that it will be necessary to expend \$500,000 in the year 1916, and denies that it will be necessary to spend \$200,000 in each year thereafter for such extensions; and this defendant denies that the Commission allowed depreciation only on \$7,083,615.64, and denies that the true life of said plant is five years from January 1, 1916, and denies that \$11,632,211, less \$1,500,000, must be amortized during said time, and denies that said Commission al-

lowed a return of only 6 per cent upon said investments, and denies that a return of less than 7 per cent on the value of the property employed in said business is unreasonable and confiscatory, and denies that the sum of \$11,632,211 is the fair and reasonable value of the property upon which plaintiffs are entitled to earn a reasonable rate of return; and defendant alleges that the true facts as to all of said matters are as hereinafter set forth in the third division of this answer.

## X.

This defendant does not know and is therefore unable to state the facts concerning the alleged valuations of the property of the Kansas Natural Gas Company in the States of Kansas, Missouri and Oklahoma, as set out in the tenth subdivision of the bill of complaint.

## XI.

This defendant denies that the plaintiff receivers filed with the Public Utilities Commission the schedule of rates mentioned in the eleventh subdivision of said bill of complaint for the purpose of avoiding complications and litigations with the State of Kansas and the Public Utilities Commission for the State of Kansas, and financial loss and suits for penalties under the statute of the State of  
202 Kansas, but allege the fact to be that the order of the Public Utilities Commission for the State of Kansas relating thereto merely gave the plaintiff receivers permission to file such schedule of rates and was not mandatory, and that such schedule was filed by the plaintiff receivers solely for the purpose of securing the benefit which would accrue to them in the increased price for natural gas sold by them, as such permission would be given when such schedule was filed, and that the laws of the State of Kansas would not in any manner have subjected the plaintiff receivers to complication, litigation, financial loss or suit for penalties if such schedules had not been filed.

This defendant specifically denies that the net income above operating expenses, taxes, repairs and accrued depreciation has not at any time during the time the plant in question has been operated amounted to a fair return on the investment.

## XII.

This defendant specifically denies that there has been any decrease in gas pressure in the year 1915 as compared with the year 1914, and denies that the miscellaneous revenues for 1915 are less than those of 1914, and denies that future years will be less than for previous years, and denies that the table set out in the twelfth division of the bill of complaint correctly shows a comparison of the miscellaneous revenues for ten months of 1915 as compared with the same period of 1914.

## XIII.

This defendant does not know whether or not expert engineers were employed by the Kansas Natural Gas Company to determine the life of the gas field, and does not know what investigations were made concerning said gas fields, or what reports, if any, were made by said engineers to the Kansas Natural Gas Company or to any other person.

This defendant alleges that there is now and has been since the formation of the Kansas Natural Gas Company an ample supply of natural gas adjacent to its lines, which it could have secured without unreasonable expense.

This defendant denies the correctness of the map showing the trunk lines of the Kansas Natural Gas Company, Quapaw and  
203      Wichita Gas Companies, and Oklahoma Natural Gas Company, together with the analysis of said map, attached to the bill of complaint, marked Exhibit L, and denies that the cost of gas has increased during the past year at least one cent per thousand cubic feet, owing to the short duration of the gas pools and fields. This defendant has no knowledge of the exact per cent of the gas which is supplied by plaintiff to consumers in Kansas or Missouri which is secured from Oklahoma, but admits that a large per cent is there purchased.

This defendant denies that, owing to the financial condition of the Kansas Natural Gas Company, very few leases have been purchased by that company or by plaintiff receivers or that practically all of the gas secured from Oklahoma has been purchased in Oklahoma at a special rate per thousand feet, but alleges the fact to be that with proper and prudent management the company would have been financially able to at all times make necessary and proper arrangements for procuring leases for the purchase of gas.

This defendant does not know the per cent of gas which is lost through leakage, as alleged in said bill of complaint, but alleges that if a large per cent thereof, as claimed in said bill of complaint, is actually so lost, that it is on account of the defective conditions of the lines of the plaintiff receivers or of such distributing companies, and that the Public Utilities Commission, in its opinion and order, attached to plaintiffs' bill of complaint, marked Exhibit K, made due allowance for said leakage.

This defendant denies that all of the evidence shows that the probable life of the gas fields which may be profitably reached by the plant of the Kansas Natural Gas Company is six years from January 1, 1915, but alleges that the evidence shows and the fact is that the probable life of such gas field will be much longer than such six years.

This defendant specifically denies that the said six years as the life of said gas plant is also determined by the State of Kansas in the creditors' agreement, and denies that said period of six years was adopted as the probable life of said gas plant by the said Public Utilities Commission of the State of Kansas in its opinion of July 16,

1915, attached to plaintiffs' bill of complaint and marked Exhibit H.

This defendant specifically denies that the plant of the Kansas Natural Gas Company at the end of six years will have no value whatever, except as scrap; but alleges, as stated above, the life of said gas fields and said plant is much longer than said six years, and that said plant at the end of such period will have a large and going value; and he further denies that at the end of said six-year period, or at the end of the life of said gas fields and the usefulness of said gas plant, the scrap value will not exceed \$1,500,000, but alleges that at such time such value will largely exceed such sum.

This defendant further denies that the difference between the total value of the plant as of date January 1, 1915, and the scrap value at the end of the life of the plant is \$10,132,211; and denies that such sum must be amortized in five years from January 1, 1915; and denies that the revenues for the year 1915 have been insufficient to amortize any part of the plant value during 1915; and denies that it will require the sum of \$500,000 for the first year and \$200,000 per year for each of the succeeding four years in order to procure the annual additional supply of gas necessary to maintain the same volume of gas supplied to consumers as is now transported and distributed; and denies that nothing less than ten per cent per annum is a fair and reasonable rate of return on the property employed and used in said business; and denies that the table therein set out shows the true and correct amount of gross revenue which is necessary for this plant to obtain in order to meet operating expenses, repairs, secure future gas supply and provide for the amortization of the plant and a fair return on the property employed in the service.

#### XV.

This defendant denies that the table set out in the fifteenth division of plaintiffs' bill of complaint shows the correct amount of revenues which the order of December 10, 1915, will produce in the State of Kansas, and the revenues which the rates now in existence will produce in the State of Missouri; but alleges that table 5 in exhibit K to said complaint shows the correct amount of revenues which the order of December 10, 1915, will produce.

This defendant further denies all the other allegations of the fifteenth division of the plaintiffs' bill of complaint.

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#### XVI.

This defendant denies that the tables set out in the thirteenth and fifteenth subdivisions of the plaintiffs' bill of complaint are typical of the years of the remaining life of said plant; and further denies that any lower schedule of rates in the State of Kansas than those set out in Exhibit F of this petition will be unreasonable, unremunerative, noncompensatory and confiscatory, or that the plaintiff receivers have been deprived of property without just compensation and without due process of law, or that they will continue to be so deprived

of property in the transportation of gas to consumers in the State of Kansas unless the rates set out in such Exhibit F are put into effect; and this defendant denies that the said order of the Public Utilities Commission of the State of Kansas is void or in contravention of the fourteenth amendment to the constitution of the United States and in interference with interstate commerce; and he further alleges that the question as to whether the business conducted by the plaintiff receivers is or is not a business or commerce between various States of the Union has been fully and finally adjudicated adverse to the claim of the plaintiff receivers, as if fully set out in the fifth and seventh subdivisions above.

This defendant does not know whether said Kansas Natural Gas Company or said federal receivers have or do deliver or sell gas to domestic consumers in the State of Oklahoma or conduct or carry on any business of or as a public utility therein, but denies that plaintiffs carry on such business in said State.

#### XVII.

This defendant specifically denies that the order of December 10, 1915, of the Public Utilities Commission of the State of Kansas provides and requires plaintiff receivers to furnish gas produced in Kansas to consumers in Kansas at such an unreasonably low rate as not to afford sufficient revenue to pay a fair return above operating expenses on the property employed in such service, and thereby imposes a burden upon interstate commerce; but alleges the fact to be that the said receivers are not engaged in interstate commerce, as is fully set out in subdivision five of this answer.

This defendant denies that the plaintiffs have no adequate remedy in the premises, except such relief as may be obtained by applying to a court of equity; but alleges the fact to be that the order of December 10, 1915, of the Public Utilities Commission was a permissive order, and that these plaintiff receivers availed themselves of the authority therein granted to increase the rate at which gas is sold by them to their consumers within the State of Kansas; that said schedules of rates were voluntarily filed by said plaintiff receivers, and upon their approval by the Public Utilities Commission became the legal rates, which could not be changed without first having obtained the authority of the Public Utilities Commission, and that the plaintiffs' only remedy was by such application.

This defendant specifically denies all the other allegations of subdivision seventeen of the plaintiffs' bill of complaint.

#### XVIII.

This defendant denies the allegations of the eighteenth subdivision of the plaintiffs' bill of complaint.

#### XIX.

This defendant specifically denies every allegation of fact contained in the nineteenth subdivision of the bill of complaint.



## XX.

This defendant specifically denies every allegation of fact contained in the twentieth subdivision of the bill of complaint, but alleges that he does not know what orders have been made by the Public Service Commission of the State of Missouri, or what is the power and authority of such Commission, but denies that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant.

## XXI.

This defendant admits that the Public Service Commission of the State of Missouri held a conference with the Public Utilities Commission for the State of Kansas at Kansas City, Mo., on or about the 27th day of September, 1915.

207 This defendant specifically denies each and every other allegation of fact in such twenty-first subdivision of the bill of complaint, except that he does not know what orders have been made by the Public Service Commission of the State of Missouri or what is the power and authority of such Commission, but denies that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant.

## XXII.

This defendant states that he is not informed and does not know concerning what orders have been made by the Public Service Commission of the State of Missouri, or the effect of such orders, if any have been made, but denies that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant, and specifically denies that any schedule or rate for natural gas below 37 cents per thousand cubic feet for gas delivered to consumers in all other cities in Missouri, except St. Joseph, and that 26  $\frac{2}{3}$  cents for plaintiffs' proportion of gas delivered in St. Joseph is and will be unreasonably low, unremunerative, noncompensatory and confiscatory.

## XXIII.

This defendant denies that plaintiffs have no adequate remedy at law in the State of Missouri.

This defendant states that he does not know what orders, if any, have been made by the Public Service Commission of the State of Missouri, or what is the power and authority of such Commission, and he does not know what is the desire of the plaintiffs receivers with reference to the furnishing of gas within the State of Missouri, or concerning the reasonableness of the rates charged in such State,



but denies that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant.

#### XXIV.

This defendant denies all of the allegations of fact contained in the 24th subdivision of the bill of complaint, except that he states that he does not know what orders, if any, have been made by the

Public Service Commission of the State of Missouri, or the  
208 power and authority of such Commission, or what action such Commission has taken or proposes to take relative to gas supplied within that State by plaintiff receivers, but denies that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant.

#### XXV.

This defendant does not know and can not state concerning the alleged statutes of the State of Missouri which are set out in the twenty-fifth subdivision of the bill of complaint.

#### XXVI.

This defendant does not know and can not state what orders, if any, have been made by the Public Service Commission of the State of Missouri, or the effect of such orders, or the penalties provided for violating such orders, but denies that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant.

#### XXVII.

This defendant does not know and can not state what orders, if any, have been made by the Public Service Commission of the State of Missouri, or the effect of such orders, and does not know whether or not the plaintiffs have an adequate relief at law under the statutes of the State of Missouri, but denies that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant.

#### XXVIII.

This defendant admits that the application to the Public Utilities Commission for the State of Kansas in 1912 resulted in no increase above 25 cents per thousand cubic feet, and that the application of April 9, 1915, resulted, on July 16, 1915, in an opinion that 28 cents per thousand cubic feet north of Montgomery county, Kansas, was sufficient, and that upon rehearing on December 10, 1915, per-

mission was given the plaintiff receivers to put into effect the rates set out in Exhibit K attached to the bill of complaint, but  
209 denies that a majority of the Public Utilities Commission for the State of Kansas found such rates to be excessive.

## XXIX.

This defendant does not know what rates, if any, have been prescribed for the sale and distribution of gas in the State of Missouri by these plaintiffs, but alleges that the rates permitted by the Public Utilities Commission for the State of Kansas to be filed by authority of its order of December 10 are just and reasonable and will yield plaintiffs a just and reasonable return upon their property used and useful and devoted to the public use in the supplying natural gas to their consumers in the State of Kansas, and do not in any way interfere with the possession and control of this court over property potentially in its charge and custody.

## XXX.

This defendant denies that the plaintiffs are without adequate remedy at law in the premises in the bill of complaint set forth, and denies that plaintiffs will suffer irreparable injury unless accorded the injunctive relief in the bill of complaint prayed for.

## XXXI.

That the thirty-first subdivision of plaintiffs' bill of complaint consists of mere conclusions based upon previous averments of fact in said bill of complaint, all of which have been fully answered by the defendant herein, and which the defendant specifically denies.

## XXXII.

This defendant alleges that the allegations of the thirty-second subdivision of the bill of complaint, so far as the same relate to orders made by the Public Utilities Commission for the State of Kansas, are mere conclusions based upon allegations of fact theretofore made in such bill of complaint, all of which have been fully answered, but which this defendant now again specifically denies.

This defendant does not know what orders have been made by the Public Service Commission of the State of Missouri, or what is the power and authority of that Commission, or the effect upon the plaintiff receivers of any orders which it may have made, but denies  
210 that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against this defendant.

## XXXIII.

This defendant admits that the defendant distributing companies are furnishing gas to consumers in Kansas under contracts originally

made with the Kansas Natural Gas Company, which contracts were assumed and adopted by the plaintiff receivers, and ever since their appointment the plaintiff receivers have been furnishing gas under the terms of such supply contracts; that such contracts were valid and binding in every respect and were entered into by all the parties with a full knowledge of all of the facts relating thereto, and that with careful and competent management the Kansas Natural Gas Company and the plaintiff receivers would have been and would now be fully able to supply all the gas which they may have been required to furnish under the terms of such contracts.

This defendant specifically denies that any of the defendant cities within the State of Kansas are attempting in any manner to establish the rates at which gas is to be sold within said cities, or establish and provide the rules and regulations governing the sale and distribution thereof, but alleges the fact to be that the said distributing companies are the agents of the Kansas Natural Gas Company for the sale and distribution of said gas, and are under the control and supervision of the Public Utilities Commission for the State of Kansas.

This defendant is not informed and has no knowledge that any contracts between the Kansas Natural Gas Company and said distributing companies or any franchises granted by the defendant cities to said Kansas Natural Gas Company contain any provisions similar to those averred and set out in paragraph XXXIII of the plaintiffs' bill of complaint, or of which the same are typical; and further avers that if such provisions are contained in any of the said contracts or franchises that they are not sufficiently identified in plaintiffs' bill of complaint to enable the defendant to determine the truth of said averments.

This defendant specifically asks that the plaintiffs be put upon their proof as to such allegations and to all of the other averments of fact in the thirty-third subdivision of the said bill of complaint.

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Third.

This defendant, having fully traversed and answered the bill of complaint filed herein, further answering, says:

## I.

That in 1903 R. M. Snyder and associates formed a copartnership, known as the New York Oil and Gas Company, and acquired nearly 18,000 acres of gas leases, upon which they developed a supply of gas and secured a franchise to use the streets and alleys of Independence, Kan., to supply gas to the citizens thereof. During the same year said Snyder and associates obtained from the Consolidated Gas, Oil and Manufacturing Company and the Independence Gas Company, corporations then owning a plant for the sale and distribution of gas in the city of Independence, an option to buy said plant in Independence and some 80,000 acres of leases located principally in the counties of Montgomery and Chautauqua, in Kansas, paying for said option the sum of \$10,000. The full purchase price

for said property was to be \$550,000. During the same year R. N. Barnsdall and James O'Neil acquired about 90,000 acres of leases and brought in some producing gas wells thereon, located principally in Allen, Neosho, Wilson and Labette counties, Kansas, and organized the Kansas Natural Gas Company.

In 1904 the said Barnsdall and Snyder and their associates consolidated their propositions and increased the stock of the Kansas Natural Gas Company from \$6,000,000 to \$12,000,000, and each group of associates transferred to the Kansas Natural Gas Company their various properties herein enumerated; the said Barnsdall and associates received for their property \$6,000,000 of the capital stock of the Kansas Natural Gas Company, and Snyder and his associates received the remaining \$6,000,000 of said capital stock. Said Snyder and associates received in addition thereto the sum of \$900,000 in money, \$540,000 of which was to be devoted to the payment of the balance of the purchase price of the properties of the Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company; that the \$900,000 paid to Snyder and his associates was realized from the sale of the first mortgage bonds of the Kansas

212 Natural Gas Company; that the said Kansas Natural Gas Company thereafter acquired other leases, all of which said leases cost the said Kansas Natural Gas Company not to exceed \$4,100,000, and said sum includes the value of all material used in the wells; and this defendant alleges that all of the said leaseholds in the aggregate have not, during the time herein mentioned, been worth to exceed \$4,000,000; that the value of the gas and oil marketed from said leases during all the years from the organization of the Kansas Natural Gas Company up to December 31, 1914, was not in excess of \$6,652,944.83, and that the expenses in connection with the production of said oil and gas so sold from said leases was at least \$3,630,171.48.

That the Kansas City Pipe Line Company and the Marnet Mining Company are in fact subsidiary companies to the Kansas Natural Gas Company, and the property of the three companies is one contiguous whole and all used in producing and transporting natural gas from the Mid-Continent gas fields to the consumers within the States of Kansas and Missouri; that all of said property will be hereafter referred to as one property under the name of the Kansas Natural Gas Company. The following table shows the amount of capital stock and bonds issued by each of these three companies:

## Kansas Natural:

Common stock .....	\$12,000,000
First-mortgage bonds .....	4,000,000
Second-mortgage bonds .....	4,000,000

## Kansas City Pipe Line Company:

Stock .....	4,500,000
Bonds .....	4,745,000

## Marnet Mining Company:

Stocks .....	2,500,000
Bonds .....	2,000,000

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\$33,745,000

The statement shows that these companies have issued bonds of the face value of \$14,745,000, for which they received \$13,404,250. Of this amount \$1,035,000 was invested by the Kansas Natural Gas Company in the bonds of the Marnet Mining Company, leaving a balance of \$12,369,250 outside money actually received from the sale of said bonds.

Defendant alleges that table 2 of Exhibit K of the bill of complaint is a statement showing the true and correct investment and property at the close of each year, together with the accrued depreciation and the net investment and division as between the transportation and production property of the said Kansas Natural Gas Company from the time it actually began business to December 31, 1914, a copy of which said table is herein set out for the convenience of the court.

TABLE No. 2.—EXHIBIT K.

## Kansas Natural Gas Company.

*Property Statement Showing the Investment and Property at the Close of Each Year, Together with Accrued Depreciation and Net Investment, and Divided as Between Transportation and Production Property.*

July 1, 1905, \$6,357,478.32, half year—equals for 1 year	Property account.		Investment.	Less accrued depreciation at rate of 5.116% per annum. (Accumulated.)	Investment, less accrued depreciation each year.
	Transportation.	Production.			
1906	.....	.....	\$3,178,739.16	\$162,624.30	\$3,016,114.86
1907	.....	.....	6,919,980.31	516,650.49	6,403,329.82
1908	.....	.....	7,081,176.07	878,923.46	6,202,252.61
1909	.....	.....	9,266,149.14	1,352,979.65	7,913,169.49
1910	.....	.....	9,642,505.22	1,846,290.22	7,796,215.00
1911	.....	.....	11,506,458.47	2,434,960.61	9,071,497.86
1912	.....	.....	11,601,907.18	3,028,514.17	8,573,393.01
1913	.....	.....	11,723,851.33	3,628,306.39	8,095,544.94
1914	.....	.....	11,823,006.29	4,233,175.98	7,589,830.31
	.....	.....	11,926,812.97	4,843,207.33	7,083,605.64
Total for the period.....			\$94,670,676.14	\$22,925,632.60	\$71,745,043.54

Production property.		Rate 11.70% per annum.	
July 1, 1905, half year—equals for 1 year.			
1906	\$1,251,268.83	\$146,398.44	\$1,104,870.39
1907	2,741,414.47	467,143.94	2,274,270.53
1908	2,758,321.63	789,867.57	1,968,454.06
1909	2,822,372.11	1,120,085.11	1,702,287.00
1910	2,845,454.82	1,453,003.32	1,392,451.50
1911	3,559,635.72	1,869,480.70	1,690,155.02
1912	4,241,551.88	2,365,742.27	1,875,809.61
1913	4,174,627.10	2,854,173.64	1,320,453.46
1914	4,146,067.38	3,339,263.52	806,803.86
	4,113,563.46	3,820,550.45	*293,013.01
Total for the period.	\$32,654,277.40	\$18,225,708.96	\$14,428,568.44
Total for the period combined.	\$127,324,953.54	\$41,151,341.56	\$86,173,611.98
Add working capital, 9½ years at \$200,000 per year.			1,900,000.00
Average investment per year for 9½ years.			\$88,073,611.98
			9,270,906.50
		Less accrued depreciation.	Present value.
1914.			
Transportation	Investment.		
Production	\$11,926,812.97	\$4,843,207.33	\$7,083,605.64
	4,113,563.46	3,820,550.45	*293,013.01
Total	\$16,040,376.43	\$8,663,757.78	\$7,376,618.65

\*Covers cost of material in wells and that portion of warehouse stock assigned to production.



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## II.

This defendant further answers and alleges that from the time the said Kansas Natural Gas Company began its business, April 15, 1908, to December 31, 1914, that its revenues derived from its business were ample and sufficient to properly amortize its transportation and production property, to adequately maintain the same, and 215 afforded the said Kansas Natural Gas Company, above such proper depreciation and maintenance, a return of 11.32 per cent per annum on the entire investment in said properties, as is more fully shown by tables 3 and 4, set out in Exhibit K attached to plaintiffs' bill of complaint, and which for the convenience of the court are here set out.

Table No. 3.—Kansas Natural Gas Company.

*Summary of Operations from the Beginning of Business April 15, 1904, to December 31, 1914.*

Income.		Production.	Transportation and distribution.
Gas sales	\$30,629,066.07	.....	\$30,629,066.07
Oil sales	166,261.94	\$166,261.94	.....
Dividends received from trustees territory	462,890.73	462,890.73	.....
Gas produced (Table No. 2)	6,023,792.16	6,023,792.16	.....
Rents	27,523.19	.....	27,523.19
Water	2,450.86	.....	2,450.86
Profit on material sold	62,274.55	.....	62,274.55
Total operating revenue	\$37,374,259.50	\$6,652,944.83	\$30,721,314.67
Operating Expenses:			
Gas purchased	\$3,438,596.90	.....	\$3,438,596.90
Gas expenses, Oklahoma field (Table A in Appendix)	550,568.77	\$467,195.53	83,373.24
Gas produced (Table No. 2*)	6,023,792.16	.....	6,023,792.16
Gas expenses and taxes (Table B in Appendix)	7,959,994.04	3,056,111.37	4,903,882.67
Uncollectible accounts; gas	344,302.85	.....	344,302.85
Oil expense	104,690.73	104,690.73	.....
Taxes: Kansas City Pipe Line†	261,910.16	2,173.85	259,736.31
Maintaining organization; Kansas City Pipe Line	1,434.11	.....	1,434.11
Taxes: Marnet Mining Co.	50,472.14	.....	50,472.14
Maintaining organization: Marnet Mining Co.	4,362.05	.....	4,362.05
Total operating expenses and taxes	\$18,740,123.91	\$3,630,171.48	\$15,109,952.43
Net operating income	\$18,634,135.59	\$3,022,773.35	\$15,611,362.24

\*For the purpose of this statement, this item is treated both as a revenue and expense.

†Divided on basis of 1914 taxes.

Table No. 3.—Continued.

Other Income:			
	Income.	Total.	
Dividends .....		\$30,800.00	Transportation and distribution.
Interest .....		205,467.21	.....
Profit on first mortgage bonds.....		53,798.75	.....
Profit on second mortgage bonds.....		5,277.45	.....
Sundry .....		5,773.44	.....
Total other income .....		\$301,116.85	.....
Total income .....		\$18,935,252.44	.....
Deductions from Income:			
Uncollectible accounts: financial .....		\$40,096.82	.....
Interest on K. C. P. L. bonds.....		1,510,231.00	.....
Interest on Marnet Mining Co. Bonds.....		220,083.50	.....
Interest on Kansas Natural bonds.....		3,093,808.94	.....
Interest on Kansas Natural debt.....		443,795.26	.....
Bond expense .....		14,416.85	.....
Premium on bonds purchased for sinking funds.....		214,364.03	.....
Total deductions from income .....		\$5,536,796.40	.....
Net corporate income .....		\$13,398,456.04	.....

Table No. 4.—Kansas Natural Gas Company.

*Summary of Operations from Beginning of Business to December 31, 1914.*

	Total.	Production.	Transportation.
Net operating income (as shown by Table No. 3).....	\$18,634,135.59	\$3,022,773.35	\$15,611,362.24
Less accrued depreciation (as shown by Table No. 1)...	8,663,757.78	3,820,550.45	4,843,207.33
Net operating income, less depreciation.....	9,970,377.81	797,777.10	10,768,154.91
Average net operating income per year for 9½ years.....	1,049,513.40	.....	.....
Average annual investment (as shown by Table No. 1).	9,270,906.50	.....	.....
Which is equal to an average annual return on the investment of .....	11.32%	.....	.....
The capital was all supplied from the sale of bonds, or in other words, borrowed money, except a small amount from earnings, and the investors were willing to accept 6%, as the money was borrowed at that rate. This company therefore had a surplus after paying 6% on its investment as follows:			
Net earnings .....	\$9,970,377.81	.....	.....
6% on \$88,073,611.98 .....	5,284,416.70	.....	.....
Surplus .....	\$4,685,961.11	.....	.....

## III.

This defendant, further answering, alleges that the value of the property of the Kansas Natural Gas Company as a going concern in the hands of the plaintiff receivers, as found by the engineer of the Commission, on the 1st day of January, 1915, was \$8,994,811.03; that said valuation is made up of the production and transportation properties of the said Kansas Natural Gas Company; that the following items, which compose the production property of the said company, are as follows:

Wells .....	\$605,539.20
Leaseholds .....	1,126,359.34
Drilling and pulling tools .....	3,660.00
Warehouses, tools used in connection with wells....	56,379.53
Proper proportion of overhead expenses,.....	119,205.39
Total deductions .....	<u>\$1,911,205.39</u>

216 That for a number of years the Kansas Natural Gas Company, and at the present time the receivers thereof, have purchased a large percentage of the gas sold and distributed by said gas company and receivers; that said plaintiff receivers are now purchasing at least 75 per cent of all gas transported and sold or distributed by them, and are producing from their said leases not to exceed 25 per cent of the gas so transported, sold or distributed.

This defendant alleges that the value of said leases and wells is speculative and can not be definitely fixed, for the reason that should said wells on said leases become exhausted in the near future, then the value of said leases would be much less than the present value thereof assigned to them by the Commission's engineer; that should additional wells, furnishing considerable quantities of gas, be brought in in the near future, then the real value of said leases would be considerably greater than the said assigned value; and for these reasons this defendant alleges that the said producing property in the hands of the said receivers should be separated from the total value of the property in the hands of said receivers, and that the said receivers should be allowed for the gas actually produced by them from said leases the same price which they are compelled to pay in the open market for gas; that by so dividing said property the value of said leases and wells is automatically, accurately and correctly fixed, and provides the plaintiffs at all times with a reasonable rate for the gas produced therefrom.

This defendant alleges that the value of said wells, leaseholds, drilling and pumping tools, and warehouse tools used in connection with such wells, and a proper proportion of the overhead expense in the aggregate, was estimated by the engineer of the Public Utilities Commission for the State of Kansas to be \$1,911,205.39, as of January 1, 1915.

This defendant further alleges that the Public Utilities Commission for the State of Kansas had no way of actually arriving at the true value of said leases, wells and other producing property other than as is herein explained, and therefore they assigned to it the estimated value placed thereon by the Commission's engineer, to wit, \$1,911,205.39, for the purposes of the aforesaid division between the transportation and production properties, and deducted that amount from the total value of said property as found by the said engineer.

217 This defendant further alleges that the present fair and reasonable value of the property used and useful for the transportation and distribution of natural gas in both Kansas and Missouri, and now in the possession of the plaintiff receivers, was, on January 1, 1915, the amount found by the Commission's engineer, less the said value of the leaseholds and other producing property assigned by Commission's engineer, to wit, the sum of \$7,083,605.64.

Said Commission had jurisdiction over only the property used in Kansas, and sought to provide only a reasonable return thereon to the receivers on such property as was used for supplying its consumers in Kansas, and in order to accomplish this result it divided the value of the whole transportation property between Kansas and Missouri, as aforesaid, according to the uses made thereof in supplying the customers of the plaintiffs in the States of Kansas and Missouri. The method employed by said Commission in making such division is fully and completely set out in Table 1 of Exhibit K, attached to plaintiffs' bill of complaint, but which is for the convenience of the court herein set out.

That the fair value of the transportation property used in transporting gas from the places of production to consumers within the State of Kansas, as shown by said table, is \$3,221,379.49, which said amount this defendant alleges is a fair value of the property in the possession of the plaintiff receivers used and useful in the supplying of gas to their customers within the State of Kansas, and amounts to 45.48 per cent of the value of the transportation property.

This defendant further alleges that the said Kansas Natural Gas Company began making its investments in the year 1905, and continued making such investments up to January 1, 1915; that a fair average date of the total investment is January 1, 1907, and that the life of said transportation property, from the first day of January, 1915, is not less than 12 years in the field in which it is now employed, and the defendant alleges that notwithstanding the uncertainty of the supply of gas in parts of the Mid-continent field, the amount of gas now being transported through said transportation property and available for said purposes to the plaintiff receivers is not greatly diminished from the largest amount heretofore

*Transportation and Distribution System Kansas Natural Gas Company, Kansas City Pipe Line Company, Marvet Mining Company.*

Division.	Total plant investment, present physical value.	Gas used in Kansas.	Per cent.	Gas used in Missouri.	Per cent.	Plant used in Kansas.	Plant used in Missouri.
Field .....	\$2,186,293.00	8,240,556	49.86	8,286,727	50.14	\$1,090,040.82	\$1,090,162.18
Southern Trunk, Main Line.....	470,988.35	931,183	40.13	1,380,215	59.87	189,007.62	281,980.73
Southern Trunk, Branch Lines.....	119,547.26	.....	.....	.....	.....	119,547.26	.....
Southern Trunk, Branch Lines.....	74,983.17	.....	.....	.....	.....	.....	74,983.17
Northern Trunk, Graham to Ottawa.....	2,191,219.59	5,633,451	44.96	6,897,512	55.04	983,172.33	1,206,047.26
Northern Trunk, meters, real estate, etc.,.....	22,073.56	.....	.....	.....	.....	22,073.56	.....
Northern Trunk, Branch Lines.....	90,410.62	.....	.....	.....	.....	90,410.62	.....
Northern Trunk, Ottawa to Kansas City.....	658,188.16	1,635,679	22.91	5,705,267	77.09	150,790.91	507,397.25
Northern Trunk, Ottawa to Kansas City, Branch Lines.....	18,666.45	.....	.....	.....	.....	15,114.55	3,551.90
Northern Trunk, Ottawa to Topeka "Y," Main Line.....	130,291.00	2,334,294	67.25	1,136,868	32.75	83,632.85	45,598.15
Northern Trunk, Ottawa to Topeka "Y," Branch Lines.....	3,458.42	.....	.....	.....	.....	3,458.42	.....
Northern Trunk, Topeka Branch.....	127,174.28	.....	.....	.....	.....	127,174.28	.....
Northern Trunk, Topeka "Y," to Atchison "Y," Main Line.....	273,502.85	1,292,722	52.02	1,136,868	47.98	142,276.18	131,226.67
Northern Trunk, Topeka "Y," to Atchison "Y," Branch Lines.....	15,545.97	.....	.....	.....	.....	15,545.97	.....
Atchison "Y," to St. Joseph, Mo.,.....	234,719.33	.....	.....	.....	.....	.....	234,719.33
Atchison "Y," to Atchison, Kan.,.....	65,856.19	.....	.....	.....	.....	65,856.19	.....
Joplin District.....	290,559.51	.....	.....	.....	.....	.....	280,559.51
Independence Distribution.....	83,835.38	.....	.....	.....	.....	83,835.38	.....
Elk City and Independence Supply.....	27,422.55	.....	.....	.....	.....	27,422.55	.....
Totals .....	\$7,083,605.64	.....	.....	.....	.....	\$3,221,379.49	\$3,862,226.15
						Or 45.48%	Or 54.52%



transported by them through said lines, and was greater in  
 219 the year of 1915 than in the year of 1914, and that the said  
 Mid-Continent gas field is being constantly developed and  
 extended and its total production at the present time is greater than  
 in the past, and its full extent and capacity for production is still  
 unknown.

This defendant alleges that the order of the Public Utilities Commission of December 10, 1915, is based upon the past history and present condition of said Mid-Continent gas field and is not predicated upon a speculative decrease in the production of the said Mid-Continent gas field, and that the said basis is the only legal, fair and certain method of fixing said values and rates; that said rates complained of by the plaintiff receivers in their said bill of complaint were not, and could not legally be fixed by said Commission for a specific number of years, but are based upon the conditions as they actually exist at the present time, and should other and different conditions prevail at some future time, as is predicted by plaintiffs in their bill of complaint, then it would become the duty of the defendant, the Public Utilities Commission for the State of Kansas, upon proper application, to fix rates applicable to that time and those conditions.

#### IV.

Plaintiff receivers in their bill of complaint rest their claim for the future needs of gas, their future operating expenses and maintenance, upon the amount of gas transported and sold by them during the year 1914, except that for the year 1916 they allege that they should be entitled to \$500,000 for the extension of their pipe lines into other gas fields, alleging that the same is a proper maintenance charge, but which this defendant alleges to be a capital charge.

This defendant alleges that during the year 1914 the plaintiffs transported and delivered to their consumers in the States of Kansas and Missouri 18,199,544 M. cu. ft., and said amount is fully shown by the following table:

Sold from field lines.....	678,717 M. cu. ft.
Used in compressor stations.....	1,409,413 "
Sold from main-line taps.....	277,838 "
Sold through dist. companies.....	15,833,576 "
Total .....	18,199,544 M. cu. ft.

220 That to supply the same amount of gas in the future as was supplied during the year 1914 these plaintiff receivers would not need to buy or produce in excess of 25,671,445 M. cu. ft., making allowance for all leakage and waste in the same per cents as alleged in plaintiffs' bill of complaint.

This defendant further alleges that the plaintiff receivers during the first nine months of the year 1915 sold more gas than during the similar months for 1914 and at only a slight increase in cost, as is more fully shown in detail by the following table:

## Kansas Natural Gas Company.

## Comparative Statement of Business for Nine Months of 1915 with the Same Months of 1914.

	1915.	1914.	Increase.	Decrease.
Gas sales .....	\$2,146,909.45	\$1,968,552.82	\$178,356.63	
Oil sales .....	9,761.14	37,968.26		\$28,207.12
Sundry .....	24,089.43	42,429.02		18,339.59
Total income .....	\$2,180,760.02	\$2,048,950.10	\$131,809.92	
Expenses:				
Gas purchased .....	\$752,162.04	\$554,820.40	\$197,341.64	
Operating expenses and taxes .....	524,380.73	515,688.40	8,692.33	
Oil expense .....	22,375.57	28,764.44		\$6,384.87
Receivership expense .....	3,571.05	44,933.07		41,362.02
Uncollectible accounts .....	17,467.81	14,912.60	2,551.21	
Total .....	\$1,319,961.20	\$1,159,118.91	\$160,842.29	
Net .....	860,798.82	889,831.19		\$29,032.37
Gas sales (M. cubic feet) .....	13,806,398	13,256,339	550,059	
Average price (cents) .....	15.65	14.85	.80	
Gas purchased (M. cubic feet) .....	14,983,109	10,910,444	4,072,665	
Average price (cents)* .....	5.02	5.09		.07

\*Includes expense Oklahoma field, which has been deducted from the expense of gas purchased and added to operating expense in other tables. This is not the actual price at the wells.

That the plaintiff receivers are able to purchase a sufficient quantity of gas at not to exceed four cents per thousand cubic feet at the wells, and that said receivers have not and are not paying for gas on the average to exceed four cents per thousand cubic feet at the wells, based upon the pressure at which said receivers sell gas to their consumers.

This defendant further answering alleges that the total operating expenses of the said receivers of the Kansas Natural Gas Company's property for the year 1914 were \$841,289.88, but that said operating expenses included the sum of \$28,663.90 taxes paid by said receivers on a large sum of money on hand, which said sum has since  
221 been distributed under the so-called creditor's agreement, and that said sum so paid for taxes should be eliminated from an estimate for future operating expenses.

That the receivership expenses for the year 1914 were \$137,463.11, which, however, cover a period of more than two years and include the costs of expensive litigation, a large part of which said amount should not be allowed for future operating expenses.

This defendant alleges that a reasonable amount for the services and expenses of said receivers and attorneys is not in excess of \$40,000 per annum.

This defendant alleges that the total operating expenses and taxes, based on the same expenses for the year 1914, should not be in excess of \$812,625.98 per annum; that the total operating expenses of the entire plant operated in Oklahoma, Kansas and Missouri, including a proper allowance for gas purchased, treating the gas produced upon the company's leases the same as that purchased, is not in excess of \$1,936,794.67; that the total operating expense of the said plant after deducting therefrom the amount of expenses incurred directly in the production of gas, and in addition thereto a proper proportion of expense common to both the production and transportation, is not to exceed \$1,626,652.83, which said amount is the total expense of obtaining, transporting and distributing gas; that the said \$1,626,652.83 should be divided between Kansas and Missouri according to the use made of said property in transporting and delivering gas to plaintiffs' consumers within the States of Kansas and Missouri respectively.

That on this basis that portion of said expense which should be assigned to the State of Kansas would not exceed the sum of \$780,269.57, all of which said allegations in reference to said operating expenses is more fully shown by the following table:

*Summary of Expenses for the Year 1914, Showing a Division of Same as Between Production and Transportation and the Assignment of Transportation Expenses as Between Kansas and Missouri.*

	Total.	Production.	Transportation and distribution.	Kansas.	Missouri.
(1) Oklahoma field division .....	\$20,401.77	\$64,100.25	\$35,301.52	\$15,688.00	\$19,613.52
(2) Main line division .....	308,791.67	.....	308,791.67	161,101.98	207,689.69
(3) Field division .....	296,808.03	270,444.19	39,425.84	19,735.57	19,688.27
(4) Independence division .....	13,637.16	.....	13,637.16	13,637.16	.....
(4) Joplin division .....	22,633.58	.....	22,633.58	.....	22,633.58
(5) General division .....	38,853.77	7,515.40	31,288.37	13,682.40	17,605.97
Total operating expenses and taxes,....	\$812,625.98	\$792,089.84	\$510,536.14	\$223,245.11	\$287,291.03
(5) Receivership expenses .....	.....	.....	.....	.....	.....
(6) Uncollectible gas accounts .....	\$40,000.00	\$7,772.00	\$32,228.00	\$14,063.50	\$18,134.70
(6) Taxes, Kansas City Pipe Line .....	12,555.07	.....	12,555.07	6,350.14	6,195.93
(6) Taxes, Kansas City Pipe Line .....	33,508.27	280.00	33,288.27	16,800.51	16,427.76
(6) Marinet Mining Company .....	10,497.35	.....	10,497.35	5,316.91	5,180.44
(6) Maintaining organization, Marinet Mining Company .....	690.20	.....	690.20	349.59	340.61
(7) Gas purchased and produced .....	1,026,857.80	.....	1,026,857.80	514,045.01	512,812.79
Grand total .....	\$1,936,794.67	\$710,141.84	\$1,626,652.83	\$780,209.57	\$846,383.26

(1) Complete details are given in Table C in the Appendix.

(2) Complete details are given in Table D in the Appendix.

(3) Complete details are given in Table E in the Appendix.

(4) Allocated direct.

(5) Divided on basis of preceding accounts and "gas purchased" included with expenses assigned to transportation. This assigns to production 19.43 per cent, and to transportation 80.57 per cent, divided between Kansas and Missouri on basis of preceding accounts.

(6) Allocated direct between production and transportation. Transportation expenses divided between Kansas and Missouri, on basis of all gas sold, compressor gas excluded, which assigns to Kansas 50.65 per cent and Missouri 49.35 per cent.

(7) Divided between Kansas and Missouri on the basis of all gas sold and used, compressor gas being divided on basis of use. This assigns to Kansas 50.06 per cent, Missouri 49.94 per cent.

## V.

223 This defendant further answering alleges that the fair present value of the property in the possession and under the control of these receivers, and used and useful for transporting and distributing gas, as of January 1, 1915, is not in excess of \$7,083,606.64.

That the fair life expectancy of said property is at least twelve years from said January 1, 1915; that the amount necessary to completely amortize the present value of the said plant during the said life expectancy is not to exceed \$500,300 per annum, which said amount should be divided between the States of Kansas and Missouri on the basis of the use of said property in transporting and distributing gas to the plaintiff receivers' customers within the said States of Kansas and Missouri; i. e., 45.48 per cent should be assigned to Kansas and 54.52 per cent should be assigned to Missouri, as is more fully set out in paragraph three of the third division of this answer.

That upon this basis the amount properly to be charged to the State of Kansas is not in excess of \$268,468.44 per annum.

This defendant alleges that the total operating expenses and depreciation of said property properly assigned to Kansas is not in excess of \$1,048,738.01 per annum, as is more fully and completely shown by Table No. 5 of plaintiffs' Exhibit K, attached to said bill of complaint; that part of said table showing the same is, for the convenience of the court, herein set out, and is as follows:

Table No. 3.—Kansas Natural Gas Company.

*Statement of Estimated Revenue and Requirements for the Ensuing Year Based on 1914 Figures as Revised in the foregoing Table, for the State of Kansas.*

Requirements.		Transportation.	Kansas.
25,671,445 M cubic feet of gas at 4c .....		\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation .....		510,536.14	223,245.11
Receivership expenses .....		32,928.00	14,093.30
Uncollectible gas accounts .....		12,555.07	6,359.14
Taxes, Kansas City Pipe Line .....		33,288.27	16,860.51
Taxes, Marret Mining Company .....		10,497.35	5,316.91
Maintaining organization, Marret Mining Company .....		620.20	349.59
Total .....		\$1,626,652.83	\$780,269.57
*Present value of transportation property, \$7,083,685.64; depreciation on basis of 13 years .....		\$500,300.00	\$268,468.44
Requirements exclusive of a return on property investment .....		\$2,216,952.83	\$1,048,738.01

\*The division of these items between Kansas and Missouri has been made on the basis of the use of the property. A table showing complete details of the method and values used is given as Table 1, exhibit K. This division assigns to Kansas 45.48% and to Missouri 54.52%.

This defendant alleges that the plaintiffs are entitled to a rate which will pay all necessary operating expenses and properly amortize the property under their control used and useful in transporting and distributing gas to their consumers within the State of Kansas during the life expectancy of said property and provide a reasonable return upon the fair value of the said property so used, and that the public should not be required to pay a higher rate.

This defendant alleges that during the year 1914 these plaintiff receivers sold to their consumers within the State of Kansas (a small amount of gas used in compressor stations was treated as a sale) gas of the value of \$1,223,827.52 at the rates then in effect. On December 10, 1915, the Public Utilities Commission rendered its opinion and entered its order complained of by these plaintiff receivers in their bill of complaint.

Thereafter and on the 22d day of December, 1915, complainant receivers filed with the defendant, the Public Utilities Commission for the State of Kansas, the following schedule of rates and rules:

"Notice to Consumers and Distributing Companies:

"Take notice that on and after the December, 1915, meter readings, at or near the close of the month of December, after the filing of this schedule with the Public Utilities Commission, John M. Landon and R. S. Litchfield, as receivers of Kansas Natural Gas Company, and the distributing companies hereinafter named, will change the rates and joint rates for natural gas now in effect, and will thereafter charge and collect from domestic and gas engine consumers of natural gas at the several places hereinafter named, the following rates and joint rates, to wit:



City.	Company.	Present joint rate.	Changed joint rate.	Present minimum bill.	Changed minimum bill.
Independence, Kan.	K. N. G. Gas Co.	\$0.20	\$0.25	\$0.20	\$0.50
Elk City, Kan.	Elk City Oil and Gas Co.	.25	.25	.20	.50
Coffeyville, Kan.	Coffeyville Gas and Fuel Co.	.20	.25	.20	.50
Liberty, Kan.	Liberty Gas Co.	.25	.25	..	.50
Altamont, Kan.	American Gas Co.	.25	.28	..	.50
Owego, Kan.	American Gas Co.	.25	.28	..	.50
Columbus, Kan.	American Gas Co.	.25	.28	..	.50
Scammon, Kan.	American Gas Co.	.25	.28	..	.50
Weir City, Kan.	Weir City Gas Co.	.25	.28	.50	.50
Galeana and Empire, Kan.	American Gas Co.	.25	.28	..	.50
Cherokee, Kan.	American Gas Co.	.25	.28	..	.50
Pittsburg, Kan.	Home Light, Heat and Power Co., Kansas and Electric Co., lessee	.25	.28	..	.50
Parsons, Kan.	Parsons Gas Co.	.25	.28	..	.50
Thayer, Kan.	O. A. Evans & Co. (Thayer Gas Plant)	.25	.28	..	.50
Colony, Kan.	Union Gas and Traction Co.	.25	.28	..	.50
Welda, Kan.	Union Gas and Traction Co.	.25	.28	..	.50
Richmond, Kan.	Union Gas and Traction Co.	.25	.28	..	.50
Princeton, Kan.	Union Gas and Traction Co.	.25	.28	..	.50
Ottawa, Kan.	Ottawa Gas and Electric Co.	.25	.28	..	.50
Baldwin, Kan.	Union Gas and Traction Co.	.25	.28	..	.50

City.	Company.	Present joint rate.	Changed joint rate.	Present minimum bill.	Changed minimum bill.
Lawrence, Kan.	Citizens Light, Heat and Power Co.	.25	.28	...	.50
Topeka, Kan.	Consumers Light, Heat and Power Co.	.25	.28	...	.50
Fort Scott, Kan.	Fort Scott Gas and Electric Co.	.30	.30	...	.50
Moran, Kan.	Fort Scott and Nevada Light, Water, Heat and Power Co.	.30	.30	...	.50
Bronson, Kan.	Fort Scott and Nevada Light, Water, Heat and Power Co.	.30	.30	...	.50
Tonganoxie, Kan.	Tonganoxie Gas and Electric Co.	.25	.28	...	.50
Leavenworth, Kan.	Leavenworth Light, Heat and Power Co.	.25	.28	...	.50
Atchison, Kan.	Atchison Railway, Light and Power Co.	.25	.28	...	.50
Wellsville and LeLoup.	Union Gas and Traction Co.	.25	.28	...	.50
Edgerton, Kan.	Union Gas and Traction Co.	.25	.28	.50	.50
Gardner, Kan.	Union Gas and Traction Co.	.25	.28	.50	.50
Lenexa, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Merriam and Shawnee, Kan.	Union Gas and Traction Co.	.25	.28	...	.50
Kansas City, Kan.	Wyandotte County Gas Company.	.25	.28	...	.50
Olathe, Kan.	Olathe Gas Co.	.25	.28	...	.50

" 'Boiler Gas' for use under boilers, for making steam for power purposes at ten cents (10c) per thousand cubic feet in Montgomery county, Kansas, and at twelve and one-half cents (12½c) per thousand cubic feet at all points in Kansas outside of Montgomery county; provided, that the receivers will supply boiler gas only when, in their judgment, such use will not affect the domestic service. Gas used for purposes or in a manner different than as herein provided, shall carry the domestic rate of the locality where used.

"Two cents per thousand cubic feet will be added to the bills, but shall be deducted from the bills of all consumers who pay their bills on or before the 10th day of the succeeding month in which the service is rendered.

"All gas heretofore furnished to any person, firm, corporation or municipality, without compensation, commonly called 'free gas' is discontinued, and all such users heretofore using 'free gas' shall be required to pay for gas furnished in the future for the uses for which said 'free gas' was used, at the domestic rate herein provided  
226 for the city or locality wherein such gas is used: Provided, that where gas is used for street lighting purposes, a charge will be made for one thousand cubic feet of gas per month for each lamp having a single burner where gas is turned off during daylight hours, and for two thousand cubic feet if left burning during the daylight hours; and a similar charge for each additional burner.

"The foregoing schedule of rates and joint rates is made and filed by said receivers under protest against the establishment and enforcement thereof, but in obedience to, in compliance with, and only because of the order of the Public Utilities Commission of Kansas, made and entered on the 10th day of December, 1915; the grounds for this protest are, that said order of the Public Utilities Commission of Kansas is null and void because the business conducted by said receivers in the State of Kansas, Oklahoma and Missouri is interstate commerce, and said order an attempted regulation thereof; that as to the gas produced in Kansas, said rates are inadequate, insufficient, unremunerative, noncompensatory, confiscatory, wrongful and unlawful, and will not yield sufficient revenue to pay a fair return on the property employed in said service, and will deprive said receivers and all persons having rights therein of property without due process of law, and imposes a burden upon the interstate commerce conducted by said receivers; that as to the gas produced in Oklahoma and sold in Kansas, such rates are inadequate, insufficient, unremunerative, noncompensatory, confiscatory, wrongful and unlawful, and the enforcement thereof an interference with interstate commerce.

JOHN M. LANDON,  
R. S. LITCHFIELD,

*Receivers for Kansas Natural Gas Co."*

Which said schedule of rates and rules on the 28th day of December, 1915, were approved by the defendant, the Public Utilities Commission for the State of Kansas, a copy of which said order is here set out for the convenience of the court:

"Be it Remembered: That on this 28th day of December, A. D. 1915, the application for approval of the schedule showing changes in rates and joint rates for natural gas supplied by John M. Landon and R. S. Litchfield, as receivers for Kansas Natural Gas Company, and of the rules and regulations therewith filed, came duly on for consideration and order by the Commission; and the Commission, upon consideration thereof, and being duly advised in the premises, finds that said schedule of rates and joint rates, as filed, and the rules and regulations therewith filed, should be approved, with the modification of one of said rules as hereinafter set forth.

227 "The Commission further finds that the proviso in relation to 'boiler gas' and its use should be modified so as to read as follows:

"Provided, that the receivers will supply boiler gas to all users thereof, upon application and without discrimination, only when, in their judgment, such use will not affect the domestic service."

"It is therefore by the Commission considered and ordered: That the said schedule showing changes in rates and joint rates for natural gas supplied by John M. Landon and R. S. Litchfield, as receivers for Kansas Natural Gas Company, and the rules and regulations therewith filed, as above modified, be and they hereby are ratified, approved and confirmed.

"By order of the commission.

CARL W. MOORE, *Secretary*.

"O. K.

JOSEPH L. BRISTOW,

JOHN M. KINKEL,

C. F. FOLEY,

*Commissioners.*"

That under the rates so filed and now in effect these plaintiff receivers will receive for the same quantity of gas sold and delivered the sum of \$171,513.63 more than they received in 1914, or a total of \$1,385,341.15. After paying all necessary operating expenses and taxes, including the amount paid for gas and the amount necessary to properly amortize the property, these plaintiff receivers will have a net return upon their Kansas business of \$346,603.14, or 10.46 per cent, which is more fully shown by the latter part of Table 5 in Exhibit K attached to plaintiffs' bill of complaint, and which for the convenience of the court is herein set out:

*Estimated Revenue.*

Gas sales—1914 .....	\$1,192,089.82
Gas used in compressor stations (on basis of use) ...	31,737.70
	<hr/>
	\$1,223,827.52
Estimated revenue from proposed increased rates. ....	171,513.63
	<hr/>
Total estimated revenue from Kansas. ....	\$1,395,341.15
Deduct requirements as above. ....	1,048,738.01
	<hr/>
Estimated net revenue. ....	\$346,603.14
Which is equal to a return of. ....	10.46%
On the present value, \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,- 605.64, or—	
Total estimated revenue for Kansas. ....	\$1,395,341.15
Less requirements, including a 6% return. ....	1,247,493.01
	<hr/>
Surplus .....	\$147,848.14

228 This defendant alleges that the rates authorized by the Public Utilities Commission for the State of Kansas in its order of December 10, 1915, and now in force and effect, yield these plaintiff receivers sufficient revenue to pay all necessary operating expenses, including the purchase of gas, to properly amortize the property and to pay a fair rate of return upon the value of the property used and useful and devoted to the public use by said receivers in the supplying of gas to their customers within the State of Kansas, and to provide a reasonable margin to meet any future unforeseen contingency.

## VII.

This defendant, further answering, alleges that while the order of the Public Utilities Commission for the State of Kansas of December 10, 1915, and which plaintiff receivers are here attempting to set aside, is based upon the business of the said complainant receivers for the year 1914, but that the said complainant receivers, as is shown by the first nine months of their 1915 business, are able to purchase, transport and distribute a much larger quantity of gas than was purchased, transported and distributed by them during the year 1914, without materially increasing their said operating expenses, taxes and depreciation, and will be able to earn a much larger return than hereinbefore set out.

## VIII.

This defendant, further answering, alleges that these plaintiff receivers have not properly and efficiently managed the said properties

in their possession and under their control, but have wasted the revenues of the company in interminable and expensive lawsuits. The leaseholds have been exhausted, and they have neglected to make proper effort to obtain an additional supply of gas necessary to meet the demands of the company's markets. Leases that were available for them have been obtained by other companies operating in the same field. That said receivers are now failing and neglecting to secure an adequate quantity of gas to supply their customers.

This defendant alleges that the rates authorized by the Public Utilities Commission in its said order of December 10 will produce more revenue to these plaintiff receivers than any higher rate; that the present schedule of rates filed by the receivers under the authority of the said order of the Public Utilities Commission for the State of Kansas are reasonable and lawful and will prove themselves so to be if these receivers will in good faith operate the said plant in their possession and under their control for a reasonable length of time.

This defendant denies that the plaintiffs are entitled to any relief whatsoever, or any part of the relief in said bill of complaint demanded, and alleged that the plaintiffs have no standing in this court or in any court of equity.

And defendant prays in all things the same benefit and advantages of this, his answer, as if he had moved to dismiss said bill of complaint, and that a hearing be granted them upon the issues of law arising upon the face of the bill of complaint, as set forth in the first division of this answer, and that the bill of complaint be dismissed as against this defendant.

Second, that should the bill of complaint not be dismissed as against this defendant before a final hearing of this cause this defendant prays that the bill of complaint be dismissed as against him, and that he go hence without day, and that he have judgment for his costs.

S. M. BREWSTER,

*Attorney General of the State of Kansas;*

S. N. HAWKES,

*Assistant Atty Gen'l;*

J. L. HUNT,

*Assistant Attorney General,*

*Of Counsel.*

Filed in the District Court on March 11, 1916. Morton Albaugh, Clerk.

230 Exhibit A, being Petition and Motion of Public Utilities Commission of Kansas for Writ of Mandamus in State ex rel. v. Flannelly, No. 20,324, filed 8/17/15, is omitted.

Exhibit B, being Separate Answer of John M. Landon and R. S. Litchfield, Receivers in above case, filed 8/17/15, is omitted.

Exhibit C, being Opinion of Supreme Court of Kansas in above case, is omitted.

231 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS; Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public Utilities Commission for the State of Kansas; H. O. Caster, as Attorney for the Public Utilities Commission for the State of Kansas, et al., Defendants.

*Answer of the Public Utilities Commission for The State of Kansas.*

Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public Utilities Commission for the State of Kansas, and

H. O. Caster, as Attorney for the Public Utilities Commission for the State of Kansas.

231½ In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS; Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public Utilities Commission for the State of Kansas; H. O. Caster, as Attorney for the Public Utilities Commission for the State of Kansas, et al., Defendants.

These defendants, above named, now and at all times hereafter, saving and reserving to themselves all and all manner of benefits and advantages of exceptions which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the plaintiffs' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised that it is material or necessary for them to make answer unto, answering, say:

That this answer is divided into three principal parts, the first consisting of such defenses in point of law as arise upon the face of the bill of complaint on account of misjoinder and insufficiency of fact to constitute a valid cause of action in equity, as hereinafter



more particularly appears, and upon which these defendants above named will ask for a hearing before the final hearing of this cause upon the facts; and second, a statement in answer to the averments of said bill of complaint and a denial of such matters as are denied by these defendants; and third, a statement of affirmative matters which it is averred by these defendants constitute defenses to the bill of complaint of the plaintiffs herein.

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First.

## I.

These defendants above named, further answering the bill of complaint of the plaintiffs herein, aver that said bill of complaint shows upon its face that there is a misjoinder of causes of action herein, for that the plaintiffs in paragraphs 1 to XX, both inclusive, of their bill of complaint, as well as in paragraphs XXVIII to XXXIII, inclusive, of said bill of complaint, have attempted to set forth facts which constitute causes of action and averments of law and fact which the said plaintiffs intended as grounds for relief in equity against these answering defendants, based on a certain order made by the Public Utilities Commission for the State of Kansas on December 28, 1915, allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory and that all proceedings prior and relative to the establishment thereof are illegal and void.

These defendants, further answering, aver that in the paragraphs of plaintiffs' bill of complaint after paragraph XX, including the said paragraphs XXVIII to XXXIII, heretofore mentioned, aver and set forth that because the pipe lines and other property of the Kansas Natural Gas Company extend into Oklahoma and Missouri, that the same should be treated as a whole or as one unit, and that the character of its business is wholly interstate and not of a local character in Kansas; and that said Commissions of the States of Kansas and Missouri are jointly interested in allocating the value of the property used in such State- for supplying gas, for the purpose of determining what is a legal charge or rate thereon for service; and that in paragraph XXI of said bill of complaint it is averred that the Public Service Commission of the State of Missouri has determined that it will allow no rate or charge for supplying gas in the western cities of Missouri higher than is charged in the eastern cities of Kansas, and that said Public Service Commission of the State of Missouri has suspended certain rates sought to be put into operation by the plaintiffs herein as receivers of the said Kansas Natural Gas Company; and it is averred in paragraphs XXII to XXVII of said bill of complaint that the aforesaid

233 acts of the Missouri Public Service Commission are unlawful and confiscatory, and that because of said facts so averred in the said paragraphs after paragraph XX of said bill of complaint show that the causes of action and grounds for relief in

equity attempted to be set forth as against the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri, and their several attorneys and officers, are related to each other and of joint interest and concern to the plaintiffs and these several defendants; but these answering defendants aver that said pretended causes of action are not related to each other to any extent that would allow them to be joined in one bill of complaint in this court, and that the Public Service Commission of the State of Missouri is not responsible for nor interested in any way in any action of the Public Utilities Commission for the State of Kansas or its attorneys and officers, and that these answering defendants have no common interest in the cause, or causes, of action, or the subject, or subjects, of the action, or the relief demanded in said bill of complaint, as to the causes of action attempted to be set up in the paragraphs succeeding paragraph XX of said bill of complaint, except paragraphs XXVIII to XXXIII, both inclusive, which constitutes a résumé of previous averments and statements made directly against these answering defendants in paragraphs I to XX of said bill, both inclusive, and constitute mere conclusions of law, and that there are no other averments or allegations in said bill of complaint which show that said causes of action, or any other causes of action attempted to be set forth in plaintiffs' bill of complaint, or any other of the several causes of action and grounds for complaint, can be properly joined in one bill of complaint in this court; and these defendants ask that upon hearing of the points of law so arising upon the face of the bill of complaint that said bill of complaint, for this reason, be dismissed against these answering defendants because of said misjoinder of causes of action therein.

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II.

These defendants above named, further answering the bill of complaint herein, aver that it does not appear from said bill of complaint why the Hon. John T. Barker, as attorney-general of the State of Missouri, is made a party to said bill of complaint, except upon the theory of law that it is the official duty of said attorney-general, under the general laws of said State, as its chief law officer, to enforce the laws thereof and all legal orders made by the Public Service Commission of the State of Missouri establishing rates for public service corporations and public utilities, and these answering defendants, therefore, refer to paragraph I, of this answer, as to the nature of the causes of action alleged against the Public Utilities Commission for the State of Kansas and its attorneys and officers, and makes the same a part of this paragraph of their answer, and further aver that there is a misjoinder of action as to these answering defendants and the said defendant John T. Barker as attorney-general of the State of Missouri, and asks that upon the hearing as to the points of law arising on the face of said bill of complaint it be determined that there is a misjoinder of causes of action for the reasons alleged in said paragraph I of this answer, and that for this reason this bill of complaint be dismissed as against these answering defendants.

## III.

These defendants above named, further answering the bill of complaint of the plaintiffs herein, aver that said bill of complaint shows upon its face that there is a misjoinder of causes of action herein, for that the plaintiffs, in paragraphs I to XX, both inclusive, of their bill of complaint, as well as in paragraphs XXVIII to XXXIII, inclusive, of said bill of complaint, have attempted to set forth facts which constitute causes of action and averments of law and fact which the said plaintiffs intended as grounds for relief in equity against these answering defendants, based on a certain order made by the Public Utilities Commission for the State of Kansas on December 28, 1915, allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory, and that all proceedings prior and relative to the establishment thereof are illegal and void.

The answering defendants further aver that in paragraph XXXIII of the plaintiffs' bill of complaint it is averred and set forth that the Kansas Natural Gas Company prior to the appointment of the plaintiff receivers herein had been  
235 delivering gas to certain distributing companies in

Kansas and in Missouri under and by virtue of certain written contracts made by the said Kansas Natural Gas Company with said distributing companies, and certain contracts which are alleged to be typical ones are set forth and described in the said paragraph of the bill of complaint; and it is further averred that said contracts were made the basis of certain franchises granted by the defendant cities in the States of Missouri and Kansas to said distributing companies and to the Kansas Natural Gas Company, for the purpose of delivering and distributing gas in said Missouri and Kansas cities, and that said cities, both in Missouri and in Kansas, are attempting to regulate, control and fix the price at which the plaintiff may sell natural gas furnished by them to their patrons in violation of said contracts; and it is further averred and set forth that said contracts are illegal and unreasonable and should be set aside and the plaintiffs relieved from complying with the terms thereof, both as to the Kansas cities and towns situated in the State of Missouri.

These answering defendants further aver that these defendants have no common interest in the cause of action or the subject thereof, or the relief demanded, based on the facts averred in said paragraph XXXIII of the bill of complaint as to the defendant cities in the State of Missouri, and that neither in said paragraph XXXIII nor in any other part of the bill is it disclosed that the plaintiffs are entitled to any relief in equity against the cities and distributing companies of the State of Missouri in which these answering defendants are interested or in any way related, and these defendants ask that upon the hearing of the points of law so arising upon the face of the bill of complaint that it be held that there is a misjoinder of causes of action as to the matters herein set forth, and that the bill of complaint for this reason be dismissed as against them.

## IV.

These defendants further answering aver that it is disclosed upon the face of said bill of complaint that there is no controversy arising between the plaintiffs and these answering defendants, under the laws, constitution or treaties of the United States, that the plaintiffs are residents of the State of Kansas, deriving their authority to  
236 institute actions in courts of law from the courts and the laws of the State of Kansas, and that this court is therefore without jurisdiction to consider and determine the matters attempted to be set out in said bill of complaint; and these defendants further state that it appears upon the face of said bill of complaint that the rates complained of therein were put into effect voluntarily by the plaintiffs and that they can not be heard in this case to aver that the same are confiscatory and illegal.

## V.

These defendants further answering the bill of complaint of the plaintiffs herein aver that said bill of complaint reveals upon its face that this court is without jurisdiction to hear and determine the pretended causes of action therein averred, for the reason that it appears from said bill that the plaintiffs are not without adequate relief in the due course of law for any rights or remedies due them or for the redress of any wrongs complained of under the laws and the statutes of the State of Kansas, and that said plaintiffs have not pursued the remedies provided for them by said laws, and that therefore said bill of complaint fails to show any equitable cause for relief in favor of the plaintiffs and against these answering defendants.

## VI.

The defendants for their further defense aver that the bill of complaint and the record in this case reveal that the plaintiffs can not recover and are not entitled to the relief prayed for in said bill of complaint, on the grounds that the plaintiff receivers are engaged wholly in interstate commerce and that the properties of said company are instrumentalities of interstate commerce and not subject to the local laws of the State of Kansas, the police power thereof, and not within the jurisdiction of the defendant Public Utilities Commission of said State, for the following reasons, to wit:

First, that it appears from said bill of complaint that said receivers were appointed in a proceeding had in the district court of Montgomery county, Kansas, upon a petition filed by the Honorable John S. Dawson, attorney-general of said State, January 5, 1912, against the Kansas Natural Gas Company et al., which said petition and  
all the files and proceedings of said case, to wit, No. 13,476,  
237 are made a part of the bill of complaint and the record in this case, at paragraph 3 thereof; that suit said was begun by the attorney-general of the State of Kansas for the purpose of enforce-

ing the criminal laws and the other statutes of Kansas imposing penalties against persons and corporations who, being engaged in local business in said State, had formed or entered into combinations with others in said local business in the restraint of trade or for the purpose of securing a monopoly therein, as well as for other purposes more fully set out in said bill of complaint at paragraph 4 thereof, and that said petition contained the following allegations, to wit:

"That plaintiffs allege that the above-named defendants, the Kansas Natural Gas Company, a corporation, et al., and each of them, have entered into a series of unlawful arrangements, contracts, agreements, trusts, combinations with each other in violation of the laws of the State of Kansas with a view to prevent, and are done to prevent, full and free competition in the production and sale of natural gas within the State of Kansas, which product is an article of domestic raw material produced in large quantities in Montgomery county, Kansas, and elsewhere in southern Kansas, and is an article of trade and commerce, and is an aid to commerce, which arrangements, contracts, agreements, trusts and combinations are in restriction and restraint of the full and free operation of divers and various lines of legitimate business authorized and permitted by the laws of the State of Kansas, and are a perversion, misuse and abuse of the corporate powers and privileges granted to them, and each of them, by the State of Kansas, as above set forth, and all of which is more particularly set forth as follows:"

That said petition, after alleging the purchase of the Independence Gas Company, a corporation, and The Consolidated Gas, Oil and Manufacturing Company, a corporation, by the defendant Kansas Natural Gas Company, contained the following allegation:

"That said The Independence Gas Company and The Consolidated Gas, Oil and Manufacturing Company, defendants, were at all times mentioned herein public service corporations of the State of Kansas and were without authority under the law to sell and dispose of their entire properties, franchises and means of performance of their duties to the public in and about the production, transportation, delivery and sale of natural gas to the inhabitants of the State of Kansas;  
 \* \* \* and the said Kansas Natural Gas Company, defendant, in pursuance of said unlawful, wrong agreement, understanding,  
 238 arrangement, purpose and intent, has ever since been and is now in exclusive possession and control, and claims to own all gas, gas leases, franchises and property of every kind and character, as aforesaid, that were used, owned and employed by said other corporations, defendants, and said partnership, in and about the production, transportation, distribution, delivery and sale of natural gas to the said inhabitants of the State of Kansas, but such possession and control by said Kansas Natural Gas Company, defendant, is merely as agent or trustee."

To which petition the Kansas Natural Gas Company, May 21, 1912, filed its answer, in which it denied each and every, all and singular, the allegations and averments of the said petition, and these defendants aver that thereupon an issue was joined in said case as to whether the said Kansas Natural Gas Company was engaged in domestic or

intra-state commerce in the State of Kansas, and that whether, being so engaged, it had violated the laws of the state made in conformity to and in pursuance of its police power prohibiting combinations in restraint of said trade.

The plaintiffs further aver that a trial of said issue was had with the other issues of said cause, beginning September 30, 1912. The attorney-general for the State of Kansas, as attorney for the plaintiff in said cause, in defining the issues of said case, made the following statement:

"These defendants are charged civilly with perversion of their corporate privileges because they have entered into a combination and trust to prevent competition in the production, distribution and sale of natural gas, which product is an article of domestic raw material, an article of trade and commerce and an aid to commerce in this state."

The attorney for the defendant The Kansas Natural Gas Company in said cause, in his opening statement, said:

"We particularly deny that anything that is shown or that will be shown has any of the elements of a combination or trust or monopoly. I don't care to add anything further, but the questions to be read will show in detail, I think, more accurately than I could say it, just exactly what has transpired."

These defendants, the Public Utilities Commission for the State of Kansas, and H. O. Caster its attorney, further aver that on the trial of said cause the Hon. T. J. Flannelly, judge of said court, who presided at said trial, determined all of the issues arising upon the pleadings and statements of the defendants against the contentions of the Kansas Natural Gas Company, and held and determined it to be guilty of violating the laws and police regulations of the State of Kansas made for the purpose of prohibiting trusts and combinations in domestic commerce, and in passing upon the particular question raised by said pleadings as to whether said company was engaged in domestic commerce and had made a combination in restraint of said trade, the said Hon. T. J. Flannelly, in his opinion and findings filed in said cause, said:

"Is the defendant, the Kansas Natural Gas Company, a monopoly and has it and other defendant corporations entered into a trust and combination to prevent competition in the production, distribution and sale of natural gas?"

"Section 5185, General Statutes of Kansas (chap. 257, Laws of 1889) provides:

"That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this State, or in the product, manufacture, or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorneys' or doctors' fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed or which tend to advance, reduce or control

the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void.'

"This act was followed by the act of 1897, which the supreme court of the State of Kansas, in the case of *State v. Lumber Company*, 83 Kan. 399, said was intended by the legislature to supplement, not repeal, the law of 1889.

"In section 5142, General Statutes of Kansas, 1909, being 240 section 1 of chapter 265, Laws of 1907, the legislature defines a trust as follows:

"A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes: First, to create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State. Second, to increase or reduce the price of merchandise, produce or commodities or to control the cost or rates of insurance. Third, to prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce. Fourth, to fix any standard or figures whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State. Fifth, to make or enter into or execute or carry out, any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure; or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity; or by which they shall agree to pool, combine or unite any interests they have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected.'

"Section two of the same act provides:

"All persons, companies or corporations within this State are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise, in any trust as defined in section 1 of this act.'

\* \* \* \* \*

"The decisions of the United States supreme court with reference to the national antitrust act have direct force and application in



interpreting our own antitrust laws. The statute of this State in regard to monopolies and trusts is as broad in its terms as the Sherman antitrust act.

"That statute (the Sherman act)' says the supreme court of Kansas, 'differs in verbal phraseology but not in essential particular or effect from ours.

241 "State v. Smiley, 65 Kan. 240.'

"A violation of the Sherman antitrust act itself by a corporation doing business in this State would be a perversion and abuse of its corporate privileges. The laws of the United States, as far as civil suits are concerned, are a part of the State's system of jurisprudence.

"Mondou v. N. Y. H. R. Co., 32 Sup. Ct. 169.

"Clafflin v. Housman, 93 U. S. 130.

"One cannot read this record and examine these contracts, to which attention has been called in the foregoing statement, without reaching the conclusion that the whole purpose and design of the Kansas Natural Gas Company, from the very inception, has been to monopolize the production, transportation, sale and distribution of natural gas in the Kansas field. Not only was it the purpose and design to secure a monopoly, but the plans were successful, the purpose was accomplished, and the Kansas Natural Gas Company to-day almost completely dominates the situation; it practically controls the field of production, the field of transportation and the sale and distribution of natural gas in Kansas."

These defendants, the Public Utilities Commission for the State of Kansas, and H. O. Caster, its attorney, aver that the said court thereafter rendered its judgment upon said findings of fact and conclusions of law, and as a part thereof appointed the plaintiff receivers to receive and control the property in controversy herein as the officers of said court; that said judgment is unappealed from and in full force and effect, and that said receivers have acquiesced in the said judgment and the rules of law declared by the said court and acted in conformity therewith, and that therefore and thereby the fact that said corporation, the Kansas Natural Gas Company, was prior to the appointment of said receivers, and said receivers since then as the representatives of said corporation in continuing its said business have been, engaged in local or intrastate commerce and not wholly engaged in interstate commerce, and that the properties controlled by them are therefore not such instrumentalities of interstate commerce as withdraw all business done by the use of said properties in said State of Kansas from the control of the local laws of said State, the police power thereof, or from the jurisdiction of the Public Utilities Commission for the State of Kansas; that said facts having been fully adjudicated by the said court, and the said receivers having acted in conformity therewith and in pursuance of the principles of law followed and announced by the said court, and which

242 thereby became the law of said case, are now estopped and barred from asserting anything contrary thereto in this cause.

These defendants, further answering, aver that as a part of said judgment the plaintiff receivers, John M. Landon and R. S. Litch-

field, were directed to appear in the case of John L. McKinney et al. v. The Kansas Natural Gas Company, No. 1351, and Fidelity Title and Trust Company v. Kansas Natural Gas Company et al., No. 1-N in equity, which case is fully referred to and set out in the bill of complaint herein, for the purpose of recovering the control and management of the physical property of the Kansas Natural Gas Company, as is fully set out in the bill of complaint herein at paragraphs 3 and 4, and elsewhere, in said bill; that for the purpose of said appearance in said cause the attorney-general, acting on and in behalf of said receivers and under the direction of the district court of Montgomery county, Kansas, prepared and filed therein a petition for said purposes, which said petition contained the following averment, to wit:

"First, that on January 5, 1912, the State of Kansas, by its attorney-general, brought an action in the nature of quo warranto in the district court of Montgomery county, Kansas, against The Independence Gas Company, The Consolidated Gas, Oil and Manufacturing Company, Kansas corporations, and Kansas Natural Gas Company, a Delaware corporation authorized to do business in Kansas, charging said corporations with misuse, perversion and abuse of their corporate privileges and with having connived and engaged in various illegal combinations in restraint of trade, in violation of the antitrust laws of the State of Kansas, and in violation of the National antitrust laws, which are a part of the civil jurisprudence of the State of Kansas, by which unlawful combinations the said Kansas Natural Gas Company had secured a monopoly of the source of gas supply and a monopoly of the sale and distribution of gas to the people of Kansas, and by which unlawful combination the selling price of gas, a product of domestic raw material, an article of commerce, and an aid to commerce, had been advanced and controlled by the said Kansas Natural Gas Company, and a true copy of the petition filed by the State of Kansas in said action is contained in an abstract filed herewith and made part hereof."

That thereafter the complainant in said cause and the Fidelity Title and Trust Company appeared in said cause and contested the averments of the petition filed by the said attorney-general on and in behalf of the plaintiff receivers herein, and that said John L. McKinney and the Fidelity Title and Trust Company filed, as paragraph 10 of their answer, the following averments, to wit:

"These complainants further allege that although the defendant the Kansas Natural Gas Company, is engaged in operating a pipe line within the State of Kansas for the transportation of natural gas from various sources of supply from localities within the State of Kansas to respective towns and cities within the State of Kansas, the pipe line of said Kansas Natural Gas Company and its system likewise extends into the adjacent States of Missouri and Oklahoma, for the purpose of receiving and transporting gas through its pipe lines to cities in said states, and is therefore an interstate carrier, subject to the act of Congress of February 7, 1887, and its amendments. That by the judgment and order appointing receivers over the property of

the Kansas Natural Gas Company by the district court of Montgomery county, State of Kansas, in the proceedings by the State of Kansas instituted by the attorney-general as aforesaid, for a claimed violation of a penal statute of the State, constitute an exertion of the power of the State of Kansas, acting through and under the district court of Montgomery county, Kansas, over interstate commerce, and is invalid and violative of the commerce clause of the constitution of the United States, and the district court of Montgomery county, Kansas, was without jurisdiction to appoint receivers over the property of the Kansas Natural Gas Company in said proceedings by reason of said fact."

And these defendants, the Public Utilities Commission for the State of Kansas, and H. O. Caster, its attorney, avers that by the filing of said petition and answer an issue was made in said cause as to whether said Kansas Natural Gas Company at the time of the filing of the petition in the district court of Montgomery county, Kansas, by the State of Kansas through its attorney-general, heretofore referred to, was engaged in domestic commerce and not engaged wholly in interstate commerce, and whether by reason of said fact the district court of Montgomery county, Kansas, had the right, authority and jurisdiction, because of the violation of the local laws of said Kansas by said corporation, to appoint the plaintiff receivers as the officers of said court to take possession of said property, and whether as such officers they were now entitled to the possession of the property of said Kansas Natural Gas Company as against certain receivers theretofore appointed in the said cause of John L. McKinney et al. v. The Kansas Natural Gas Company, heretofore set  
244 out and referred to in this answer and bill of complaint of the plaintiffs.

That said cause came on for trial on June 5, 1913, on said issues of law and fact, before the Hon. John A. Marshall, district judge of the United States sitting as such judge of the district court for the District of Kansas, and after hearing the testimony adduced by the said parties and being fully advised in the premises the court found in favor of the said petitioners, the plaintiffs herein, and against the said John L. McKinney and the Fidelity Title & Trust Company, the complainants in said original action; that as a part of said decision the court filed written findings and a written opinion as to the law controlling said case, and as to this question the court said:

"Under the Kansas antitrust act (Gen. St. 1909, sec. 5146), which provides that every person or corporation within or without the state, violating its provisions within the state, shall be denied the right to do business in the state, and authorizes the enforcement of such provision 'by injunction or other proceeding,' a state court has power to appoint receivers of the property within the state of a foreign corporation charged with violation of the act, and under the state practice such remedy is not precluded because the legal relief of ouster is sought in the action.

"The appointment by a state court of a receiver of the property within the state of a foreign corporation engaged in interstate commerce does not amount to an unlawful interference with the

right of such corporation to transact interstate commerce." (206 Fed. 777.)

These defendants, further answering, aver that the said John L. McKinney and the Fidelity Title and Trust Company, complainants as aforesaid, excepted to the findings of the court and regularly took their appeal to the circuit court of appeals of the eighth district of the United States in said cause, and that thereafter said cause came regularly on for hearing and was decided by said court December 4, 1913, and it was there held and decided by the honorable circuit court of the said district that the opinion and decision of the district court of the United States, heretofore set forth, should be affirmed, and in determining the questions arising on said appeal the court, speaking by the Hon. Wm. C. Hook, circuit judge, said:

"A foreign corporation engaged in interstate and local commerce may be adjudged guilty of a violation of the antitrust laws of the state, its license to do business in the state may be canceled, and a receiver for all its property therein appointed under the general laws in aid of the enforcement of the judgment; and it is no defense that such property included instrumentalities used by it in conducting its interstate business, or that the corporation by the  
245 same course of conduct has also violated the similar laws of the United States." (209 Fed. 300.)

And again, at pages 306-7, the court further said:

"There remains for consideration the contention that as applied to this case, the antitrust statutes of the State conflict with the Sherman act (act July 2, 1890, c. 647, 26 Stat. 209 [U. S. Comp. St. 1901, p. 3200]), and hence must give way. In this connection it is unimportant that the Kansas Natural Gas Company is a Delaware corporation instead of a corporation of Kansas. The character of its trade and commerce, interstate or local, determines the applicability of the antitrust laws of the nation or state and not the origin of its corporate existence. The term 'interstate corporation' is a convenient colloquialism but hardly accurate. In respect of the contention now being considered, the case would not be different had that company been organized under the laws of Kansas. Nor is it material that it transports some of the gas it deals in from Oklahoma into Kansas and from Kansas into Missouri by pipe lines. By express exemption it is not a common carrier subject to the interstate commerce act (act June 29, 1906, c. 3591 [U. S. Comp. St. Supp. 1911, p. 1284], 34 Stat. 584), sec. 1, even would it matter were it otherwise. The point urged by counsel rests on the fact that the company is engaged in both interstate and local commerce and upon the assertion that the two are so intricately interwoven as to be inseparable. The claim of inseparable intricacy is not tenable. The two kinds of commerce are no more interinvolved than with most railroads of the country and many manufacturing and mercantile concerns. Whatever may be the origin and admixture of the commodity dealt in or the common use of the same plant, equipment, and instrumentalities, the two kinds of commerce are distinguishable. The company is in no better position than if it were an ordinary industrial and mercantile concern of Kansas producing, buying, ship-

ping, and selling, locally and in other states, grains, oils, or other commodities which lose their particular identity in the mass of that which is dealt in. Again, the property and business of the company which are wholly within the State of Kansas are not negligible incidents to which the state antitrust statutes are being forced; much of its property, including that obtained from the other corporations, is located there and much of its business is there transacted. The action of the State of Kansas was directed to the violation of the state statutes. The decree of the state court was expressly  
246 confined to the matters within its jurisdiction and subject to the local laws. There was no attempt to enforce the Sherman act."

These defendants therefore further aver that by the aforesaid decisions and holding of the courts it has been fully determined and adjudicated that the plaintiff receivers are engaged in intrastate commerce subject to the local laws and police power of the State of Kansas and the jurisdiction of the Public Utilities Commission for said State, and that the plaintiffs are not engaged wholly in interstate commerce, and that the properties under their control are not instrumentalities of interstate commerce of such nature as to deprive the defendants Public Utilities Commission for the State of Kansas of jurisdiction over it, and that said plaintiffs, having acquiesced in said holdings and principles of law announced by the courts in the said cases, and having in this cause alleged that this case is dependent upon and ancillary to the case of John L. McKinney et al. v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N, Equity, as averred in plaintiffs' bill of complaint, paragraph 1, which these defendants in no wise admit, and that said findings and principles of law having become the law of said cases, and of this case, and all of said matters having been fully determined, the plaintiffs are estopped from averring to the contrary herein, and from causing a retrial of said issues in this suit.

#### Second.

These defendants, having objected to the jurisdiction of this court arising upon the points of law disclosed upon the face of the bill of complaint, and having moved to dismiss this action for want of such jurisdiction, further answering, say:

#### I.

The above-named defendants deny that the bill of complaint herein is dependent upon and ancillary to the causes entitled John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N, Equity, now pending in this court, and further deny that this action is brought for the purpose of protecting the property now in the potential pos-

247 session of this court in said causes and of enforcing the jurisdiction of this court in said causes.

These defendants specifically deny that the matter and amount in controversy in this cause exceeds the sum or value of \$3000 exclusive of interest and costs.

These defendants specifically deny that the causes of action, if any such be stated in the bill of complaint filed here, arise under the constitution or laws of the United States.

These defendants do not know for what purpose the bill of complaint was filed herein, but nevertheless deny that the Public Utilities Commission for the State of Kansas have fixed rates which are unreasonably low or that are unremunerative, noncompensatory and confiscatory, or which amount to the taking of the property in the possession and control of these plaintiffs without just compensation and without due process of law, or that the Public Utilities Commission for the State of Kansas has issued any order interfering with interstate commerce.

These defendants deny that there is any relationship and acts of the Public Utilities Commission for the State of Kansas, and the Public Service Commission of the State of Missouri, or the attorneys and counsel of said Commissions, either now or at any time, such that it is practicable to present here and determine said causes in one suit in this court, but allege that plaintiffs' pretended causes of action against the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri are wholly different and can not be joined as one cause of action, nor can the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri be joined as parties defendant in the same cause of action, nor are the pretended causes of action against the counsel for the Public Service Commission of the State of Missouri and the attorney for the Public Utilities Commission for the State of Kansas such that they can be joined in one cause of action, nor can the counsel for the Public Service Commission of the State of Missouri and the attorney for the Public Utilities Commission for the State of Kansas be joined in one cause of action such as is attempted in the suit at bar.

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## II.

These defendants admit that the defendants Joseph L. Bristow, C. F. Foley and John M. Kinkel are the duly appointed, qualified and acting members of the Public Utilities Commission for the State of Kansas; that the defendant S. M. Brewster is the duly elected, qualified and acting attorney-general of the State of Kansas and the chief law officer of the State of Kansas; that the defendant H. O. Caster is the duly appointed, qualified and acting attorney for the Public Utilities Commission for the State of Kansas. That the defendant members of the Public Utilities Commission for the State of Kansas, and the defendant attorney-general for the State of Kansas, and the defendant attorney for the Public Utilities Com-



mission for the State of Kansas are charged by the laws of the State of Kansas with the duty and obligation of executing and enforcing all of the laws affecting public utilities and other property.

These defendants have no knowledge as to who is the attorney-general of Missouri and who constitute the members and officers of the Public Service Commission of Missouri.

These defendants admit that the defendant Fidelity Title and Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, and is trustee under a certain first mortgage and supplemental mortgages heretofore executed by the Kansas Natural Gas Company on its property here involved. That said Fidelity Title and Trust Company is complainant in two of the suits pending in this court referred to in the bill of complaint.

These defendants admit that the Delaware Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is the trustee under a certain second mortgage executed and delivered by the Kansas Natural Gas Company covering a part of the property here involved. That the said Delaware Trust Company is defendant in one of the suits mentioned in the bill of complaint.

These defendants admit that the Fidelity Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is the trustee under a certain first mortgage and three supplemental mortgages executed and delivered by the Kansas City Pipe Line Company, whose property has been leased to the Kansas Natural Gas Company and is being operated by the plaintiff receivers.

These defendants admit that the Kansas City Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey. That all of the property of said Kansas City Pipe Line Company has heretofore been leased to the Kansas Natural Gas Company and is now, so far as it is situated in Kansas, in the possession of the plaintiff receivers of said Kansas Natural Gas Company, but deny "that said pipe lines of the Kansas City Pipe Line Company are of little or no use unless they be operated in conjunction with the balance of the system of the Kansas Natural Gas Company."

These defendants admit that the Marnet Mining Company is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, that said Marnet Mining Company owns certain property and pipe lines in the State of Oklahoma, which said pipe lines and property form a part of the system of the Kansas Natural Gas Company, but deny "that all of the property of the said Marnet Mining Company is of but little value if separated from the system of pipe lines operated by the Kansas Natural Gas Company."

These defendants admit that John F. Overfield is the receiver of the property of the Kansas City Pipe Line Company, as in the bill of complaint alleged.



These defendants admit that the defendant Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and from 1904 to October, 1912, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas. That it has been duly admitted to do business in the State of Kansas as a foreign corporation. That it owns and operates a system, by lease and otherwise, of pipe lines extending from the counties of Rogers, Wagoner and Tulsa, in the State of Oklahoma, northward to the Kansas-Oklahoma State line, and through the State of Kansas into the State of Missouri, with terminals at Joplin, but deny that they have terminals in Kansas City and Nevada, Mo., but admit that they have a line extending to St. Joseph in the State of Missouri, and Atchison, Leavenworth, Topeka, Galena, Pittsburg and Kansas City in the State of Kansas, and other points, which are more fully shown in the map referred to in the bill of complaint and filed with said bill.

That since October, 1912, said system of pipe lines has been 250 in the control of and operated by receivers of said Kansas Natural Gas Company.

These defendants admit the issuance of the order of September 22, 1914, made and entered in the cases of John L. McKinney et al. v. The Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N, Equity, but deny that the said George F. Sharitt is in the possession or control, actually or potentially, of any property involved in this suit by virtue of such order or otherwise.

### III.

These defendants admit that the said John M. Landon and R. S. Litchfield, plaintiffs, are in the actual possession and control of the property of the Kansas Natural Gas Company and the property under lease to it in the State of Kansas, as receivers of said company, appointed by the district court of Montgomery county, Kansas, and admit that the said John M. Landon and R. S. Litchfield are in the actual possession and control of the pipe-line system of the Kansas Natural Gas Company, including leased lines located in the States of Oklahoma and Missouri, but deny that they are in such possession as ancillary receivers of this court, but allege that they are in the actual possession of such property in Oklahoma and Missouri, as receivers appointed by the district court of Montgomery county, Kansas.

### IV.

These defendants admit the allegation of the fourth division of the bill of complaint.

### V.

These defendants admit that on the 17th day of December, 1914, the first and second mortgage bondholders of the Kansas Natural Gas

Company and the Kansas City Pipe Line Company, the Kansas Natural Gas Company, and the plaintiff receivers, John M. Landon and R. S. Litchfield, and the Marnet Mining Company, entered into a certain agreement and stipulation called "Creditors' Agreement," a copy of which agreement is attached to plaintiffs' bill of complaint as Exhibit A. But these defendants specifically deny that the State of

251 Kansas was a party to or affected by such agreement, and these defendants specifically deny the matter and things set up in said creditors' agreement.

These defendants admit that said Kansas Natural Gas Company, prior to the appointment of receivers, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas, and carrying on its said activities in the States of Oklahoma, Kansas and Missouri; that after the appointment of the receivers by this court said receivers continued and carried on the said business after the manner the same had been theretofore conducted by Kansas Natural Gas Company, and after the delivery of the property aforesaid to said State receivers they continued to carry on said business theretofore conducted and carried on by said federal receivers and by said Kansas Natural Gas Company.

These defendants specifically deny all other allegations in the fifth subdivision of said bill of complaint, except such as are hereafter in this subdivision specifically admitted.

These defendants allege that in carrying on said business as aforesaid these plaintiff receivers procured a part of their gas from wells in Wagoner, Rogers and Tulsa counties, Oklahoma, piping the same northward into and through the gas fields of Kansas, where the same is so commingled in the pipe lines conveying the same with gas produced in Kansas that it is impossible to separate or distinguish that produced in Oklahoma from that produced in Kansas; and, after being so commingled and mixed, it is conveyed northward from city to city throughout the State, and is drawn off by the numerous cities along its lines within the State of Kansas at such times and in such quantities as the individual consumers desire; that the gas in being so transported is, by means of compressor stations, packed into the transportation lines as reservoirs and is at all times subject to be drawn off by the various distributing companies serving the several towns along said pipe line, and when the said gas is drawn off by the said distributing companies from the transportation lines there is no way of telling whether it was produced in

252 Kansas or in Oklahoma, but is drawn off by said distributing companies from the mass of said gas stored in the transportation lines for sale and distribution to the consumers in the various cities.

These defendants specifically deny that only six per cent of the gas delivered to consumers in Kansas is produced in Kansas. These defendants specifically deny that the business carried on and conducted by the plaintiff receivers is the carrying on of business and commerce among different states of the Union, to wit, Oklahoma, Kansas and Missouri, or that the same is exclusively under the control of the Congress of the United States, as confided to it by section 8 of article

1 of the constitution of the United States, and allege that the business conducted by the plaintiff receivers is subject to the control and regulation of the States of Kansas and Missouri.

That on August 17, 1915, H. O. Caster, as attorney for the Public Utilities Commission for the State of Kansas, filed a suit in mandamus in the supreme court of the State of Kansas against the plaintiff receivers herein; a copy of the application for such writ is attached to this answer and made a part hereof and marked Exhibit A. That notice was duly had upon the plaintiff receivers, as defendants in such action, and in due time they filed in said court their answer and return; a copy of such answer and return is attached to and made a part of this answer, marked Exhibit B. That, as shown by said answer and return, the plaintiff receivers herein, as defendants in said action, allege that the business so conducted by them was the carrying on of business and commerce among the different States of the Union, to wit, Oklahoma, Kansas and Missouri, and that it was exclusively under the control of the Congress of the United States, as confided to it by section 8 of article 1 of the constitution of the United States. Upon hearing duly had in such action and being well advised in the premises, the supreme court of the State of Kansas, in such action, being case No. 20324 of the files of said court, duly filed its opinion (96 Kan. 372) and order, to the effect that the business as conducted by the plaintiff receivers was not the carrying on of business and commerce among the different States of the Union, and was not under the control of the Congress of the United States, but that the same was under the control of the Public Utilities Commission for the State of Kansas; a copy of the opinion

of the supreme court of the State of Kansas in such action is 253 attached hereto and made a part of this answer, marked Exhibit C. Such order was not appealed from or reversed and is still in full force and effect.

That these defendants, therefore, allege that it has been adjudicated in an action wherein these plaintiffs as receivers and the Public Utilities Commission for the State of Kansas were parties, that the business as conducted by the plaintiff receivers was not the carrying on of a business or commerce among the different States of the Union and was not under the control of the Congress of the United States, but that the same was under the control of the Public Utilities Commission of the State of Kansas, and that such question has been fully and finally adjudicated and determined and is res adjudicata as between all the parties to this suit.

## VI.

The defendants admit all of the allegations of fact contained in the sixth subdivision of the bill of complaint herein, except with reference to the alleged orders of this court purported to have been made on December 30, 1912, and on January 4, 1913, with reference to which orders these defendants allege that this court had no power, authority or jurisdiction to make any such alleged orders; and that if such

orders were made, as alleged in said bill of complaint, they were wholly illegal and void; and this court, recognizing that said orders of December 30, 1912, and of January 4, 1913, were made without jurisdiction and were wholly null and void, has never pretended to enforce the same.

## VII.

These defendants specifically deny each and all of the allegations in the seventh subdivision of plaintiffs' bill of complaint, except such as are in this division of the answer admitted.

These defendants admit that the attorney for the Public Utilities Commission for the State of Kansas, in January, 1913, filed a complaint with the said commission, wherein the Kansas Natural Gas Company and its receivers and the distributing companies were respondents. After a hearing upon such application the Public Utilities Commission for the State of Kansas made and filed its order and opinion, a copy of which is attached to the bill of complaint, marked

Exhibit E. That on April 9, 1915, the plaintiff receivers 254 filed before the Public Utilities Commission for the State of Kansas their complaint and schedule of rates, requesting an order of the Public Utilities Commission permitting them to increase the rates which they might charge for natural gas furnished by them to their consumers in Kansas. A copy of such complaint is attached to this answer as a part — Exhibit A, and a true copy of the original schedule of rates then filed is attached to the bill of complaint, marked Exhibit F. That upon July 16, 1915, after a full hearing upon said complaint, the Public Utilities Commission for the State of Kansas rendered its opinion, a copy of which is attached to the bill of complaint, marked Exhibit H.

That thereafter, in the action pending in the district court of Montgomery county, Kansas, brought by the plaintiff receivers against the Public Utilities Commission et al. as defendants, an order was made by said court overruling the demurrer of the Public Utilities Commission to the petition filed in such case. An appeal was taken from this order to the supreme court of the State of Kansas by the Public Utilities Commission.

That on August 17, 1915, H. O. Caster, as attorney for the Public Utilities Commission for the State of Kansas, filed a suit in mandamus in the supreme court of the State of Kansas against the plaintiff receivers herein and the judge of the district court of Montgomery county, Kansas, to require the said receivers to maintain efficient and sufficient service in the supplying of gas to their customers within the State of Kansas, and to require the said judge of the district court of Montgomery county, Kansas, to vacate and set aside an order making the Public Utilities Commission a party defendant in the action pending in the said district court of Montgomery county, Kansas, wherein the said receivers were appointed to set aside the temporary restraining order issued by the district court

of Montgomery county, Kansas, in that action, and to dismiss the suit against the Public Utilities Commission for the State of Kansas.

That the said John M. Landon and R. S. Litchfield made their return and answer in said mandamus case. That on the 22d day of September, 1915, a hearing was had on said mandamus action in the supreme court of the State of Kansas, which said action was consolidated with the appeal taken from the decision of the 255 district court of Montgomery county, Kansas, overruling the said demurrer.

That thereafter, and on the 4th day of October, 1915, the supreme court of the State of Kansas rendered its opinion and final judgment in said actions, which opinion is reported in volume 96 of the Kansas Reports at page 872, and a copy of which said opinion and judgment is hereto attached, marked Exhibit C and made a part hereof. Said judgment has never been appealed from nor reversed, and is still in force and effect.

### VIII.

These defendants deny all of the allegations of fact contained in the eighth subdivision of the bill of complaint, except such as are specifically admitted in this subdivision of the answer.

These defendants admit that on the 7th day of October, 1915, the plaintiff receivers filed with the Public Utilities Commission for the State of Kansas a petition for rehearing, a copy of which is attached to the bill of complaint, marked Exhibit J. That later, and on the 10th day of December, 1915, the Public Utilities Commission for the State of Kansas, after due notice and after a full and final hearing thereon, made and filed its opinion and order, a copy of which is attached to the bill of complaint, marked Exhibit K. (Plaintiffs' bill, 222.)

Thereafter, and on the 22d day of December, 1915, the plaintiff receivers acquiesced in said order of said Commission and consented to and accepted the benefits thereof by filing a schedule of rates and rules in accordance with the permission therein given, a copy of which said schedule is attached to the bill of complaint and marked Exhibit M, and hereinafter set out for the convenience of the court. And thereafter, and on the 28th day of December, 1915, the Public Utilities Commission for the State of Kansas made and entered its order approving said schedule of rates and rules, and said schedule of rates became the lawful rates for the sale of gas by said plaintiff receivers within the State of Kansas, and said rules became the lawful rules under which said gas should be supplied. And thereafter the said plaintiff receivers put into force and effect said schedule of rates and have been ever since, and now are, charging rates in accordance with said schedule to their consumers in the State of Kansas, and accepting the benefits of said order of said Public Utilities Commission for the State of Kansas, except that in the cities of Atchison, Topeka, Lawrence and Galena, and at Parsons and Pittsburg, the plaintiffs are failing to observe the said schedule approved by order of the Public Utilities Commission

dated the 28th day of December, 1915, as to furnishing free gas to said cities, and in the cities of Independence and Coffeyville plaintiffs are not charging and collecting the rates prescribed in said order from their consumers in said cities.

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## IX.

These defendants deny each and all of the allegations in subdivision nine of the bill of complaint filed herein, except such as are admitted in this subdivision of the answer.

These defendants allege that the opinion and order of the Public Utilities Commission, referred to in said bill of complaint as Exhibit K, were made and entered after a full and complete hearing had before said Commission, and are based upon the evidence there adduced, and that the plaintiff receivers were present by their attorneys at all sessions of said Commission and participated in said hearing and had ample and full opportunity of presenting all evidence which they desired and full opportunity of cross-examining all witnesses, and that no evidence was considered by the Commission in making the findings of fact contained in said Exhibit K except such evidence as was so produced at said hearing.

The defendants deny that said engineer testified that he did not include going value or going-concern value or any value of the property for the cost of attaching the business or as a going concern, or that said engineer did not allow values for said items, and deny that the fair and reasonable going value or development cost of said plant was on January 1, 1915, or now is \$2,637,400, and deny that the fair and reasonable value of said plant and property was on January 1, 1915, or now is more than the sum of \$11,632,211, and deny that said plaintiffs are entitled to a return of ten per cent upon the investment in said property, and deny that said Commission did not allow any intangible value in connection with said property, and deny that said Commission did not consider more than \$7,083,605.64 as the total value on which plaintiffs were entitled to earn a return, and deny that said Commission allowed no value for leaseholds derived by conveyance from Snyder, Barnsdall and

O'Neil, and deny that said leaseholds were at the time  
257 of their conveyance of the reasonable value of \$6,000,000,

and deny that the life of said plant is only six years from January 1, 1915, and allege that said Commission in said Exhibit K, in ascertaining the income derived from the production of natural gas, showed said income to be \$6,023,792.16 more than it actually was, but that this fact did not change the net income for the reason that an equal amount was included in the expenses of producing said gas in addition to the actual expense, thereby offsetting said item, and deny that the effect of this was to give the public the benefit of over \$6,000,000 worth of gas without charge, and deny that the reasonable value of gas produced from said leaseholds up to and including December 1, 1914, was in excess of \$6,023,792.16, and deny that said Commission erred in separating the property used in the produc-



tion of natural gas from the property used in its transportation, and deny that the Commission erred in using 4 cents as the price to be paid for gas to be purchased in the future, and deny that such price will in the future be not less than 6 cents per thousand cubic feet, and deny that the Commission erred in estimating the increased revenue to be obtained on the schedule put in effect after the order of December 10, 1915, and deny that such increased revenue will be not more than \$75,059.53, and deny that said Commission erred in estimating and fixing the amount of operating expenses and taxes as \$510,536.14, and deny that the true amount required for these purposes is \$800,000 per year, and deny that said Commission omitted any items of operating expenses; and these defendants deny that expenditures for making extensions to new fields are proper items of operating expense, and admit that the same were not included as such in the computations in Exhibit K, and deny that it will be necessary to expend \$500,000 in the year 1916, and deny that it will be necessary to spend \$200,000 in each year thereafter for such extensions; and these defendants deny that the Commission allowed depreciation only on \$7,083,615.64, and deny that the true life of said plant is five years from January 1, 1916, and deny that \$11,632,211, less \$5,500,000, must be amortized during said time, and deny that said Commission allowed a return of only 6 per cent upon said investments, and deny that a return of less than 7 per cent on the value of the property employed in said business is unreasonable and confiscatory, and deny that the sum of \$11,632,211 is the fair and reasonable value of the property upon which plaintiffs are entitled to earn a reasonable rate of return; and defendants allege that the true facts as to all of said matters are as hereinafter set forth in the third division of this answer.

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X.

These defendants do not know and are therefore unable to state the facts concerning the alleged valuations of the property of the Kansas Natural Gas Company in the States of Kansas, Missouri and Oklahoma, as set out in the tenth subdivision of the bill of complaint.

## XI.

These defendants deny that the plaintiff receivers filed with the Public Utilities Commission the schedule of rates mentioned in the eleventh subdivision of said bill of complaint for the purpose of avoiding complications and litigations with the State of Kansas and the Public Utilities Commission for the State of Kansas, and financial loss and suits for penalties under the statute of the State of Kansas, but allege the fact to be that the order of the Public Utilities Commission for the State of Kansas relating thereto merely gave the plaintiff receivers permission to file such schedule of rates and was not mandatory, and that such schedule was filed by the plaintiff receivers solely for the purpose of securing the benefit



*which would accrue to them in the increased price for natural gas sold by them, as such permission would be given when such schedule was filed, and that the laws of the State of Kansas would not in any manner have subjected the plaintiff receivers to complication, litigation, financial loss or suit for penalties if such schedules had not been filed.*

These defendants specifically deny that the net income above operating expenses, taxes, repairs and accrued depreciation has not at any time during the time the plant in question has been operated amounted to a fair return on the investment.

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## XII.

These defendants specifically deny that there has been any decrease in gas pressure in the year 1915 as compared with the year 1914, and deny that the miscellaneous revenues for 1915 are less than those of 1914, and deny that future years will be less than for previous years, and deny that the table set out in the twelfth division of the bill of complaint correctly shows a comparison of the miscellaneous revenues for ten months of 1915 as compared with the same period of 1914.

## XIII.

These defendants do not know whether or not expert engineers were employed by the Kansas Natural Gas Company to determine the life of the gas field, and do not know what investigations were made concerning said gas fields, or what reports, if any, were made by said engineers to the Kansas Natural Gas Company or to any other person.

These defendants allege that there is now and has been since the formation of the Kansas Natural Gas Company an ample supply of natural gas adjacent to its lines, which it could have secured without unreasonable expense.

These defendants deny the correctness of the map showing the trunk lines of the Kansas Natural Gas Company, Quapaw and Wichita Gas Companies, and Oklahoma Natural Gas Company, together with the analysis of said map, attached to the bill of complaint, marked Exhibit L, and deny that the cost of gas has increased during the past year at least one cent per thousand cubic feet, owing to the short duration of the gas pools and fields. These defendants have no knowledge of the exact per cent of the gas which is supplied by plaintiff to consumers in Kansas or Missouri which is secured from Oklahoma, but admit that a large per cent is there purchased.

These defendants deny that, owing to the financial condition of the Kansas Natural Gas Company, very few leases have been purchased by that company or by plaintiff receivers or that practically all of the gas secured from Oklahoma has been purchased in Oklahoma at a specified rate per thousand feet, but allege the fact to be that with proper and prudent management the company would have

260 been financially able to at all times make necessary and proper arrangements for procuring leases and for the purchase of gas.

The defendants do not know the per cent of gas which is lost through leakage, as alleged in said bill of complaint, but allege that if a large per cent thereof, as claimed in said bill of complaint, is actually so lost, that it is on account of the defective conditions of the lines of the plaintiff receivers or of such distributing companies, and that the Public Utilities Commission, in its opinion and order, attached to plaintiffs' bill of complaint, marked Exhibit K, made due allowance for said leakage.

The defendants deny that all of the evidence shows that the probable life of the gas fields which may be profitably reached by the plant of the Kansas Natural Gas Company is six years from January 1, 1915, but allege that the evidence shows and the fact is that the probable life of such gas field will be much longer than such six years.

The defendants specifically deny that the said six years as the life of said gas plant is also determined by the State of Kansas in the Creditors' Agreement, and deny that said period of six years was adopted as the probable life of said gas plant by the said Public Utilities Commission of the State of Kansas in its opinion of July 16, 1915, attached to plaintiffs' bill of complaint and marked Exhibit H.

These defendants specifically deny that the plant of the Kansas Natural Gas Company at the end of six years will have no value whatever, except as scrap; but allege, as stated above, the life of said gas fields and said plant is much longer than said six years, and that said plant at the end of such period will have a large and going value; and they further deny that at the end of said six-year period, or at the end of the life of said gas fields and the usefulness of said gas plant, the scrap value will not exceed \$1,500,000, but allege that at such time such value will largely exceed such sum.

261 These defendants further deny that the difference between the total value of the plant as of date January 1, 1915, and the scrap value at the end of the life of the plant is \$10,132,211; and deny that such sum must be amortized in five years from January 1, 1915; and deny that the revenues for the year 1915 have been insufficient to amortize any part of the plant value during 1915; and deny that it will require the sum of \$500,000 for the first year and \$200,000 per year for each of the succeeding four years in order to procure the annual additional supply of gas necessary to maintain the same volume of gas supplied to consumers as is now transported and distributed, and deny that nothing less than ten per cent per annum is a fair and reasonable rate of return on the property employed and used in said business; and deny that the table therein set out shows the true and correct amount of gross revenue which is necessary for this plant to obtain in order to meet operating expenses, repairs, secure future gas supply and provide for the amortization of the plant and a fair return on the property employed in the service.

## XV.

These defendants deny that the table set out in the fifteenth division of plaintiffs' bill of complaint shows the correct amount of revenues which the order of December 10, 1915, will produce in the State of Kansas, and the revenues which the rates now in existence will produce in the State of Missouri; but alleges that table 5 in exhibit K to said complaint shows the correct amount of revenues which the order of December 10, 1915, will produce.

These defendants further deny all the other allegations of the fifteenth division of the plaintiffs' bill of complaint.

## XVI.

These defendants deny that the tables set out in the thirteenth and fifteenth subdivisions of the plaintiffs' bill of complaint are typical of the years of the remaining life of said plant; and further deny that any lower schedule of rates in the State of Kansas than those set out in Exhibit F of this petition will be unreasonable, unremunerative, noncompensatory and confiscatory, or that the plaintiff receivers have been deprived of property without just compensation and without due process of law, or that they will continue to be so deprived of property in the transportation of gas to consumers in the State of Kansas unless the rates set out in such Exhibit F are put into effect; and these defendants deny that the said order of the Public Utilities Commission of the State of Kansas is void or in contravention of the fourteenth amendment to the constitution of the United States and in interference with interstate commerce; and they further allege that the question as to whether the business conducted by the plaintiff receivers is or is not a business or commerce between various States of the Union has been fully and finally adjudicated adverse to the claim of the plaintiff receivers, as if fully set out in the fifth and seventh subdivisions above.

These defendants do not know whether said Kansas Natural Gas Company or said federal receivers or the plaintiff herein have or do deliver or sell gas to domestic consumers in the State of Oklahoma or conduct or carry on my business of or as a public utility therein.

## XVII.

These defendants specifically deny that the order of December 10, 1915, of the Public Utilities Commission of the State of Kansas provides and requires plaintiff receivers to furnish gas produced in Kansas to consumers in Kansas at such an unreasonably low rate as not to afford sufficient revenue to pay a fair return above operating expenses on the property employed in such service, and thereby imposes a burden upon interstate commerce; but allege the fact to be that the said receivers are not engaged in interstate commerce, as is fully set out in subdivision five of this answer.

These defendants deny that the plaintiffs have no adequate

remedy in the premises, except such relief as may be obtained by applying to a court of equity; but allege the fact to be that the order of December 10, 1915, of the Public Utilities Commission was a permissive order, and that these plaintiff receivers availed themselves of the authority therein granted to increase the rate at which gas is sold by them to their consumers within the State of Kansas; that said schedules of rates were voluntarily filed by said plaintiff receivers, and upon their approval by the Public Utilities Commission became the legal rates, which could not be changed without first having obtained the authority of the Public Utilities Commission, and that the plaintiffs' only remedy was by such application.

These defendants specifically deny all the other allegations of subdivision seventeen of the plaintiffs' bill of complaint.

### XVIII.

These defendants deny the allegations of the eighteenth subdivision of the plaintiffs' bill of complaint.

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### XIX.

These defendants specifically deny every allegation of fact contained in the nineteenth subdivision of the bill of complaint.

### XX.

These defendants specifically deny every allegation of fact contained in the twentieth subdivision of the bill of complaint, but allege that they do not know what orders have been made by the Public Service Commission of the State of Missouri, or what is the power and authority of such Commission, but deny that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against these defendants.

### XXI.

These defendants admit that the Public Service Commission of the State of Missouri held a conference with the Public Utilities Commission for the State of Kansas at Kansas City, Mo., on or about the 27th day of September, 1915.

These defendants specifically deny each and every other allegation of fact in such twenty-first subdivision of the bill of complaint, except that they do not know what orders have been made by the Public Service Commission of the State of Missouri, or what is the power and authority of such Commission, but deny that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against these defendants.

### XXII.

These defendants state that they are not informed and do not know concerning what orders have been made by the Public Service

Commission of the State of Missouri, or the effect of such orders, if any have been made, but deny that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against these defendants and specifically deny that any schedule or rate for natural gas below 37 cents per thousand cubic feet for gas delivered to consumers in all other cities in Missouri, except St. Joseph, and that 26  $\frac{2}{3}$  cents for plaintiffs' proportion of gas delivered in St. Joseph is and will be unreasonably low, unremunerative, noncompensatory and confiscatory.

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## XXIII.

These defendants deny that plaintiffs have no adequate remedy at law in the State of Missouri.

These defendants state that they do not know what orders, if any, have been made by the Public Service Commission of the State of Missouri, or what is the power and authority of such Commission, and they do not know what is the desire of the plaintiff receivers with reference to the furnishing of gas within the State of Missouri, or concerning the reasonableness of the rates charged in such State, but deny that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against these defendants.

## XXIV.

These defendants deny all of the allegations of fact contained in the 24th subdivision of the bill of complaint, except that they state that they do not know what orders, if any, have been made by the Public Service Commission of the State of Missouri, or the power and authority of such Commission, or what action such Commission has taken or proposes to take relative to gas supplied within that State by plaintiff receivers, but deny that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against these defendants.

## XXV.

These defendants do not know and can not state concerning the alleged statutes of the State of Missouri which are set out in the twenty-fifth subdivision of the bill of complaint.

## XXVI.

These defendants do not know and can not state what orders, if any, have been made by the Public Service Commission of the State of Missouri, or the effect of such orders, or the penalties provided for violating such orders, but deny that any orders which may have been made by such Public Service Commission are material to any

cause of action presented in the bill of complaint against these defendants.

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## XXVII.

These defendants do not know and can not state what orders, if any, have been made by the Public Service Commission of the State of Missouri, or the effect of such orders, and do not know whether or not the plaintiffs have an adequate relief at law under the statutes of the State of Missouri, but deny that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against these defendants.

## XXVIII.

These defendants admit that the application to the Public Utilities Commission for the State of Kansas in 1912 resulted in no increase above 25 cents per thousand cubic feet, and that the application of April 9, 1915, resulted, on July 16, 1915, in an opinion that 28 cents per thousand cubic feet north of Montgomery county, Kansas, was sufficient, and that upon rehearing on December 10, 1915, permission was given the plaintiff receivers to put into effect the rates set out in Exhibit K attached to the bill of complaint, but deny that a majority of the Public Utilities Commission for the State of Kansas found such rates to be excessive.

## XXIX.

These defendants do not know what rates, if any, have been prescribed for the sale and distribution of gas in the State of Missouri by these plaintiffs, but allege that the rates permitted by the Public Utilities Commission for the State of Kansas to be filed by authority of its order of December 10 are just and reasonable and will yield plaintiffs a just and reasonable return upon their property used and useful and devoted to the public use in the supplying natural gas to their consumers in the State of Kansas, and do not in any way interfere with the possession and control of this court over property potentially in its charge and custody.

## XXX.

These defendants deny that the plaintiffs are without adequate remedy at law in the premises in the bill of complaint set forth, and deny that plaintiffs will suffer irreparable injury unless accorded the injunctive relief in the bill of complaint prayed for.

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## XXXI.

That the thirty-first subdivision of plaintiffs' bill of complaint consists of mere conclusions based upon previous averments of fact in

said bill of complaint, all of which have been fully answered by the defendants herein, and which the defendants specifically deny.

### XXXII.

These defendants allege that the allegations of the thirty-second subdivision of the bill of complaint, so far as the same relate to orders made by the Public Utilities Commission for the State of Kansas, are mere conclusions based upon allegations of fact theretofore made in such bill of complaint, all of which have been fully answered, but which these defendants now again specifically deny.

These defendants do not know what orders have been made by the Public Service Commission of the State of Missouri, or what is the power and authority of that Commission, or the effect upon the plaintiff receivers of any orders which it may have made, but deny that any orders which may have been made by such Public Service Commission are material to any cause of action presented in the bill of complaint against these defendants.

### XXXIII.

These defendants admit that the defendant distributing companies are furnishing gas to consumers in Kansas under contracts originally made with the Kansas Natural Gas Company, which contracts were assumed and adopted by the plaintiff receivers, and ever since their appointment the plaintiff receivers have been furnishing gas under the terms of such supply contracts; that such contracts were valid and binding in every respect and were entered into by all the parties with a full knowledge of all of the facts relating thereto, and that with careful and competent management the Kansas Natural Gas Company and the plaintiff receivers would have been and would now be fully able to supply all the gas which they may have been required to furnish under the terms of such contracts.

These defendants specifically deny that any of the defendant cities within the State of Kansas are attempting in any manner to establish the rates at which gas is to be sold within said cities, or establish and provide the rules and regulations governing the sale and distribution thereof, but allege the fact to be that the said distributing companies are the agents of the Kansas Natural Gas Company for the sale and distribution of said gas, and are under the control  
267 and supervision of the Public Utilities Commission for the State of Kansas.

The defendants are not informed and have no knowledge that any contracts between the Kansas Natural Gas Company and said distributing companies or any franchises granted by the defendant cities to said Kansas Natural Gas Company contain any provisions similar to those averred and set out in paragraph XXXIII of the plaintiffs' bill of complaint, or of which the same are typical; and further aver that if such provisions are contained in any of the said contracts or franchises that they are not sufficiently identified in



plaintiffs' bill of complaint to enable the defendants to determine the truth of said averments.

The defendants specifically ask that the plaintiffs be put upon their proof as to such allegations and to all of the other averments of fact in the thirty-third subdivision of the said bill of complaint.

### Third.

These defendants, having fully traversed and answered the bill of complaint filed herein, further answering, say:

#### I.

That in 1903 R. M. Snyder and associates formed a copartnership, known as the New York Oil and Gas Company, and acquired nearly 18,000 acres of gas leases, upon which they developed a supply of gas and secured a franchise to use the streets and alleys of Independence, Kan., to supply gas to the citizens thereof. During the same year said Snyder and associates obtained from the Consolidated Gas, Oil and Manufacturing Company and the Independence Gas Company, corporations then owning a plant for the sale and distribution of gas in the city of Independence, an option to buy said plant in Independence and some 80,000 acres of leases located principally in the counties of Montgomery and Chautauqua, in Kansas, paying for said option the sum of \$10,000. The full purchase price for said property was to be \$550,000. During the same year R. N. Barnsdall and James O'Neil acquired about 90,000 acres of leases and brought in some producing gas wells thereon, located principally in Allen, Neosho, Wilson and Labette counties, Kansas, and organized the Kansas Natural Gas Company.

In 1904 the said Barnsdall and Snyder and their associates consolidated their propositions and increased the stock of the Kansas Natural Gas Company from \$6,000,000 to \$12,000,000, and each group of associates transferred to the Kansas Natural Gas Company their various properties herein enumerated; the said Barnsdall and associates received for their property \$6,000,000 of the capital stock of the Kansas Natural Gas Company, and Snyder and his associates received the remaining \$6,000,000 of said capital stock. Said Snyder and associates received in addition thereto the sum of \$900,000 in money, \$540,000 of which was to be devoted to the payment of the balance of the purchase price of the properties of the Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company; that the \$900,000 paid to Snyder and his associates was realized from the sale of the first mortgage bonds of the Kansas Natural Gas Company; that the said Kansas Natural Gas Company thereafter acquired other leases, all of which said leases cost the said Kansas Natural Gas Company not to exceed \$4,100,000, and said sum includes the value of all material used in the wells; and these defendants allege that all of the said leaseholds in the aggregate have not, during the time herein mentioned, been worth to exceed \$4,000,000; that the value of the gas and oil mar-

keted from said leases during all the years from the organization of the Kansas Natural Gas Company up to December 31, 1914, was not in excess of \$6,652,944.83, and that the expenses in connection with the production of said oil and gas so sold from said leases was at least \$3,630,171.48.

That the Kansas City Pipe Line Company and the Marnet Mining Company are in fact subsidiary companies to the Kansas Natural Gas Company, and the property of the three companies is one contiguous whole and all used in producing and transporting natural gas from the Mid-Continent gas fields to the consumers within the States of Kansas and Missouri; that all of said property is in the actual possession and being operated by these plaintiff receivers as one property, and will be hereafter referred to as one property under the name of the Kansas Natural Gas Company. The following table shows the amount of capital stock and bonds issued by each of these three companies:

**Kansas Natural:**

Common stock .....	\$12,000,000
First-mortgage bonds .....	4,000,000
Second-mortgage bonds .....	4,000,000

**Kansas City Pipe Line Company:**

Stock .....	4,500,000
Bonds .....	4,745,000

**Marnet Mining Company:**

Stocks .....	2,500,000
Bonds .....	2,000,000
	<hr/>
	\$33,745,000

The statement shows that these companies have issued bonds of the face value of \$14,745,000, for which they received \$13,404,250. Of this amount \$1,035,000 was invested by the Kansas Natural Gas Company in the bonds of the Marnet Mining Company, leaving a balance of \$12,369,250 outside money actually received from the sale of said bonds.

Defendants allege that table 2 of Exhibit K of the bill of complaint is a statement showing the true and correct investment and property at the close of each year, together with the accrued depreciation and the net investment and division as between the transportation and production property of the said Kansas Natural Gas Company from the time it actually began business to December 31, 1914, a copy of which said table is herein set out for the convenience of the court.

## II.

These defendants further answer and allege that from the time the said Kansas Natural Gas Company began its business, April 10,

1904, to December 31, 1914, that its revenues derived from its business were ample and sufficient to properly amortize its transportation and production property, to adequately maintain the same, and afforded the said Kansas Natural Gas Company, above such proper depreciation and maintenance, a return of 11.32 per cent per annum on the entire investment in said properties, as is more fully shown by tables 3 and 4, set out in Exhibit K attached to plaintiffs' bill of complaint, and which for the convenience of the court are here set out.

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TABLE No. 2.—EXHIBIT K.

Kansas Natural Gas Company.

*Property Statement Showing the Investment and Property at the Close of Each Year, Together with Accrued Depreciation and Net Investment, and Divided as Between Transportation and Production Property.*

	Property account. Transportation.	Investment.	Less accrued depreciation at rate of 5.116% per annum. (Accumulated.)	Investment, less accrued depreciation each year.
July 1, 1905, \$6,357,478.32, half year—equals for 1 year .....				
1906 .....		\$3,178,739.16	\$162,624.30	\$3,016,114.86
1907 .....		6,919,980.31	516,650.49	6,403,329.82
1908 .....		7,081,176.07	878,923.46	6,202,252.61
1908 .....		9,266,149.14	1,352,979.65	7,913,169.49
1909 .....		9,642,505.22	1,846,290.22	7,796,215.00
1910 .....		11,506,458.47	2,434,960.61	9,071,497.86
1911 .....		11,601,907.18	3,028,514.17	8,573,393.01
1912 .....		11,723,851.33	3,628,306.39	8,095,544.94
1913 .....		11,823,096.29	4,233,175.98	7,589,920.31
1914 .....		11,926,812.97	4,843,207.33	7,083,605.64
Total for the period .....		\$94,670,676.14	\$22,925,632.60	\$71,745,043.54

## Production property.

July 1, 1905, half year—equals for 1 year

	Rate 11.70% per annum.	
1905	\$146,398.44	\$1,104,870.39
1906	467,143.94	2,274,270.53
1907	789,967.57	1,968,454.06
1908	1,120,083.11	1,402,287.00
1909	1,453,003.32	1,392,451.50
1910	1,869,480.70	1,090,155.02
1911	2,365,742.27	1,875,809.61
1912	2,854,173.64	1,320,453.46
1913	3,329,263.52	806,803.86
1914	3,820,550.45	*293,013.01
Total for the period	\$18,225,708.96	\$14,428,568.44
Total for the period combined	\$41,151,341.56	\$86,173,611.98
Add working capital, 91½ years at \$200,000 per year		1,900,000.00
Average investment per year for 91½ years		\$88,073,611.98
		9,270,906.50
		Present value.
		\$7,083,605.64
		*293,013.01
		\$7,376,618.65

Less accrued  
depreciation.

Investment.

1914.

Transportation	\$11,926,812.97	\$4,843,207.33
Production	4,113,563.46	3,820,550.45
Total	\$16,040,376.43	\$8,663,757.78

\*Covers cost of material in wells and that portion of warehouse stock assigned to production.

Table No. 3.—Kansas Natural Gas Company.

*Summary of Operations from the Beginning of Business April 15, 1904, to December 31, 1914.*

	Income.	Production.	Transportation and distribution.
Gas sales .....	\$30,629,066.07		\$30,629,066.07
Oil sales .....	166,261.94	\$166,261.94	
Dividends received from trustees' territory .....	462,890.73	462,890.73	
Gas produced (Table No. 2) .....	6,023,792.16	6,023,792.16	
Rents .....	27,523.19		27,523.19
Water .....	2,450.86		2,450.86
Profit on material sold .....	62,274.55		62,274.55
Total operating revenue .....	\$37,374,259.50	\$6,652,944.83	\$30,721,314.67
Operating Expenses:			
Gas purchased .....	\$3,438,596.90		\$3,438,596.90
Gas expenses, Oklahoma field (Table A in Appendix) ..	530,568.77	\$467,195.53	83,373.24
Gas produced (Table No. 2*) .....	6,023,792.16		6,023,792.16
Gas expenses and taxes (Table B in Appendix) .....	7,959,994.04	3,056,111.37	4,903,882.67
Uncollectible accounts; gas .....	344,302.85		344,302.85
Oil expense .....	104,690.73	104,690.73	
Taxes: Kansas City Pipe Line† .....	261,910.16	2,173.85	259,736.31
Maintaining organization: Kansas City Pipe Line .....	1,434.11		1,434.11
Taxes: Marnet Mining Co. ....	50,472.14		50,472.14
Maintaining organization: Marnet Mining Co. ....	4,362.05		4,362.05
Total operating expenses and taxes .....	\$18,740,123.91	\$3,630,171.48	\$15,109,952.43
Net operating income .....	\$18,634,135.59	\$3,022,773.35	\$15,611,362.24

\*For the purpose of this statement, this item is treated both as a revenue and expense.

†Divided on basis of 1914 taxes.

Table No. 3.—Continued.

Other Income:		Production.	Transportation and distribution.
Dividends .....	\$30,800.00	.....	.....
Interest .....	205,467.21	.....	.....
Profit on first mortgage bonds .....	53,798.75	.....	.....
Profit on second mortgage bonds .....	5,277.45	.....	.....
Sundry .....	5,773.44	.....	.....
Total other income .....	\$301,116.85	.....	.....
Total income .....	\$18,935,252.44	.....	.....
Deductions from Income:		.....	.....
Uncollectible accounts: financial .....	\$40,096.82	.....	.....
Interest on K. C. P. L. bonds .....	1,510,231.00	.....	.....
Interest on Marnet Mining Co. Bonds .....	220,083.50	.....	.....
Interest on Kansas Natural bonds .....	3,093,808.94	.....	.....
Interest on Kansas Natural debt .....	443,795.26	.....	.....
Bond expense .....	14,415.85	.....	.....
Premium on bonds purchased for sinking funds .....	214,364.03	.....	.....
Total deductions from income .....	\$5,536,796.40	.....	.....
Net corporate income .....	\$13,398,456.04	.....	.....



Table No. 4.—Kansas Natural Gas Company.

*Summary of Operations from Beginning of Business to December 31, 1914.*

	Total.	Production.	Transportation.
Net operating income (as shown by Table No. 3) .....	\$18,634,135.59	\$3,022,773.35	\$15,611,362.24
Less accrued depreciation (as shown by Table No. 1) . . .	8,663,757.78	3,820,550.45	4,843,207.33
Net operating income, less depreciation .....	9,970,377.81	797,777.10	10,768,154.91
Average net operating income per year for 9½ years. . . . .	1,049,513.40	.....	.....
Average annual investment (as shown by Table No. 1). . .	9,270,906.50	.....	.....
Which is equal to an average annual return on the investment of .....	11.32%	.....	.....

The capital was all supplied from the sale of bonds, or in other words, borrowed money, except a small amount from earnings, and the investors were willing to accept 6 per cent, as the money was borrowed at that rate. This company therefore had a surplus after paying 6 per cent on its investment as follows:

Net earnings .....	\$9,970,377.81	.....
6 per cent on \$88,073,611.98 .....	5,284,416.70	.....
Surplus .....	\$4,685,961.11	.....

## III.

These defendants, further answering, allege that the value of the property of the Kansas Natural Gas Company as a going concern in the hands of the plaintiff receivers, as found by the engineer of the Commission, on the 1st day of January, 1915, was \$8,994,811.03; that said valuation is made up of the production and transportation properties of the said Kansas Natural Gas Company; that the following items, which compose the production property of the said company, are as follows:

Wells .....	\$605,539.20
Leaseholds .....	1,126,359.34
Drilling and pulling tools .....	3,660.00
Warehouses, tools used in connection with wells....	56,379.53
Proper proportion of overhead expenses.....	119,205.39
Total deductions .....	\$1,911,205.39

273 That for a number of years the Kansas Natural Gas Company, and at the present time the receivers thereof, have purchased a large percentage of the gas sold and distributed by said gas company and receivers; that said plaintiff receivers are now purchasing at least 75 per cent of all gas transported and sold or distributed by them, and are producing from their said leases not to exceed 25 per cent of the gas so transported, sold or distributed.

These defendants allege that the value of said leases and wells is speculative and can not be definitely fixed, for the reason that should said wells on said leases become exhausted in the near future, then the value of said leases would be much less than the present value thereof assigned to them by the Commission's engineer; that should additional wells, furnishing considerable quantities of gas, be brought in in the near future, then the real value of said leases would be considerably greater than the said assigned value; and for these reasons these defendants allege that the said producing property in the hands of the said receivers should be separated from the total value of the property in the hands of said receivers, and that the said receivers should be allowed for the gas actually produced by them from said leases the same price which they are compelled to pay in the open market for gas; that by so dividing said property the value of said leases and wells is automatically, accurately and correctly fixed, and provides the plaintiffs at all times with a reasonable rate for the gas produced therefrom.

These defendants allege that the value of said wells, leaseholds, drilling and pumping tools, and warehouse tools used in connection with such wells, and a proper proportion of the overhead expense in the aggregate, was estimated by the engineer of the Public Utilities Commission for the State of Kansas to be \$1,911,205.39, as of January 1, 1915.

These defendants further allege that the Public Utilities Commis-

sion for the State of Kansas had no way of actually arriving at the true value of said leases, wells and other producing property other than as is herein explained, and therefore they assigned to it the estimated value placed thereon by the Commission's engineer, to wit, \$1,911,205.39, for the purposes of the aforesaid division between the transportation and production properties, and deducted that amount from the total value of said property as found by the said engineer.

274 These defendants further allege that the present fair and reasonable value of the property used and useful for the transportation and distribution of natural gas in both Kansas and Missouri, and now in the possession of the plaintiff receivers, was, on January 1, 1915, the amount found by the Commission's engineer, less the said value of the leaseholds and other producing property assigned by Commission's engineer, to wit, the sum of \$7,083,605.64.

These defendants had jurisdiction over only the property used in Kansas, and sought to provide only a reasonable return thereon to the receivers on such property as was used for supplying its consumers in Kansas, and that in order to accomplish this result it divided the value of the whole transportation property between Kansas and Missouri, as aforesaid, according to the uses made thereof in supplying the customers of the plaintiffs in the States of Kansas and Missouri. The method employed by these defendants in making such division is fully and completely set out in Table 1 of Exhibit K, attached to plaintiffs' bill of complaint, but which is for the convenience of the court herein set out.

That the fair value of the transportation property used in transporting gas from the places of production to consumers within the State of Kansas, as shown by said table, is \$3,221,379.49, which said amount these defendants allege is a fair value of the property in the possession of the plaintiff receivers used and useful in the supplying of gas to their customers within the State of Kansas, and amounts to 45.48 per cent of the value of the transportation property.

These defendants further allege that the said Kansas Natural Gas Company began making its investments in the year 1905, and continued making such investments up to January 1, 1915; that a fair average date of the total investment is January 1, 1907, and that the life of said transportation property, from the first day of January, 1915, is not less than 12 years in the field in which it is now employed, and the defendants allege that notwithstanding the uncertainty of the supply of gas in parts of the Mid-Continent field, the amount of gas now being transported through said transportation property and available for said purposes to the plaintiff receivers is not greatly diminished from the largest amount heretofore transported by them through said lines, and was greater in the year 1915 than in the year of 1914, and that the said Mid-Continent gas

TABLE I.—EXHIBIT K.

*Transportation and Distribution System Kansas Natural Gas Company, Kansas City Pipe Line Company, Marnet Mining Company,*

Division.	Total plant investment, present physical value.	Gas used in Kansas.	Per cent.	Gas used in Missouri.	Per cent.	Plant used in Kansas.	Plant used in Missouri.
Field .....	\$2,186,263.00	8,240,556	49.86	8,286,727	50.14	\$1,090,040.82	\$1,096,162.18
Southern Trunk, Main Line.....	470,988.35	131,183	40.13	1,389,215	59.87	189,007.62	281,980.73
Southern Trunk, Branch Lines.....	119,547.26	.....	.....	.....	.....	119,547.26	.....
Southern Trunk, Branch Lines.....	74,983.17	.....	.....	.....	.....	.....	74,983.17
Northern Trunk, Graham to Ottawa.....	2,191,219.59	5,433,451	44.96	6,897,512	55.04	985,172.33	1,206,047.26
Northern Trunk, meters, real estate, etc.....	22,073.56	.....	.....	.....	.....	22,073.56	.....
Northern Trunk, Branch Lines.....	90,410.62	.....	.....	.....	.....	90,410.62	.....
Northern Trunk, Ottawa to Kansas City.....	658,188.16	1,095,679	22.91	5,705,267	77.09	150,790.91	507,397.25
Northern Trunk, Ottawa to Kansas City, Branch Lines .....	18,000.45	.....	.....	.....	.....	15,114.55	3,551.90
Northern Trunk, Ottawa to Topeka "Y," Main Line .....	139,231.00	2,334,284	67.25	1,136,808	32.75	93,632.85	45,598.15
Northern Trunk, Ottawa to Topeka "Y," Branch Lines .....	3,458.42	.....	.....	.....	.....	3,458.42	.....
Northern Trunk, Topeka Branch .....	127,174.28	.....	.....	.....	.....	127,174.28	.....
Northern Trunk, Topeka "Y," to Atchison "Y," Main Line .....	273,502.85	1,232,722	52.02	1,136,808	47.98	142,276.18	131,226.67
Northern Trunk, Topeka "Y" to Atchison "Y," Branch Lines .....	15,565.97	.....	.....	.....	.....	15,565.97	.....
Atchison "Y" to St. Joseph, Mo.....	234,719.33	.....	.....	.....	.....	.....	234,719.33
Atchison "Y" to Atchison, Kan.....	65,856.19	.....	.....	.....	.....	65,856.19	.....
Joplin District .....	280,559.51	.....	.....	.....	.....	.....	280,559.51
Independence Distribution .....	83,835.38	.....	.....	.....	.....	83,835.38	.....
Elk City and Independence Supply .....	27,422.55	.....	.....	.....	.....	27,422.55	.....
Totals .....	\$7,083,045.64	.....	.....	.....	.....	\$3,221,379.49 Or 45.48%	\$3,862,226.15 Or 54.52%

276 field is being constantly developed and extended and its total production at the present time is greater than in the past, and its full extent and capacity for production is still unknown.

These defendants allege that the order of the Public Utilities Commission of December 10, 1915, is based upon the past history and present condition of said Mid-Continent gas field and is not predicated upon a speculative decrease in the production of the said Mid-Continent gas field, and that the said basis is the only legal, fair and certain method of fixing said values and rates; that said rates complained of by the plaintiff receivers in their said bill of complaint were not, and could not legally be fixed by these defendants for a specific number of years, but are based upon the conditions as they actually exist at the present time, and should other and different conditions prevail at some future time, as is predicted by plaintiffs in their bill of complaint, then it would become the duty of the defendant, the Public Utilities Commission for the State of Kansas, upon proper application, to fix rates applicable to that time and those conditions.

#### IV.

Plaintiff receivers in their bill of complaint rest their claim for the future needs of gas, their future operating expenses and maintenance, upon the amount of gas transported and sold by them during the year 1914, except that for the year 1916 they allege that they should be entitled to \$500,000 for the extension of their pipe lines into other gas fields, alleging that the same is a proper maintenance charge, but which these defendants allege to be a capital charge.

These defendants allege that during the year 1914, the plaintiffs transported and delivered to their consumers in the States of Kansas and Missouri 18,199,544 M. cu. ft., and said amount is fully shown by the following table:

Sold from field lines.....	678,717 M. cu. ft.
Used in compressor stations.....	1,409,413 "
Sold from main-line taps.....	277,838 "
Sold through dist. companies.....	15,833,576 "
Total .....	18,199,544 M. cu. ft.

277 That to supply the same amount of gas in the future as was supplied during the year 1914 these plaintiff receivers would not need to buy or produce in excess of 25,671,445 M. cu. ft., making allowance for all leakage and waste in the same per cents as alleged in plaintiffs' bill of complaint.

These defendants further allege that the plaintiff receivers during the first nine months of the year 1915 sold more gas than during the similar months for 1914 and at only a slight increase in cost, as is more fully shown in detail by the following table:

## Kansas Natural Gas Company.

*Comparative Statement of Business for Nine Months of 1915 with the Same Months of 1914.*

	1915.	1914.	Increase.	Decrease.
Gas sales .....	\$2,146,909.45	\$1,908,552.82	\$178,356.63	
Oil sales .....	9,761.14	37,968.26		\$28,207.12
Sundry .....	24,089.43	42,429.02		18,339.59
Total income .....	\$2,180,760.02	\$2,048,950.10	\$131,809.92	
Expenses:				
Gas purchased .....	\$752,162.04	\$554,820.40	\$197,341.64	
Operating expenses and taxes .....	524,380.73	515,688.40	8,692.33	
Oil expense .....	22,379.57	28,764.44		\$6,384.87
Receivership expense .....	3,571.05	44,933.07		41,362.02
Uncollectible accounts .....	17,467.81	14,912.60	2,555.21	
Total .....	\$1,319,961.20	\$1,159,118.91	\$160,842.29	
Net .....	860,798.82	889,831.19		\$29,032.37
Gas sales (M. cubic feet) .....	13,806,398	13,256,339	550,059	
Average price (cents) .....	15.65	14.85	.80	
Gas purchased (M. cubic feet) .....	14,983,109	10,910,444	4,072,665	
Average price (cents) * .....	5.02	5.09		.07

\*Includes expense Oklahoma field, which has been deducted from the expense of gas purchased and added to operating expense in other tables. This is not the actual price at the wells.

That the plaintiff receivers are able to purchase a sufficient quantity of gas at not to exceed four cents per thousand cubic feet at the wells, and that said receivers have not and are not paying for gas on the average to exceed four cents per thousand cubic feet at the wells, based upon the pressure at which said receivers sell gas to their consumers.

These defendants further answering allege that the total operating expenses of the said receivers of the Kansas Natural Gas Company's property for the year 1914 were \$841,289.88, but that said operating expenses included the sum of \$28,663.90 taxes paid by said receivers on a large sum of money on hand, which said sum has since been distributed under the so-called creditors' agreement, and that said sum so paid for taxes should be eliminated from an estimate for future operating expenses.

That the receivership expenses for the year 1914 were \$137,463.11, which, however, cover a period of more than two years and  
278 include the costs of expensive litigation, a large part of which said amount should not be allowed for future operating expenses.

These defendants allege that a reasonable amount for the services and expenses of said receivers and attorneys is not in excess of \$40,000 per annum.

These defendants allege that the total operating expenses and taxes, based on the same expenses for the year 1914, should not be in excess of \$812,625.98 per annum; that the total operating expenses of the entire plant operated in Oklahoma, Kansas and Missouri, including a proper allowance for gas purchased, treating the gas produced upon the company's leases the same as that purchased, is not in excess of \$1,936,794.67; that the total operating expense of the said plant after deducting therefrom the amount of expenses incurred directly in the production of gas, and in addition thereto a proper proportion of expense common to both the production and transportation, is not to exceed \$1,626,652.83, which said amount is the total expense of obtaining, transporting and distributing gas; that the said \$1,626,652.83 should be divided between Kansas and Missouri according to the use made of said property in transporting and delivering gas to plaintiffs' consumers within the States of Kansas and Missouri respectively.

That on this basis that portion of said expense which should be assigned to the State of Kansas would not exceed the sum of \$780,269.57, all of which said allegations in reference to said operating expenses is more fully shown by the following table:



## Kansas Natural Gas Company.

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*Summary of Expenses for the Year 1914, Showing a Division of Same as Between Production and Transportation and the Assignment of Transportation Expenses as Between Kansas and Missouri.*

	Total.	Production.	Transportation and distribution.	Kansas.	Missouri.
(1) Oklahoma field division .....	\$93,401.77	\$64,100.25	\$29,301.52	\$15,688.00	\$19,613.52
(2) Main line division .....	368,791.67	.....	368,791.67	161,101.98	207,689.69
(3) Field division .....	289,868.03	230,444.19	39,423.84	19,735.57	19,688.27
(4) Independence division .....	13,037.16	.....	13,037.16	13,037.16	.....
(4) Joplin division .....	22,693.58	.....	22,693.58	.....	22,693.58
(5) General division .....	38,823.77	7,545.40	31,288.37	13,682.40	17,605.97
Total operating expenses and taxes.....	\$812,625.98	\$302,089.84	\$510,536.14	\$223,245.11	\$287,291.03
(5) Receivership expenses .....	\$40,000.00	\$7,772.00	\$32,228.00	\$14,063.30	\$18,134.70
(6) Uncollectible gas accounts .....	12,555.07	.....	12,555.07	6,359.14	6,195.93
(6) Taxes, Kansas City Pipe Line.....	33,568.27	280.00	33,288.27	16,800.51	16,427.76
(6) Marnet Mining Company .....	10,497.35	.....	10,497.35	5,316.91	5,180.44
(6) Maintaining organization, Marnet Mining Company .....	680.20	.....	680.20	349.59	340.61
(7) Gas purchased and produced .....	1,026,857.80	.....	1,026,857.80	514,045.01	512,812.79
Grand total .....	\$1,936,794.67	\$310,141.84	\$1,626,652.83	\$780,269.57	\$846,383.26

(1) Complete details are given in Table C in the Appendix.

(2) Complete details are given in Table D in the Appendix.

(3) Complete details are given in Table E in the Appendix.

(4) Allocated direct.

(5) Divided on basis of preceding accounts and "gas purchased" included with expenses assigned to transportation. This assigns to production 19.43 per cent, and to transportation 80.57 per cent, divided between Kansas and Missouri on basis of preceding accounts.

(6) Allocated direct between production and transportation. Transportation expenses divided between Kansas and Missouri, on basis of all gas sold, compressor gas excluded, which assigns to Kansas 50.65 per cent and Missouri 49.35 per cent.

(7) Divided between Kansas and Missouri on the basis of all gas sold and used, compressor gas being divided on basis of use. This assigns to Kansas 50.06 per cent, Missouri 49.94 per cent.

## V.

280        These defendants further answering allege that the fair present value of the property in the possession and under the control of these receivers, and used and useful for transporting and distributing gas, as of January 1, 1915, is not in excess of \$7,083,-605.64.

That the fair life expectancy of said property is at least twelve years from said January 1, 1915; that the amount necessary to completely amortize the present value of the said plant during the said life expectancy is not to exceed \$590,300 per annum, which said amount should be divided between the States of Kansas and Missouri on the basis of the use of said property in transporting and distributing gas to the plaintiff receivers' customers within the said States of Kansas and Missouri; i. e., 45.48 per cent should be assigned to Kansas and 54.52 per cent should be assigned to Missouri, as is more fully set out in paragraph three of the third division of this answer.

That upon this basis the amount properly to be charged to the State of Kansas is not in excess of \$268,468.44 per annum.

These defendants allege that the total operating expenses and depreciation of said property properly assigned to Kansas is not in excess of \$1,048,738.01 per annum, as is more fully and completely shown by Table No. 5 of plaintiffs' Exhibit K, attached to said bill of complaint; that part of said table showing the same is, for the convenience of the court, herein set out, and is as follows:

Table No. 5.—Kansas Natural Gas Company.

*Statement of Estimated Revenue and Requirements for the Ensuing Year Based on 1914 Figures as Revised in the Foregoing Table, for the State of Kansas.*

Requirements.	Kansas.	
	Transportation.	
25,671,445 M cubic feet of gas at 4c .....	\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation .....	510,536.14	223,245.11
Receivership expenses .....	32,228.00	14,093.30
Uncollectible gas accounts .....	12,555.07	6,359.14
Taxes, Kansas City Pipe Line .....	33,288.27	16,800.51
Taxes, Marnet Mining Company .....	10,497.35	5,316.91
Maintaining organization, Marnet Mining Company .....	630.20	349.59
Total .....	\$1,626,652.83	\$780,269.57
*Present value of transportation property, \$7,083,605.64; depreciation on basis of 13 years .....	\$500,000.00	\$268,468.44
Requirements exclusive of a return on property investment .....	\$2,216,652.83	\$1,048,738.01

\*The division of these items between Kansas and Missouri has been made on the basis of the use of the property. A table showing complete details of the method and values used is given as Table 1, exhibit K. This division assigns to Kansas 45.48% and to Missouri 54.52%.

These defendants allege that the plaintiffs are entitled to a rate which will pay all necessary operating expenses and properly amortize the property under their control used and useful in transporting and distributing gas to their consumers within the State of Kansas during the life expectancy of said property and provide a reasonable return upon the fair value of the said property so used, and that the public should not be required to pay a higher rate.

These defendants allege that during the year 1914 these plaintiff receivers sold to their consumers within the State of Kansas (a small amount of gas used in compressor stations was treated as a sale) gas of the value of \$1,223,827.52 at the rates then in effect. On December 10, 1915, the Public Utilities Commission rendered its opinion and entered its order complained of by these plaintiff receivers in their bill of complaint.

Thereafter and on the 22d day of December, 1915, complainant receivers filed with the defendant, the Public Utilities Commission for the State of Kansas, the following schedule of rates and rules:

"Notice to Consumers and Distributing Companies:

"Take notice that on and after the December, 1915, meter readings, at or near the close of the month of December, after the filing of this schedule with the Public Utilities Commission, John M. Landon and R. S. Litchfield, as receivers of Kansas Natural Gas Company, and the distributing companies hereinafter named, will change the rates and joint rates for natural gas now in effect, and will thereafter charge and collect from domestic and gas engine consumers of natural gas at the several places hereinafter named, the following rates and joint rates, to wit:

282 City.	Company.	Present joint rate.	Changed joint rate.	Present minimum bill.	Changed minimum bill.
Independence, Kan.	K. N. G. Gas Co.	80.20	80.25	80.20	80.50
Elk City, Kan.	Elk City Oil and Gas Co.	.25	.25	.20	.50
Coffeyville, Kan.	Coffeyville Gas and Fuel Co.	.20	.25	.20	.50
Liberty, Kan.	Liberty Gas Co.	.25	.25	.25	.50
Altamont, Kan.	American Gas Co.	.25	.25	.25	.50
Oswego, Kan.	American Gas Co.	.25	.25	.25	.50
Columbus, Kan.	American Gas Co.	.25	.25	.25	.50
Scammon, Kan.	American Gas Co.	.25	.25	.25	.50
Weir City, Kan.	Weir City Gas Co.	.25	.25	.50	.50
Galena and Empire, Kan.	American Gas Co.	.25	.25	.25	.50
Cherokee, Kan.	American Gas Co.	.25	.25	.25	.50
Pittsburg, Kan.	Home Light, Heat and Power Co., Kansas and Electric Co., lessee	.25	.25	.25	.50
Parsons, Kan.	Parsons Gas Co.	.25	.25	.25	.50
Thayer, Kan.	O. A. Evans & Co. (Thayer Gas Plant)	.25	.25	.25	.50
Colony, Kan.	Union Gas and Traction Co.	.25	.25	.25	.50
Welda, Kan.	Union Gas and Traction Co.	.25	.25	.25	.50
Richmond, Kan.	Union Gas and Traction Co.	.25	.25	.25	.50
Princeton, Kan.	Union Gas and Traction Co.	.25	.25	.25	.50
Ottawa, Kan.	Ottawa Gas and Electric Co.	.25	.25	.25	.50
Baldwin, Kan.	Union Gas and Traction Co.	.25	.25	.25	.50

City.	Company.	Present joint rate.	Changed joint rate.	Present minimum bill.	Changed minimum bill.
Lawrence, Kan. ....	Citizens Light, Heat and Power Co. ....	.25	.28	...	.50
Topeka, Kan. ....	Consumers Light, Heat and Power Co. ....	.25	.28	...	.50
Fort Scott, Kan. ....	Fort Scott Gas and Electric Co. ....	.30	.30	...	.50
Moran, Kan. ....	Fort Scott and Nevada Light, Water, Heat and Power Co. ....	.30	.30	...	.50
Bronson, Kan. ....	Fort Scott and Nevada Light, Water, Heat and Power Co. ....	.30	.30	...	.50
Tonganoxie, Kan. ....	Tonganoxie Gas and Electric Co. ....	.25	.28	...	.50
Leavenworth, Kan. ....	Leavenworth Light, Heat and Power Co. ....	.25	.28	...	.50
Atchison, Kan. ....	Atchison Railway, Light and Power Co. ....	.25	.28	...	.50
Wellsville and LeLoup .....	Union Gas and Traction Co. ....	.25	.28	...	.50
Edgerton, Kan. ....	Union Gas and Traction Co. ....	.25	.28	.50	.50
Gardner, Kan. ....	Union Gas and Traction Co. ....	.25	.28	.50	.50
Lenexa, Kan. ....	Union Gas and Traction Co. ....	.25	.28	...	.50
Merriam and Shawnee, Kan. ....	Union Gas and Traction Co. ....	.25	.28	...	.50
Kansas City, Kan. ....	Wyandotte County Gas Company. ....	.25	.28	...	.50
Olathe, Kan. ....	Olathe Gas Co. ....	.25	.28	...	.50

" 'Boiler Gas' for use under boilers, for making steam for power purposes at ten cents (10c) per thousand cubic feet in Montgomery county, Kansas, and at twelve and one-half cents (12½c) per thousand cubic feet at all points in Kansas outside of Montgomery county; provided, that the receivers will supply boiler gas only when, in their judgment, such use will not affect the domestic service. Gas used for purposes or in a manner different than as herein provided, shall carry the domestic rate of the locality where used.

"Two cents per thousand cubic feet will be added to the bills, but shall be deducted from the bills of all consumers who pay their bills on or before the 10th day of the succeeding month in which the service is rendered.

"All gas heretofore furnished to any person, firm, corporation or municipality, without compensation, commonly called 'free gas' is discontinued, and all such users heretofore using 'free gas' shall be required to pay for gas furnished in the future for the uses for which said 'free gas' was used, at the domestic rate herein provided  
283     for the city or locality wherein such gas is used: Provided, that where gas is used for street lighting purposes, a charge will be made for one thousand cubic feet of gas per month for each lamp having a single burner where gas is turned off during daylight hours, and for two thousand cubic feet if left burning during the daylight hours; and a similar charge for each additional burner.

"The foregoing schedule of rates and joint rates is made and filed by said receivers under protest against the establishment and enforcement thereof, but in obedience to, in compliance with, and only because of the order of the Public Utilities Commission of Kansas, made and entered on the 10th day of December, 1915; the grounds for this protest are, that said order of the Public Utilities Commission of Kansas is null and void because the business conducted by said receivers in the States of Kansas, Oklahoma and Missouri is interstate commerce, and said order an attempted regulation thereof; that as to the gas produced in Kansas, said rates are inadequate, insufficient, unremunerative, noncompensatory, confiscatory, wrongful and unlawful, and will not yield sufficient revenue to pay a fair return on the property employed in said service, and will deprive said receivers and all persons having rights therein of property without due process of law, and imposes a burden upon the interstate commerce conducted by said receivers; that as to the gas produced in Oklahoma and sold in Kansas, such rates are inadequate, insufficient, unremunerative, noncompensatory, confiscatory, wrongful and unlawful, and the enforcement thereof an interference with interstate commerce.

JOHN M. LANDON,  
R. S. LITCHFIELD,

*Receivers for Kansas Natural Gas Co."*

Which said schedule of rates and rules on the 28th day of December, 1915, were approved by the defendant, the Public Utilities Commission for the State of Kansas, a copy of which said order is here set out for the convenience of the court:



"Be it Remembered: That on this 28th day of December, A. D. 1915, the application for approval of the schedule showing changes in rates and joint rates for natural gas supplied by John M. Landon and R. S. Litchfield, as receivers for Kansas Natural Gas Company, and of the rules and regulations therewith filed, came duly on for consideration and order by the Commission; and the Commission, upon consideration thereof, and being duly advised in the premises, finds that said schedule of rates and joint rates, as filed, and the rules and regulations therewith filed, should be approved, with the modification of one of said rules as hereinafter set forth.

284 "The Commission further finds that the proviso in relation to 'boiler gas' and its use should be modified so as to read as follows:

" 'Provided, that the receivers will supply boiler gas to all users thereof, upon application and without discrimination, only when, in their judgment, such use will not affect the domestic service.'

"It is therefore by the Commission considered and ordered: That the said schedule showing changes in rates and joint rates for natural gas supplied by John M. Landon and R. S. Litchfield, as receivers for Kansas Natural Gas Company, and the rules and regulations therewith filed, as above modified, be and they hereby are ratified, approved and confirmed.

"By order of the Commission.

CARL W. MOORE, *Secretary.*

"O. K.

JOSEPH L. BRISTOW,

JOHN M. KINKEL,

C. F. FOLEY,

*Commissioners."*

That under the rates so filed and now in effect these plaintiff receivers will receive for the same quantity of gas sold and delivered the sum of \$171,513.63 more than they received in 1914, or a total of \$1,385,341.15. After paying all necessary operating expenses and taxes, including the amount paid for gas and the amount necessary to properly amortize the property, these plaintiff receivers will have a net return upon their Kansas business of \$346,603.14, or 10.46 per cent, which is more fully shown by the latter part of Table 5 in Exhibit K attached to plaintiffs' bill of complaint, and which for the convenience of the court is herein set out:

*Estimated Revenue.*

Gas sales—1914 .....	\$1,192,089.82
Gas used in compressor stations (on basis of use) . . .	31,737.70
	<hr/>
	\$1,223,827.52
Estimated revenue from proposed increased rates. . . .	171,513.63
	<hr/>
Total estimated revenue from Kansas. . . . .	\$1,395,341.15
Deduct requirements as above. . . . .	1,048,738.01
	<hr/>
Estimated net revenue. . . . .	\$346,603.14
Which is equal to a return of. . . . .	10.46%
On the present value, \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,- 605.64, or—	
Total estimated revenue for Kansas. . . . .	\$1,395,341.15
Less requirements, including a 6% return. . . . .	1,247,493.01
	<hr/>
Surplus .....	\$147,848.14

285 These defendants allege that the rates authorized by the Public Utilities Commission for the State of Kansas in its order of December 10, 1915, and now in force and effect, yield these plaintiff receivers sufficient revenue to pay all necessary operating expenses, including the purchase of gas, to properly amortize the property and to pay a fair rate of return upon the value of the property used and useful and devoted to the public use by said receivers in the supplying of gas to their customers within the State of Kansas, and to provide a reasonable margin to meet any future unforeseen contingency.

## VII.

These defendants, further answering, allege that while the order of the Public Utilities Commission for the State of Kansas of December 10, 1915, and which plaintiff receivers are here attempting to set aside, is based upon the business of the said complainant receivers for the year 1914, but that the said complainant receivers, as is shown by the first nine months of their 1915 business, are able to purchase, transport and distribute a much larger quantity of gas than was purchased, transported and distributed by them during the year 1914, without materially increasing their said operating expenses, taxes and depreciation, and will be able to earn a much larger return than hereinbefore set out.

## VIII.

These defendants, further answering, allege that these plaintiff receivers have not properly and efficiently managed the said properties in their possession and under their control, but have wasted the revenues of the company in interminable and expensive lawsuits. The leaseholds have been exhausted, and they have neglected to make proper effort to obtain an additional supply of gas necessary to meet the demands of the company's markets. Leases that were available for them have been obtained by other companies operating in the same field. That said receivers are now failing and neglecting to secure an adequate quantity of gas to supply their customers.

These defendants allege that the rates authorized by the Public Utilities Commission in its said order of December 10 will produce more revenue to these plaintiff receivers than any higher rate; that

the present schedule of rates filed by the receivers under the  
286 authority of the said order of the Public Utilities Commission for the State of Kansas are reasonable and lawful and will prove themselves so to be if these receivers will in good faith operate the said plant in their possession and under their control for a reasonable length of time.

These defendants deny that the plaintiffs are entitled to any relief whatsoever, or any part of the relief in said bill of complaint demanded, and allege that the plaintiffs have no standing in this court or in any court of equity.

And defendants pray in all things the same benefit and advantages of this, *its* answer, as if *it* had moved to dismiss said bill of complaint, and that a hearing be granted them upon the issues of law arising upon the face of the bill of complaint, as set forth in the first division of this answer, and that the bill of complaint be dismissed as against these defendants.

Second, that should the bill of complaint not be dismissed as against these defendants before a final hearing of this cause these defendants pray that the bill of complaint be dismissed as against them, and that they go hence without day, and that they have judgment for their costs.

A. E. HELM,

*Commerce Counsel for the Public Utilities  
Commission for the State of Kansas.*

F. S. JACKSON,

*Special Attorney for the Public Utilities  
Commission for the State of Kansas.*

H. O. CASTER,

*Attorney for the Public Utilities Commis-  
sion for the State of Kansas.*

Filed in the District Court on March 10, 1916. Morton Albaugh,  
Clerk.

287 Exhibit A, being application of Public Utilities Commission of Kansas for writ of mandamus in State ex rel. v. Flannelly, No. 20,324, filed August 17, 1915, together with all exhibits thereto, is omitted.

Exhibit B, being Separate Answer of Landon and Litchfield, Receivers, in State ex rel. v. Flannelly, No. 20,324, filed August 17, 1915, together with all exhibits thereto, is omitted.

Exhibit C, being Opinion of Supreme Court of Kansas in State ex rel. v. Flannelly, No. 20,324 (96 Kan. 372) filed October 4, 1915, is omitted.

288 In the District Court of the United States for the District of Kansas, First Division.

Equity. No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of The Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Separate Answer of the Fidelity Title & Trust Company, One of Said Defendants, to the Plaintiffs' Bill of Complaint as Amended.*

Comes now The Fidelity Title & Trust Company, a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, and for answer to the plaintiffs' bill of complaint as amended, says:

## I.

This defendant admits all the matters and things set forth and alleged in the first, second, third and fourth separately numbered divisions of said bill of complaint as amended.

## II.

This defendant admits all the matters and things set forth and alleged in sub-division V of said plaintiffs' bill as amended, to be true, except the first paragraph thereof, wherein it is alleged that on the 17th day of December, 1914, all parties concerned in said suite pending in the Federal and State Courts entered into a certain agreement and stipulation, called the "Creditors' Agreement;"

289 and in answer to said paragraph this defendant alleges that neither it, nor John L. McKinney, the plaintiffs in suit numbered 1351, nor it as plaintiff in suit No. 1-N, referred to in said paragraph as pending in the Circuit Court, nor The Delaware Trust Company, as one of the defendants in said suit, entered into said

Creditors' Agreement, nor were they parties thereto, although this defendant admits that all the other parties mentioned entered into said agreement.

### III.

And this defendant, further answering said bill of complaint as amended, admits all the matters and things set forth and alleged in sub-division VI of said bill of complaint as amended, to be true.

### IV.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the truth of the allegations contained in sub-divisions VII, VIII and IX, of said bill of complaint, and therefore leaves the complainants to make such proof thereof as they may be advised is material.

### V.

This defendant says that it has been informed and believes the allegations and averments contained in sub-division X of said complainants' bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

### VI.

This defendant says that it has been informed and believes the allegations and averments contained in sub-division XI of  
290 said complainants' bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

### VII.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the allegations in sub-division XII of said complainants' bill of complaint as amended, and leaves the complainants to make such proof thereof as they may be advised is material.

### VIII.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the allegations in sub-division XIII of said complainants' bill of complaint as amended, and leaves the complainants to make such proof thereof as they may be advised is material.

### IX.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the allegations in sub-division XV

of said complainants' bill of complaint as amended, and leaves the complainants to make such proof thereof as they may be advised is material.

X.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XVI of  
291 said complainants' bill as amended, to be true, and therefore this defendant admits the truth thereof.

XI.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XVII of said complainants' bill as amended, to be true, and therefore this defendant admits the truth thereof.

XII.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XVIII of said complainants' bill as amended, to be true, and therefore this defendant admits the truth thereof.

XIII.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XIX of said complainants' bill as amended, to be true, and therefore this defendant admits the truth thereof.

XIV.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XX of said complainants' bill as amended, to be true, and therefore this defendant admits the truth thereof.

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XV.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the allegations in sub-division XXI of said complainants' bill of complaint as amended, and leaves the complainants to make such proof thereof as they may be advised is material.

XVI.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XXII of said complainants' bill as amended, to be true, and therefore this defendant admits the truth thereof.

## XVII.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XXIII of said complainants' bill of complaint, as amended, to be true, and therefore this defendant admits the truth thereof.

## XVIII.

This defendant says that it has been informed and believes the allegations and averments contained in sub-division XXIV of said complainants' bill as amended, to be true, and therefore this defendant admits the truth thereof.

## XIX.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the allegations in sub-division  
293 XXV of said complainants' bill as amended, and therefore leaves the complainants to make such proof thereof as they may be advised is material.

## XX.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the truth of the allegations contained in sub-division XXVI of said bill of complaint, and therefore leaves the complainants to make such proof thereof as they may be advised is material.

## XXI.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the truth of the allegations contained in sub-division XXVII of said bill of complaint as amended, and therefore leaves the complainants to make such proof thereof as they may be advised is material.

## XXII.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XXVIII of said complainants' bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

## XXIII.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XXIX of said com-



plainants' bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

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## XXIV.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XXX of said complainants' bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

## XXV.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XXXI of said complainants' bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

## XXVI.

This defendant says it has been informed and believes the allegations and averments contained in sub-division XXXII of said complainants' bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

## XXVII.

This defendant states that it has no knowledge, save as in said bill of complaint alleged, as to the truth of the allegations contained in the XXXIII sub-division of said bill of complaint, and therefore leaves the complainants to make such proof as they may be advised is material.

## XXVIII.

This defendant, further answering plaintiffs' bill of complaint, alleges that the only interest this defendant has in the matter in controversy is by reason of its being the Trustee in the Trust Deed executed by The Kansas Natural Gas Company, given to secure its First Mortgage Bonds, which Trust Deed is being foreclosed in the suit referred to by plaintiffs in their bill of complaint and in which this defendant is the complainant.

295 And this defendant submits that the bill of complaint in this suit is ancillary to and dependent upon said foreclosure suit, as well as dependent upon and ancillary to the suit wherein John L. McKinney is the complainant and in which this defendant is intervening complainant, in both of which suits George F. Sharritt, one of the defendants herein, is the duly qualified and acting Receiver of this Court for all the property of The Kansas Natural Gas Company in the State of Kansas and in the States of Oklahoma and Missouri.

Wherefore, the premises considered, this defendant prays the judgment and decree of this Court, granting the relief prayed for in plaintiff's bill of complaint, and that the defendants, The Public Utilities Commission of the State of Kansas, and The Public Service Commission of the State of Missouri, be enjoined from interfering with the plaintiff's putting into effect reasonable rates for the sale of gas in Kansas and Missouri until such time as some competent authority shall establish reasonable, remunerative and compensatory rates.

THE FIDELITY TITLE & TRUST COMPANY,  
By CHAS. BLOOD SMITH, *Its Solicitor*.

Filed in the District Court on April 4, 1916. Morton Albaugh,  
Clerk.

296 In the District Court of the United States for the District of  
Kansas, First Division.

Equity. No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of The Kansas  
Natural Gas Company, Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Separate Answer of George F. Sharritt, as Receiver of the Kansas  
Natural Gas Company, One of said Defendants, to Plaintiffs' Bill  
of Complaint as Amended.*

Comes now George F. Sharritt, as Receiver of The Kansas Natural  
Gas Company, and for answer to said plaintiff's bill of complaint as  
amended, says:

I.

This defendant saith he hath been informed and believes the  
allegations and averments contained in sub-division I of said plain-  
tiff's bill of complaint as amended to be true, and therefore this de-  
fendants admits the truth thereof.

II.

This defendant saith he hath been informed and believes the allega-  
tions and averments contained in sub-division II of said plaintiff's  
bill of complaint as amended to be true, and therefore this defendant  
admits the truth thereof.

This defendant saith he hath been informed and believes the allegations and averments contained in the sub-division III of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## IV.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division IV of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof, except as to the last paragraph of said sub-division, and in answer to the last paragraph of said sub-division this defendant says that while he admits that the said John M. Landon and R. S. Litchfield were appointed ancillary receivers as therein alleged, this defendant alleges that they thereupon became receivers with this defendant for all the property of The Kansas Natural Gas Company situated in the States of Oklahoma and Missouri.

## V.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division V of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof, except as to the first paragraph of said sub-division, wherein it is alleged that all parties concerned in the suits pending in the Federal and State courts were parties to the Creditors' Agreement referred to therein.

298 And this defendant, answering the first paragraph of said sub-division, says, that neither of the complainants in either of said suits in the Federal Court, or the defendant, The Delaware Trust Company, was a party to said Agreement, nor was this defendant a party thereto. In other respects, this defendant admits the truth of all the allegations in said sub-division V.

## VI.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division VI of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## VII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division VII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## VIII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division VIII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## IX.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division IX of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

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## X.

This defendant saith he hath been informed and believes the allegations and averments contained in the sub-division X of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XI.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XI of said plaintiff's bill of complaint to be true, and therefore this defendant admits the truth thereof.

## XII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XIII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XIII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XIV.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XIV of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XV.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XV of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XVI.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XVI of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XVII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XVII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XVIII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XVIII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XIX.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XIX of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XX.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XX of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXI.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXI of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXIII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXIII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXIV.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXIV of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

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## XXV.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXV of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXVI.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXVI of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXVII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXVII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXIX.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXVIII of plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXIX.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXIX of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

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## XXX.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXX of said plaintiff's bill of complaint as amended, to be true, and therefore this defendant admits the truth thereof.

## XXXI.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXI of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXXII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXXII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXXIII.

This defendant saith he hath been informed and believes the allegations and averments contained in sub-division XXXIII of said plaintiff's bill of complaint as amended to be true, and therefore this defendant admits the truth thereof.

## XXXIV.

And this defendant, further answering, states that he as Receiver of The Kansas Natural Gas Company, has an united interest with said plaintiffs in the subject-matter of controversy between the plaintiffs and The Public Utilities Commission of the State of Kansas and its attorneys and S. M. Brewster, as Attorney General of the State of Kansas, and The Public Service Commission of the State of Missouri and its attorneys and John T. Barker, as Attorney General of the State of Missouri, altho' this defendant refused to join  
304 with said plaintiffs in said bill and by reason thereof he was made a defendant thereto; that this defendant refers to the bill of complaint of said plaintiffs and adopts all the allegations thereof heretofore admitted in this answer to be true and makes the same a part of this, his counterclaim against the defendants, The



Public Utilities Commission of the State of Kansas and its attorneys, and S. M. Brewster as Attorney General of the State of Kansas, and The Public Service Commission of the State of Missouri and its attorneys, and John T. Barker as Attorney General of the State of Missouri, by reference thereto as if fully set out herein.

Wherefore, the premises considered, this defendant, George F. Sharritt, as Receiver of The Kansas Natural Gas Company, prays the judgment of this Court granting all the relief prayed for in plaintiff's bill of complaint herein, and that the defendants, and each of them, *by* restrained and enjoined from interfering with plaintiffs' putting into effect reasonable rates for the sale of gas in Kansas and Missouri until such time as some competent authority shall establish reasonably remunerative and compensatory rates; and this defendant will ever pray.

GEORGE F. SHARRITT,  
*Receiver of The Kansas Natural Gas Company,*  
By CHAS. BLOOD SMITH,  
*His Solicitor.*

Filed in the District Court on April 4, 1916. Morton Albaugh,  
Clerk.

305 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer and Counterclaim of Kansas City Gas Company.*

Now comes the defendant, Kansas City Gas Company, and in answer to the bill of complaint filed herein, avers and states the following facts, to-wit:

I.

Defendant admits the facts stated in paragraph numbered I of plaintiffs' bill of complaint.

II.

Defendant admits the statement of facts in paragraph numbered II of said bill, except the allegation that "the pipelines of the Kansas City Pipe Line Company are of little or no use unless they be operated in conjunction with the balance of the system of the Kansas

Natural Gas Company," as to which averment this defendant is without knowledge, and leaves plaintiffs to make such proof thereof as they may be advised is material.

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## III.

Defendant admits the statement of facts in paragraph numbered III of the bill.

## IV.

Defendant admits the statement of facts in paragraph numbered IV of the bill.

## V.

Defendant admits that on December 17, 1914, the stipulation or Creditors' Agreement attached to plaintiffs' bill was executed by the parties thereto, as stated in paragraph numbered V of the bill, and that natural gas is delivered to the consumers in Kansas City, Missouri, by this defendant as a distributing company under a written contract, and that the amount paid by the consumers for natural gas purchased, as measured by his meter, is divided between the plaintiffs and this defendant in payment of the services rendered by each according to the percentages set out in said contract, as alleged in paragraph V of the bill; as to the remaining averments thereof, this defendant is without knowledge and leaves plaintiffs to such proof as they may be advised is material.

## VI.

Defendant admits that on December 30, 1912, this Court, in the equity suits described in the plaintiffs' petition pending in this court, fixed a schedule of rates for the sale of gas at various points supplied by the Federal receivers then in charge of said property, and that said schedule provided for a price of 31 cents per thousand  
306½ cubic feet to this defendant at the city gates, and that this defendant was served with a copy of said order and a notice of such rates by said Federal receivers, and that said order was thereafter suspended as alleged in the plaintiffs' bill; as to the remaining averments of said paragraph, this defendant is without knowledge and leaves plaintiffs to such proof as they may be advised is material.

## VII.

Defendant is without knowledge of the facts averred in paragraph VII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## VIII.

Defendant is without knowledge of the facts averred in paragraph VIII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## IX.

Defendant is without knowledge of the facts averred in paragraph IX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## X.

Defendant is without knowledge of the facts averred in paragraph X of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

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## XI.

Defendant is without knowledge of the facts averred in paragraph XI of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XII.

Defendant is without knowledge of the facts averred in paragraph XII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XIII.

Defendant is without knowledge of the facts averred in paragraph XIII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XV.

Defendant is without knowledge of the facts averred in paragraph XV of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XVI.

Defendant is without knowledge of the facts averred in paragraph XVI of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XVII.

Defendant is without knowledge of the facts averred in paragraph XVII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

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## XVIII.

Defendant is without knowledge of the facts averred in paragraph XVIII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XIX.

Defendant is without knowledge of the facts averred in paragraph XIX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XX.

Defendant admits that the demands of the consumers are increasing in Kansas City, Missouri, and with such increased demand the problem of supplying the additional gas and also the amount heretofore furnished is a serious one; as to the remaining averments of paragraph XX, this defendant is without knowledge, and leaves plaintiffs to such proof as they may be advised is material.

## XXI.

Defendant is without knowledge of the facts averred in paragraph XXI of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXII.

Defendant is without knowledge of the facts averred in paragraph XXII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

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## XXIII.

Defendant admits that the present rates in effect in Kansas City, Missouri, are not reasonable, but are unremunerative, non-compensatory and confiscatory of the property of this defendant used and useful in the service of the public; as to their effect upon the property of plaintiffs, and as to the other averments of said paragraph numbered XXIII of the bill, this defendant is without knowledge, and therefore leaves plaintiffs to their proofs.

## XXIV.

Defendant is without knowledge of the facts averred in paragraph numbered XXIV of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXV.

Defendant admits the enactment of the act known as the Public Service Commission Act of the State of Missouri, as alleged in paragraph numbered XXV of the plaintiffs' bill of complaint; and avers upon information and belief and advice of counsel that the rates and business of this defendant are under the supervision, regulation and control of the Public Service Commission of the State of Missouri as provided in said act.

## XXVI.

Defendant is without knowledge of the facts averred in paragraph numbered XXVI of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

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## XXVII.

Defendant is without knowledge of the facts averred in paragraph numbered XXVII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXVIII.

Defendant is without knowledge of the facts averred in paragraph numbered XXVIII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXIX.

Defendant is without knowledge of the facts averred in paragraph numbered XXIX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXX.

Defendant is without knowledge of the facts averred in paragraph numbered XXX of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXXI.

Defendant admits that the rates and prices in effect in Kansas City, Missouri, upon the volume of gas supplied and furnished to it by plaintiffs, are non-compensatory and confiscatory of the property of this defendant used and useful in the service of the public  
311 in the distribution and sale of natural gas; as to the remaining averments of paragraph numbered XXXI of the bill, this defendant is without knowledge, and therefore leaves plaintiffs to their proper proofs.

## XXXII.

Defendant is without knowledge of the facts averred in paragraph numbered XXXII of the bill, and therefore leaves plaintiffs to such proof as they may be advised is material.

## XXXIII.

Defendant admits the statement of facts in paragraph numbered XXXIII of the bill; except that, whether the contracts referred to therein are improvident, wasteful and destructive of the estate in the custody of the courts, and whether said contracts are a legal and equitable fraud upon the rights of the creditors of the Kansas Natural Gas Company, and whether said contracts have never been adopted by the plaintiffs, this defendant is without knowledge, and therefore leaves plaintiffs to their proofs; but defendant avers that the supply-contract existing between this defendant and the Kansas Natural Gas Company for the supply of natural gas to this defendant has never been disavowed and never was fraudulent in law or in fact.

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## XXXIV.

1. Defendant, Kansas City Gas Company, further states that it has an interest in the subject of the action arising out of the transactions which are the subject matter of the plaintiffs' suit set forth in the bill of complaint; that it also has an interest adverse to the plaintiffs and to certain defendants therein necessary to a proper and complete determination of the cause; and for its counterclaim against the plaintiffs and the defendants, Kansas Natural Gas Company, and George F. Sharitt, Receiver of the Kansas Natural Gas Company appointed by this Court, states the following facts, to-wit:

2. That the defendant, Kansas City Gas Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Missouri; and is engaged in the business of distributing and selling natural gas to the City of Kansas City, Missouri, and its inhabitants, under and pursuant to the following described ordinance of said city granting the use of the public streets for such purpose.

3. That on or about September 27, 1906, the mayor and common council of Kansas City, Missouri, duly passed, approved and caused to be published ordinance No. 33887 of said city, entitled: "An ordinance authorizing Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, to lay, acquire and maintain pipes in Kansas City, for the purpose of supplying natural gas to said city and its inhabitants"; that said ordinance and the franchises, rights and privileges therein granted was thereafter duly accepted by the grantees and has been since duly assigned, sold, transferred and conveyed to the Kansas City Gas Company, and said company is now the owner and holder of said ordinance and all the franchises, rights

and privileges therein granted; a true and correct copy thereof being hereto attached, marked Exhibit "A," and made a part hereof.

4. That said franchise provides that natural gas shall be furnished, delivered and sold for all public and private purposes, meaning thereby lighting, cooking, domestic heating, industrial and power, boiler, manufacturing and street lighting purposes; that the general domestic rates should commence at 25 cents per thousand cubic feet and increase from time to time to 30 cents per thousand cubic feet; and that the rates and charges for natural gas furnished and sold for power, boiler and manufacturing purposes should be determined from time to time by "special contracts" conditioned upon the contract rates of consumers in other communities similarly situated; that for the purpose of supplying and distributing natural gas to said city and its inhabitants, the grantees, their successors and assigns, were "authorized to acquire the ownership or use or control, by purchase, lease, agreement or otherwise, of the pipes and property of the Kansas City, Missouri, Gas Company, the consent of the city being hereby given to said company, its successors and assigns, to make such transfer, lease or disposition of its pipes or property to the grantees, and during the time the pipes and property of said company shall be in the possession or under the control of the grantees, said company, its successors and assigns, shall be relieved of any obligation to supply manufactured gas."

5. That said ordinance, in section 20 thereof, contained the following provisions:

"And grantees covenant that their contract for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (corporations), that under the terms thereof, after two years from the time natural gas is first furnished to Kansas City thereunder, the division of the gross income received for said gas between the distributing company and the supply company shall be in the proportion of thirty-seven and one-half cents out of each dollar to the former, and sixty-two and one-half cents to the latter; and covenant for themselves, their successors and assigns, that none of the terms of that contract agreement shall be changed without consent of Kansas City expressed by ordinance; and grantees agree for themselves, their successors and assigns, that if Kansas City shall acquire said plant and property they will on demand transfer free of cost to Kansas City all their rights under said contract; and grantees further agree to procure from said two corporations and file with the City Clerk within ninety days from the time this ordinance becomes a law, a written agreement in form to be approved by the City Counselor, agreeing that they (said two corporations) will, if Kansas City shall acquire said plant as aforesaid, upon demand, furnish and continue to furnish during the remaining period of this franchise gas to Kansas City on the same terms as they have agreed to furnish it to the grantees, their successors and assigns. If said proposed within agreement to be made by said two corporations is not filed with the City Clerk within the time specified this ordinance shall be null and void."

6. That said supply-contract has been approved by the city coun-



selor in the manner provided for, and all the terms and provisions of said section above quoted have been complied with; and by reason thereof, this defendant cannot consent to any modification, alteration or change in said supply-contract without the consent and approval of the corporate authorities of Kansas City, Missouri, which has not been obtained.

7. That this defendant obtains its natural gas from the Kansas Natural Gas Company and its Receivers under and pursuant to certain contracts in writing above referred to in said ordinance, dated November 17, 1906, and December 3, 1906, between the Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, party of the first part, and Hugh J. McGowan, Charles E. Small and Randal Morgan, parties of the second part; which said contracts have been duly assigned, sold and transferred by the party of the first part to the Kansas Natural Gas Company and the obligations thereof assumed by said company, and by the parties of the second part to the Kansas City Gas Company; true and correct copies of said contracts being hereto attached, marked Exhibits "B" and "C," respectively, and made a part hereof.

8. That before the Kansas Natural Gas Company went into the hands of receivers, it supplied gas under said contracts to this defendant, and ever since then the receivers of said Kansas Natural Gas Company have continued to supply this defendant with gas under said contracts, and said contracts have never been disavowed.

9. Defendant, Kansas City Gas Company, states and shows to the Court that the whole project, plan and scheme and undertaking of the natural gas business of plaintiffs and this defendant originally contemplated, undertook and provided for the furnishing and supply by the Kansas Natural Gas Company and the distribution and sale by the Kansas City Gas Company of natural gas for three purposes, to-wit: First, lighting and cooking; second, domestic heating; third, boiler, power and manufacturing purposes; that the transportation lines and system of the Kansas Natural Gas Company and the distribution system of the Kansas City Gas Company were designed, planned and constructed to that end; that the aforesaid franchise granted by the City of Kansas City, Missouri, to the predecessors of the Kansas City Gas Company contemplated and provided for the sale of natural gas for all public and private uses, including the purposes aforesaid; that said franchise purported to fix a schedule of rates for domestic lighting, cooking and heating, and provided for the sale of said gas for boiler, power and manufacturing purposes at special contract rates.

10. That the aforesaid supply-contracts existing between the Kansas City Gas Company and the Kansas Natural Gas Company and its Receivers contemplated and provided for the furnishing, distribution and sale of said natural gas for said three purposes, and made specific reference to said franchise ordinance and the provisions thereof for the sale of natural gas for all public and private purposes, including the three general purposes aforesaid; that said contracts set forth that the Kansas Natural Gas Company and its associates were the owners of gas-lands and leases in the gas belt of Kansas and

a pipe-line for the conveying of natural gas from said fields to the city of Kansas City, Missouri, and that it was desirous of entering into contract with the predecessors of the Kansas City Gas Company for the transportation and supply of natural gas to said company and its predecessors; that said McGowan, Small and Morgan were the owners of the aforesaid franchise ordinance in Kansas City, Missouri, granting the use of the public streets for the distribution of natural gas, said ordinance being referred to in said supply-contract marked Exhibit "1," and made a part thereof.

11. That said supply-contracts further provided:

"1. The party of the first part hereby agrees that it will, during the period of such ordinance, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties of the second part, or of their property, supply and deliver through its said pipe line or lines, to said parties of the second part or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned.

However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city at lower rates than those specified in said ordinance.

In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufactur-

ers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent of such gross receipts."

12. Defendant avers that the franchise ordinance No. 33887 of the city of Kansas City, Missouri, aforesaid, specifically referred to the source of supply and the contracts now existing between the Kansas City Gas Company and the Kansas Natural Gas Company for the transportation and supply of natural gas; and that said supply-contracts referred to and exhibited said ordinance No. 33887 of Kansas City, Missouri; and that by reason thereof, said supply-contracts and said ordinance must be read and construed together as constituting

the agreement between the parties relative to the furnishing  
319 and supplying of natural gas and the purposes therefor, and that as so read and construed, the said Kansas Natural Gas

Company contracted, agreed and undertook to supply, furnish and deliver to McGowan, Small and Morgan, Grantees, and their successors and assigns, the Kansas City Gas Company, the City of Kansas City, Missouri, consenting and agreeing thereto, natural gas for public and private use, including all lighting, cooking, domestic heating, industrial and power, boiler and manufacturing purposes, during the period of said franchise and "at a pressure of twenty pounds at the point of delivery," "at or near the city limits of Kansas City, Missouri," and "in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract."

13. Defendant further states and shows to the Court that at a very early point in the history of the natural gas business the Kansas Natural Gas Company failed and defaulted in its undertaking to furnish to this defendant, the Kansas City Gas Company, a sufficient supply of gas to be sold on special rate contracts for power, boiler and manufacturing purposes, as aforesaid; that soon thereafter said company commenced to fail and default in furnishing a sufficient quantity of natural gas and at sufficient pressure to fully supply the demand for domestic heating purposes; that such failure and default has continued and increased in amount and duration from winter to winter from 1910-11 to the present time; that in the year 1910, the Kansas City Gas Company was supplied by said Kansas Natural Gas Company, and thereby enabled to deliver and sell 970,389 thousand  
320 cubic feet of gas for boiler, power and manufacturing purposes; that the supply for such purposes decreased from time to time until 1913, after which time this defendant has r

ceived and been permitted to sell no power, boiler or manufacturing gas whatever; that in the winter of 1910-11 this defendant was furnished by the Kansas Natural and thereby enabled to sell 55 million cubic feet of natural gas per day on maximum demand days; that the decrease and diminution in supply has continued until the present winter of 1915-16, when this defendant is receiving and is therefore enabled to furnish and sell only 16 million cubic feet of gas a day on maximum demand days; that the demand for such natural gas is very great and the number of consumers applying and meters installed is constantly increasing and the supply of natural gas by the Kansas Natural Gas Company and its Receivers is constantly waning, and the pressure maintained and the amount of natural gas available is so unstable and unreliable that domestic heating stoves, furnaces and ranges, and industrial and cooking establishments have in very large part at this time ceased to use said natural gas.

14. That the amount of natural gas furnished by the Kansas Natural Gas Company and its Receivers from year to year since the beginning of the natural gas business, for manufacturing, boiler and power purposes sold at special contract rates by the Kansas City Gas Company, and the price per thousand cubic feet, and the gross receipts therefor, and the net income therefrom to the Kansas City Gas Company is shown by the following table:

321

*Table.*

Year.	M. c. f.	Rate.	Gross receipts.	Net income.
1908....	700,374	1st 200 M 25¢	\$ 99,072.41	\$37,152.15
1909....	923,834		122,386.54	45,894.95
1910....	970,389	balance	123,042.42	46,140.91
1911....	673,913		87,980.20	32,992.57
1912....	382,981	10¢	44,177.89	16,566.71
1913....	110,984	12½¢	13,872.96	5,202.36
1914....	None.			
1915....	None.			
1916....	None.			

15. That the amount of natural gas furnished by the Kansas Natural Gas Company and its Receivers from year to year since the beginning of the natural gas business, for domestic purposes, sold by the Kansas City Gas Company, and the price per thousand cubic feet, the gross receipts therefor and the net income therefrom to the Kansas City Gas Company is shown by the following table:

Table.

Year.	M c. f.	Rate.	Gross rec'ts.	Net Income.
1908. . . . .	5,976,282	25¢	\$1,516,490.11	\$568,683.79
1909. . . . .	6,646,971	25¢	1,687,339.84	640,686.49
1910. . . . .	7,542,566	25¢	1,912,718.04	717,269.26
1911. . . . .	8,133,396	25¢ & 27¢	2,077,946.43	779,229.91
1912. . . . .	7,360,654	27¢	2,026,309.35	759,866.00
1913. . . . .	6,068,942	27¢	1,678,115.45	629,293.29
1914. . . . .	5,657,635	27¢	1,568,740.37	588,281.01
1915. . . . .	6,154,177	27¢	1,702,201.65	638,325.62

322      The sales per meter of domestic gas and income per meter for the various years is as follows:

Year.	Gas in c. f.	Cash.
1908. . . . .	148,452	\$37.11
1909. . . . .	149,919	37.47
1910. . . . .	156,872	39.17
1911. . . . .	156,544	39.36
1912. . . . .	134,325	36.62
1913. . . . .	108,666	29.74
1914. . . . .	97,030	26.61
1915. . . . .	102,207	27.93

And for domestic and manufacturing purposes, the receipts per meter were as follows:

Year.	Cash.
1908. . . . .	\$38.84
1909. . . . .	39.55
1910. . . . .	41.34
1911. . . . .	41.13
1912. . . . .	37.80
1913. . . . .	30.30
1914. . . . .	26.61
1915. . . . .	27.93

16. Defendant avers that by reason of the premises it has lost all of its power, boiler and manufacturing gas business; that it has lost the major portion of its domestic heating and furnace gas business, and that it has lost a very considerable part of its domestic lighting and cooking business; all by reason of the failure and default of the

323      Kansas Natural Gas Company and its Receivers to furnish, supply and deliver to the Kansas City Gas Company an adequate and sufficient supply of gas to meet the demands of its consumers, as per the terms, conditions and provisions of said supply-contracts and said franchise referred to therein and made a part thereof.

17. Defendant further avers that the volume of business obtainable and done by it upon the supply of natural gas furnished by the Kansas Natural Gas Company and its Receivers is wholly inadequate and insufficient to afford a fair return upon the reasonable value of defendant's property used and useful in the service of the public at the rates and charges now in force in said city; that said supply-contracts were entered into and said franchise accepted, and the domestic rates therein set forth were put into effect and undertaken by this defendant, upon the representations and inducement of the Kansas Natural Gas Company and its associates and upon the supply-contracts aforesaid, that said Company and its associates and their successors and assigns, including the Receivers, plaintiff herein, would at all times furnish an adequate and sufficient supply of natural gas to enable this defendant to furnish, distribute and sell the same in sufficient quantities for all proper and efficient lighting, cooking, domestic heating, furnace, industrial and power, boiler and manufacturing purposes; that by reason of the failure and default of said company and its Receivers so to do this defendant has heretofore and is now sustaining great and irreparable loss and damage; that it is being subjected to continuous and repeated criticisms, public assaults by the press and derogatory and damaging statements incurring public disfavor and ill-will; that its income from the limited sales and insufficient supply of gas is little more than 323¼ enough to pay current operating expenses and taxes, with nothing for renewal reserve for depreciation, or for interest and business profits.

18. Defendant further avers that the Kansas Natural transportation system is so constructed, maintained and operated that, in periods of extreme cold weather when the demand for heating and furnace gas is very great, the numerous other cities and distributing companies on said system receive from the mains of the Kansas Natural Gas Company a far greater proportion of the total supply available than they do in moderate weather; that by reason thereof, there is but little natural gas left for this defendant in proportion to the number of meters in use in the other cities compared with the number of meters in use in the city of Kansas City, Missouri; that by reason thereof, the returns from the domestic meters in use in said other cities in the year 1915 ran as high as \$37.50 per year in some cases, while the returns from the meters in Kansas City, Missouri, due to shortage and inadequate service, as aforesaid, amounted to only \$27.93 per year in 1915, resulting in an inequitable apportionment and distribution of the available supply of natural gas, and preferential and discriminatory service in favor of the consumers in other cities as against the consumers in Kansas City, Missouri.

19. A table showing the number of meters in use, the sales per meter, the rate and the return per meter during the year 1914 in the various cities on the system of the Kansas Natural Gas Company is as follows:

323<sup>1</sup>/<sub>2</sub>

Table

City.	Number of meters.	Sales per meter.	Rate.	Return per meter.
Joplin .....	5,517	112,000	25¢	\$28.00
Leavenworth .....	3,543	113,000	25¢	28.25
Lawrence .....	3,432	139,000	25¢	35.00
Topeka .....	11,241	90,000	25¢	22.50
Parsons .....	3,367	147,000	25¢	37.75
Atchison .....	2,524	105,000	25¢	26.25
Kansas City, Missouri	58,381	97,030	27¢	26.61

20. That when natural gas was supplied in sufficient quantities to meet the demands of the consumers on the whole system, including Kansas City, Missouri, the consumption in Kansas City, Missouri, per meter, was substantially the same, if not greater, than in the other cities.

21. Defendant further avers that the Kansas Natural Gas Company and its Receivers have sold and continue to sell power, boiler and manufacturing gas at special contract rates in other cities in southeastern Kansas and southwestern Missouri since they have refused to permit this defendant to so sell power, boiler and manufacturing gas in Kansas City, Missouri; that by reason thereof, the net returns and income of this defendant have been greatly diminished and reduced and this defendant has been discriminated against in favor of other companies, cities, localities and consumers in that respect.

324 22. Defendant further states and shows to the Court that the Kansas Natural Gas Company and its Receivers have from time to time held out inducements and promises to this defendant that they would furnish a better, increased and more efficient and sufficient supply of natural gas; that by reason thereof, this defendant has borne and endured the losses in income, criticisms and damages aforesaid, but can no longer afford so to do, for the reason that this defendant is entitled in law and in equity and under existing contracts and franchises to demand and earn just compensation and fair returns upon its property used and useful in the service of the public.

23. Defendant further avers that this defendant never agreed nor undertook to furnish natural gas during the whole term of the aforesaid franchise ordinance No. 33887, but on the contrary, it was foreseen, contemplated and provided in said franchise ordinance that there might and in all probability would be, before the end of the term of said franchise, a final failure and end to the supply of natural gas, as follows:

"Should the supply of natural gas, obtainable by the grantees reasonably accessible, be at any time hereafter during the life of this ordinance inadequate to warrant them in continuing to supply



natural gas under the terms of this ordinance, \* \* \* they shall not be longer required to do so."

24. That at the time said natural gas franchise ordinance was passed and accepted it was a matter of common knowledge that said natural gas must be transported from the Mid-Continent field in eastern Kansas or from more distant points; that the grantees of said franchise must obtain natural gas by purchase or contract from some

transportation company carrying natural gas from said field;  
325 that said grantees and their assignee, the Kansas City Gas Company, would be wholly dependent upon said supply company, and that they could not, on their own account, contract or undertake to furnish a supply of natural gas for the term of said franchise or for any given period of time at any given rates; that by reason thereof, said supply-contracts specifically provided that:

"However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying."

25. That said supply-contracts were referred to and made a part of said franchise-ordinance No. 33887, and said franchise-ordinance was referred to and made a part of said supply-contracts; that by reason thereof, the City of Kansas City, Missouri, is a party and privy in contract with the Kansas Natural Gas Company in said supply-contracts.

26. That said contracts and franchise were construed by the United States District Court for the Western District of Missouri in the case of Kansas City Gas Co. v. Kansas City et al., 198 Fed. 500, in a suit prosecuted by said City to force the Kansas City Gas Company to furnish more gas and at a higher pressure, wherein the Court said:

"The gas franchise or contract between the city and the gas company does not require the gas company to furnish gas in all desired quantities at all times or under all conditions. Natural gas is more or less elusive, unstable and uncertain. It is produced by nature in indeterminate quantities, not by man according to fixed or controllable laws of production, and if the supply of natural gas fails,

that would constitute a defense for the gas company if it  
326 has made all efforts to furnish the gas. Its situation is different from that of a company supplying artificial gas."

27. In the opinion the Court pointed out that the Kansas City Gas Company "does not control its source of supply"; that its supply is from the Kansas Natural Gas Company, "a distinct corporation with which it has a contract," referring to the contracts hereto attached; that said supply-contract was referred to in said ordinance; that "it was expressly approved by the city's legal department," and that the city was bound by the terms, conditions and provisions thereof.

28. That said contracts and ordinances were again construed by the Supreme Court of the State of Missouri in the case of *State ex inf. v. Kansas City Gas Co.*, 254 Mo. 533, wherein it was held that the Kansas City Gas Company is not a transportation company obligated to furnish and supply natural gas, but a "natural gas distributing corporation," and its duty extends only to distributing such natural gas as may be furnished it by the Kansas Natural Gas Company. In the opinion, the Court said:

"A possible failure of natural gas in accessible regions, with a return to the use of artificial gas, was contemplated, or at least provided for in such contingency."

29. Defendant states that it is ready, willing and able to distribute all the natural gas demanded by its consumers that said Kansas Natural Gas Company and its receivers will furnish and deliver to it at the corporate limits of Kansas City, Missouri, as provided for in said supply-contracts; that it is not warranted and can no longer afford to distribute and sell the limited, insufficient and inadequate supply of natural gas furnished and delivered to it by the Kansas Natural Gas Company and the plaintiffs.

327 30. Defendant avers that by reason of the premises, the Kansas Natural Gas Company and its Receivers should be required by this Honorable Court to furnish an adequate and sufficient supply of natural gas for all the purposes contemplated and provided for in said supply-contracts and the ordinance made a part thereof by reference, to-wit: lighting, cooking, domestic heating, industrial and power, boiler and manufacturing purposes; and to discontinue and prevent the discrimination against this defendant as to the quantity of gas apportioned and supplied to it as aforesaid.

31. Defendant further states and avers that it has no other plain, adequate, full and complete remedy at law; that its rights and interests are embraced and involved in the cause of action set forth in the plaintiffs' bill of complaint; that it has an interest in the subject of the action and the relief demanded, and that it has an interest adverse to the plaintiffs and certain of the defendants, and that a decision of its rights is necessary to a complete determination of the cause set forth in the plaintiffs' bill; and by reason thereof, this defendant files this, its answer and counterclaim in this Honorable Court where alone full, adequate and equitable relief can be had.

Wherefore, the premises considered, the defendant, Kansas City Gas Company, prays this Honorable Court that the plaintiffs, the Kansas Natural Gas Company and the defendant, George F. Sharitt, as Receiver of the Kansas Natural Gas Company, be ordered and required to furnish, supply and deliver to this defendant at 328 or near the corporate limits of Kansas City, Missouri, at a pressure of twenty pounds, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in said contract and the franchise made a part thereof by reference, to-wit: for lighting, cooking, domestic heating, power, boiler and manufacturing purposes; and for a uniform and

equitable apportionment and distribution of said gas; and for such other and further relief as to this Honorable Court may seem equitable and just; and for its costs herein expended.

(Signed)

CHARLES E. SMALL,

(Signed)

J. W. DANA,

*Solicitors of Kansas City Gas Company.*

STATE OF MISSOURI,

*County of Jackson, ss:*

E. L. Brundrett, being first duly sworn, deposes and says that he is the President of the Kansas City Gas Company; that he has read and knows the facts set forth in the foregoing Answer and Counterclaim, and that the statements of fact therein made and contained are true, except such as are stated on information and belief, and as to such this affiant believes them to be true; and further affiant saith not.

(Signed)

E. L. BRUNDRETT.

Subscribed and sworn to before me this 26th day of April, 1916.

(Signed)

WILLIAM SHELDON McCARTHY,

[SEAL.]

*Notary Public.*

My Commission expires Jany. 16th, 1918.

Filed in the District Court on April 27, 1916. Morton Albaugh,  
Clerk.

329 Exhibit A, being Ordinance No. 33887 of Kansas City, Missouri, "Natural gas franchise" dated 9/27/06, is omitted.

Exhibit B, being gas-supply-contract between The Kansas City Pipe Line Company and McGowan, Small & Morgan, dated 11/17/06, is omitted.

Exhibit C, being gas-supply-contract between The Kansas City Pipe Line Company and McGowan, Small & Morgan, dated 12/3/06, is omitted.

330 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of Defendants John T. Barker, Attorney-General of the State  
of Missouri; William G. Busby, Counsel of the Public Service  
Commission of the State of Missouri; The Public Service Commission  
of the State of Missouri, and John M. Atkinson, Edwin J. Bean,  
John Kennish, Howard B. Shaw, and Eugene McQuillin, Mem-  
bers of the Public Service Commission of the State of Mis-  
souri.*

William G. Busby, Alex Z. Patterson, James D. Lindsay, Solici-  
tors.

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John Kennish, Howard B. Shaw, and Eugene McQuillin, Mem-  
bers of the Public Service Commission of the State of Missouri.*

These answering defendants above named, now and at all times  
hereafter, saving and reserving to themselves all and all manner of  
benefits and advantages of exceptions which may be had or taken to  
the many errors, uncertainties, imperfections and insufficiencies in the  
plaintiffs' said bill of complaint contained, for answer thereunto, or  
unto so much or such parts thereof as these defendants are advised

that it is material or necessary for them to make answer unto, answering, say:

That this answer is divided into three principal parts, the first consisting of such defenses as rest upon want of lawful process on these defendants, and such other defenses in point of law as arise upon the face of the bill of complaint on account of misjoinder and insufficiency of fact to constitute a valid cause of action in equity, as herein after more particularly appears, and upon which these defendants above named will ask for a hearing before the final hearing of this cause upon the facts; and second, a statement in answer to the averments of said bill of complaint and a denial of such matters as are denied by these defendants; and third, a statement of affirmative matters which it is averred by these defendants constitute defenses to the bill of complaint of the plaintiffs herein.

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First.

## I.

These answering defendants above named, further answering the bill of complaint of the plaintiffs herein, aver that said bill of complaint shows upon its face that there is a misjoinder of causes of action herein, for that the plaintiffs in paragraphs I to XX, both inclusive, of their bill of complaint, as well as in paragraphs XXVIII to XXXIII, inclusive, of said bill of complaint, have attempted to set forth facts which constitute causes of action and averments of law and fact which the said plaintiffs intended as grounds for relief in equity against the Public Utilities Commission for the State of Kansas and other Kansas defendants, based on a certain order made by the Public Utilities Commission for the State of Kansas on December 28, 1915, allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory and that all proceedings prior and relative to the establishment thereof are illegal and void.

These defendants, further answering, aver that in the paragraphs of plaintiffs' bill of complaint after paragraph XX, including the said paragraphs XXVIII to XXXIII, heretofore mentioned, aver and set forth that because the pipe lines and other property of the Kansas Natural Gas Company extend into Oklahoma and Missouri, that the same should be treated as a whole or as one unit, and that the character of its business is wholly interstate and not of a local character in Kansas and Missouri; and that said Commissions of the States of Kansas and Missouri are jointly interested in allocating the value of the property used in such State- for supplying gas, for the purpose of determining what is a legal charge or rate thereon for service; and that in paragraph XXI of said bill of complaint it is averred that the Public Service Commission of the State of Missouri has determined that it will allow no rate or charge for supplying gas in the western cities of Missouri higher than is

charged in the eastern cities of Kansas, and that said Public Service Commission of the State of Missouri has suspended certain rates sought to be put into operation by the plaintiffs herein as receivers of the said Kansas Natural Gas Company; and it is averred in paragraphs XXII to XXVII of said bill of complaint that the  
332 aforesaid acts of the Missouri Public Service Commission are unlawful and confiscatory, and that because of said facts so averred in said paragraphs after paragraph XX of said bill of complaint show that the causes of action and grounds for relief in equity attempted to be set forth as against the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri, and their several attorneys and officers, are related to each other and of joint interest and concern to the plaintiffs and these several defendants; but these answering defendants aver that said pretended cause or causes of action are not related to each other to any extent that would allow them to be joined in one bill of complaint in this court and that the Public Utilities Commission for the State of Kansas or its attorney or officers are not responsible for nor interested in any way in any action of the Public Service Commission for the State of Missouri or its attorneys and officers, and that these answering defendants have no common interest in the cause or causes of action, or the subject or subjects, of the action, or the relief demanded in said bill of complaint, as to the causes of action attempted to be set up in said bill of complaint against said Public Utilities Commission for the State of Kansas or its attorneys or officers or the other Kansas defendants joined in said bill, and that there are no other averments or allegations in said bill of complaint which shows that said causes of action, or any other causes of action attempted to be set forth in plaintiffs' bill of complaint, or any other of the several causes of action and grounds for complaint, can be properly joined in one bill of complaint in this court; and these defendants ask that upon hearing of the points of law so arising upon the face of the bill of complaint, that said bill of complaint, for this reason, be dismissed against these answering defendants because of said misjoinder of causes of action therein.

## II.

These answering defendants above named, further answering the bill of complaint herein, aver that it does not appear from said bill of complaint why defendant John T. Barker, as Attorney-General of the State of Missouri, is made a party to said bill of complaint, except upon the theory of law that it is the official duty of said attorney-general, under the general laws of said State, as its chief law officer, to enforce the laws thereof and all legal orders made by the Public Service Commission of the State of Missouri establishing rates for public service corporations and public utilities, but these answering de-  
333 fendants say that the Public Service Commission Law of Missouri, approved March 17, 1913, provides that all such orders of the Public Service Commission of the State of Missouri shall be enforced and defended by the Counsel of said Commission and that

by reason thereof the defendant John T. Barker, as such attorney-general, is not a necessary or proper party defendant herein and these defendants move that this cause be dismissed, as to him.

### III.

These answering defendants above named, further answering the bill of complaint of the plaintiffs herein, aver that said bill of complaint shows upon its face that there is a misjoinder of causes of action herein, for that the plaintiffs, in paragraphs I to XX, both inclusive of their bill of complaint, as well as in paragraphs XXVIII to XXXIII, inclusive, of said bill of complaint, have attempted to set forth facts which constitute causes of action and averments of law and fact which the said plaintiffs intended as grounds for relief in equity against the Public Utilities Commission for the State of Kansas and other Kansas defendants, based on a certain order made by the Public Utilities Commission for the State of Kansas on December 28, 1915, allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory, and that all proceedings prior and relative to the establishment thereof are illegal and void.

The answering defendants further aver that in paragraph XXXIII of the plaintiffs' bill of complaint it is averred and set forth that the Kansas Natural Gas Company prior to the appointment of the plaintiff receivers herein had been delivering gas to certain distributing companies in Kansas and in Missouri under and by virtue of certain written contracts made by the said Kansas Natural Gas Company with said distributing companies, and certain contracts which are alleged to be typical ones are set forth and described in the said paragraph of the bill of complaint; and it is further averred that said contracts were made the basis of certain franchises granted by the defendant cities in the States of Missouri and Kansas to said distributing companies and to the Kansas Natural Gas Company, for the purpose of delivering and distributing gas in said Missouri and Kansas cities, and that said cities, both in Missouri and Kansas, are attempting to regulate, control and fix the price at which the plaintiff may sell natural gas furnished by them to their patrons in violation of said contracts; and it is further averred and set forth that said contracts are illegal and unreasonable and should be set aside

334 and the plaintiffs relieved from complying with the terms thereof, both as to the Kansas cities and towns situated in the State of Missouri.

These answering defendants further aver that these defendants have no common interest in the cause of action or the subject thereof, or the relief demanded, based on the facts averred in said paragraph XXXIII of the bill of complaint as to the defendant cities in the State of Kansas, and that neither in said paragraph XXXIII nor in any other part of the bill is it disclosed that the plaintiff is entitled to any relief in equity against the cities and distributing companies of the State of Kansas in which these answering defendants



are interested or in any way related, and these defendants ask that upon the hearing of the points of law so arising upon the face of the bill of complaint that it be held that there is a misjoinder of causes of action as to the matters herein set forth, and that the bill of complaint for this reason be dismissed as against them.

#### IV.

These answering defendants for their further defense aver that the bill of complaint and record herein reveal that they are and were at the time the subpoena herein was issued and served on them public officials of the State of Missouri, performing the duties of their respective offices within and for said State; that they are and were at such times citizens and residents of the Western District of Missouri, and not citizens or residents of the District of Kansas, and that said subpoena was served upon them outside of the District of Kansas, and in Cole County, State of Missouri, and is and was not a valid, legal, service of process upon these defendants in this cause; that this court is without jurisdiction of these defendants, and they move a dismissal of this cause as to these defendants.

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#### V.

These answering defendants further answering the bill of complaint of the plaintiffs herein aver that said bill of complaint reveals upon its face that this court is without jurisdiction to hear and determine the pretended causes of action therein averred, for the reason that it appears from said bill that the plaintiffs are not without adequate relief in the due course of law for any rights or remedies due them or for the redress of any wrongs complained of under the laws and the statutes of the State of Missouri, and that said plaintiffs have not pursued the remedies provided for them by said laws, and that therefore said bill of complaint fails to show any equitable cause for relief in favor of the plaintiffs and against these answering defendants.

#### VI.

These answering defendants for their further defense aver that the bill of complaint and the record in this case reveal that the plaintiffs cannot recover and are not entitled to the relief prayed for in said bill of complaint, on the grounds that the plaintiff receivers are engaged wholly in interstate commerce and that the properties of said company are instrumentalities of interstate commerce and not subject to the local laws of the States of Missouri and Kansas, the police power thereof, and not within the jurisdiction of the defendant Public Service Commission of said State of Missouri, for the following reasons, to wit:

First, that it appears from said bill of complaint that said receivers were appointed in a proceeding had in the district court of Montgomery county, Kansas, upon a petition filed by the Honorable John

S. Dawson, attorney-general of said State, January 5, 1912, against the Kansas Natural Gas Company et al., which said petition and all the files and proceedings of this case, to wit, No. 13,476, are made a part of the bill of complaint and the record in this case, at paragraph 3 thereof; that suit was begun by the attorney-general of the State of Kansas for the purpose of enforcing the criminal laws and the other statutes of Kansas imposing penalties against persons and corporations who, being engaged in local business in said State, had formed or entered into combinations with others in said local business in the restraint of trade or for the purpose of securing a monopoly therein, as well as for other purposes more fully set out in said bill of complaint at paragraph 4 thereof, and that said petition contains the following allegations, to wit:

"That plaintiffs allege that the above-named defendants, the Kansas Natural Gas Company, a corporation, et al., and each of them, have entered into a series of unlawful arrangements, contracts, 336 agreements, trusts, combinations with each other in violation of the laws of the State of Kansas with a view to prevent, and are done to prevent, full and free competition in the production and sale of natural gas within the State of Kansas, which product is an article of domestic raw material produced in large quantities in Montgomery county, Kansas, and elsewhere in southern Kansas, and is an article of trade and commerce, and is an aid to commerce, which arrangements, contracts, agreements, trusts and combinations are in restriction and restraint of the full and free operation of divers and various lines of legitimate business authorized and permitted by the laws of the State of Kansas, and are a perversion, misuse and abuse of the corporate powers and privileges granted to them, and each of them, by the State of Kansas, as above set forth, and all of which is more particularly set forth as follows:"

That said petition, after alleging the purchase of the Independence Gas Company, a corporation, and The Consolidated Gas, Oil and Manufacturing Company, a corporation, by the defendant Kansas Natural Gas Company, contained the following allegation:

"That said The Independence Gas Company and The Consolidated Gas, Oil and Manufacturing Company, defendants, were at all times mentioned herein public service corporations of the State of Kansas and were without authority under the law to sell and dispose of their entire properties, franchises and means of performance of their duties to the public in and about the production, transportation, delivery and sale of natural gas to the inhabitants of the State of Kansas; and the said Kansas Natural Gas Company, defendant, in pursuance of said unlawful, wrong agreement, understanding, arrangement, purpose and intent, has ever since been and is now in exclusive possession and control, and claims to own all gas, leases, franchises and property of every kind and character, as aforesaid, that were used, owned and employed by said other corporations, defendants, and said partnership, in and about the production, transportation, distribution, delivery and sale of natural gas to the said inhabitants of the State of Kansas, but such posses-

337 sion and control by said Kansas Natural Gas Company, defendant, is merely as agent or trustee."

To which petition the Kansas Natural Gas Company, May 21, 1912, filed its answer, in which it denied each and every, all and singular, the allegations and averments of the said petition, and these defendants aver that thereupon an issue was joined in said case as to whether the Kansas Natural Gas Company was engaged in domestic or intrastate commerce in the State of Kansas, and that whether, being so engaged, it had violated the laws of the state made in conformity to and in pursuance of its police power prohibiting combinations in restraint of said trade.

The plaintiffs further aver that a trial of said issue was had with the other issues of said cause, beginning September 30, 1912. The attorney general for the State of Kansas, as attorney for the plaintiff in said cause, in defining the issues of said case, made the following statement:

"These defendants are charged civilly with perversion of their corporate privileges because they have entered into a combination and trust to prevent competition in the production, distribution and sale of natural gas, which product is an article of domestic raw material, an article of trade and commerce and an aid to commerce in this state."

The attorney for the defendant The Kansas Natural Gas Company in said cause, in his opening statement, said:

"We particularly deny that anything that is shown or that will be shown has any of the elements of a combination or trust or monopoly. I don't care to add anything further, but the questions to be read will show in detail, I think, more accurately just exactly what has transpired."

These defendants further aver that on the trial of said cause the Honorable T. J. Flannelly, judge of said court, who presided at said trial, determined all of the issues arising upon the pleadings and statements of the defendants against the contentions of the Kansas Natural Gas Company, and held and determined it to be guilty of violating the laws and police regulations of the State of Kansas made for the purpose of prohibiting trusts and combinations

338 in domestic commerce, and in passing upon the particular question raised by said pleadings as to whether said company was engaged in domestic commerce and had made a combination in restraint of said trade, the said Hon. T. J. Flannelly, in his opinion and findings filed in said cause, said:

"Is the defendant, the Kansas Natural Gas Company, a monopoly and has it and other defendant corporations entered into a trust and combination to prevent competition in the production, distribution and sale of natural gas?"

"Section 5185, General Statutes of Kansas. (chap. 257, Laws of 1889) provides:

"That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this State, or

in the product, manufacture, or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorneys' or doctors' fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void.

"This act was followed by the act of 1897, which the supreme court of the State of Kansas, in the case of *State v. Lumber Company*, 83 Kan. 339, said was intended by the legislature to supplement, not repeal, the law of 1889.

"In section 5142, General Statutes of Kansas, 1909, being section 1 of chapter 265, Laws of 1907, the legislature defines a trust as follows:

"A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes:

First, to create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State. Second, to increase or reduce the price of merchandise, produce or commodities or to control the cost or rates of insurance. Third, to prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce. Fourth, to fix any standard or figures whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State. Fifth, to make or enter into or execute or carry out, any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure; or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity; or by which they shall agree to pool, combine or unite any interests they have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected."

"Section two of the same act provides:

"All persons, companies or corporations within this State are hereby denied the right to form or to be in any manner interested,

either directly or indirectly, as principal, agent, representative, consignee or otherwise, in any trust as defined in section I of this act.'

\* \* \* \* \*

"The decisions of the United States Supreme Court with reference to the national antitrust act have direct force and application in interpreting our own antitrust laws. The statute of this  
340 State in regard to monopolies and trusts is as broad in its terms as the Sherman antitrust act.

"That statute (the Sherman act)' says the supreme court of Kansas, 'differs in verbal phraseology but not in essential particular or effect from ours.

"State v. Smiley, 65 Kan. 240."

"A violation of the Sherman antitrust act itself by a corporation doing business in this State would be a perversion and abuse of its corporate privileges. The laws of the United States, as far as civil suits are concerned, are a part of the State's system of jurisprudence.

"Mondou v. N. Y. H. R. Co., 32 Sup. Ct. 169.

"Claffin v. Housman, 93 U. S. 130.

"One cannot read this record and examine these contracts, to which attention has been called in the foregoing statement, without reaching the conclusion that the whole purpose and design of the Kansas Natural Gas Company, from the very inception, has been to monopolize the production, transportation, sale and distribution of natural gas in the Kansas field. Not only was it the purpose and design to secure a monopoly, but the plans were successful, the purpose was accomplished, and the Kansas Natural Gas Company to-day almost completely dominates the situation; it practically controls the field of production, the field of transportation and the sale and distribution of natural gas in Kansas."

These defendants aver that the said court thereafter rendered its judgment upon said findings of fact and conclusions of law, and as a part thereof appointed the plaintiff receivers to receive and control the property in controversy herein as the officers of said court; that said judgment is unappealed from and in full force and effect, and that said receivers have acquiesced in the said judgment and the rules of law declared by the said court and acted

341 in conformity therewith, and that therefore and thereby the fact that said corporation, the Kansas Natural Gas Company, was prior to the appointment of said receivers, and said receivers since then as the representatives of said corporation in continuing its said business have been, engaged in local or intrastate commerce, and that the properties controlled by them are therefore not such instrumentalities of interstate commerce as withdraw all business done by the use of said properties in said States of Kansas or Missouri from the control of the local laws of said States, the police power thereof, or from the jurisdiction of the Public Utilities Commission for the State of Kansas, or the Public Service Commis-

sion of the State of Missouri; that said facts having been fully adjudicated by the said court, and the said receivers having acted in conformity therewith and in pursuance of the principles of law followed and announced by the said court, and which thereby became the law of said case, are now estopped and barred from asserting anything contrary thereto in this cause.

These defendants, further answering, aver that as a part of said judgment the plaintiff receivers, John M. Landon and R. S. Litchfield, were directed to appear in the case of John L. McKinney et al. v. The Kansas Natural Gas Company, No. 1351, No. 1-N in equity, which case is fully referred to and set out in the bill of complaint herein, for the purpose of recovering the control and management of the physical property of the Kansas Natural Gas Company, as is fully set out in the bill of complaint herein at paragraphs 3 and 4, and elsewhere, in said bill; that for the purpose of said appearance in said cause the attorney-general, acting on and in behalf of said receivers and under the direction of the district court of Montgomery county, Kansas, prepared and filed therein a petition for said purposes, which said petition contained the following averment, to wit:

"First, that on January 5, 1912, the State of Kansas, by its attorney-general, brought an action in the nature of quo warranto in the district court of Montgomery county, Kansas, against The Independence Gas Company, The Consolidated Gas, Oil and Manufacturing Company, Kansas corporations, and Kansas Natural Gas Company, a Delaware corporation authorized to do business in Kansas, charging said corporations with misuse, perversion and abuse of their corporate privileges and with having connived and engaged in various illegal combinations in restraint of trade, in violation of the antitrust laws of the State of Kansas, and in violation of the National antitrust laws, which are a part of the civil jurisprudence of the State of Kansas, by which unlawful combinations the said Kansas Natural Gas Company had secured a monopoly of the source of gas supply and a monopoly of the sale and distribution of gas to the people of Kansas, and by which unlawful combination the selling price of gas, a product of domestic raw material, an article of commerce, and an aid to commerce, had been advanced and controlled by the said Kansas Natural Gas Company, and a true copy of the petition filed by the State of Kansas in said action is contained in an abstract filed herewith and made part hereof."

That thereafter the complainant in said cause and the Fidelity Title and Trust Company appeared in said cause and contested the averments of the petition filed by the said attorney-general on and in behalf of the plaintiff receivers herein, and that said John L. McKinney and the Fidelity Title and Trust Company filed, as paragraph 10 of their answer, the following averments, to wit:

"These complainants further allege that although the defendant the Kansas Natural Gas Company, is engaged in operating a pipe line within the State of Kansas for the transportation of natural gas from various sources of supply from localities within the State of



Kansas to respective towns and cities within the State of Kansas, the pipe line of said Kansas Natural Gas Company and its system likewise extends into the adjacent States of Missouri and Oklahoma, for the purpose of receiving and transporting gas through its pipe lines to cities in said states, and is therefore an interstate carrier, subject to the act of Congress of February 7, 1887, and its amendments. That by the judgment and order appointing receivers over the property of the Kansas Natural Gas Company by the district court of Montgomery county, State of Kansas, in the proceedings by the State of Kansas instituted by the attorney-general as aforesaid, for a claimed violation of a penal statute of the State, constitute an exertion of the power of the State of Kansas, acting through and under the district court of Montgomery county, Kansas, over interstate commerce, and is invalid and violative of the commerce clause of the constitution of the United States, and the district court of Montgomery county, Kansas, was without jurisdiction to appoint receivers over the property of the Kansas Natural Gas Company in said proceedings by reason of said fact."

And these defendants aver that by the filing of said petition and answer an issue was made in said cause as to whether said Kansas Natural Gas Company at the time of the filing of the petition in the district court of Montgomery county, Kansas, by the State of Kansas through its attorney-general, heretofore referred to, was engaged in domestic commerce and not engaged wholly in interstate commerce, and whether by reason of said fact the district court of Montgomery county, Kansas, had the right, authority and jurisdiction, because of the violation of the local laws of said Kansas by said corporation, to appoint the plaintiff receivers as the officers of said court to take possession of said property, and whether as such officers they were now entitled to the possession of the property of said Kansas Natural Gas Company as against certain receivers theretofore appointed in the said cause of John L. McKinney et al. v. The Kansas Natural Gas Company, heretofore set out and referred to in this answer and bill of complaint of the plaintiffs.

That said cause came on for trial on June 5, 1913, on said issues of law and fact, before the Hon. John A. Marshall, district judge of the United States sitting as such judge of the district court for the District of Kansas, and after hearing the testimony adduced by the said parties and being fully advised in the premises the court found in favor of the said petitioners, the plaintiffs herein, and against the said John L. McKinney and the Fidelity Title and Trust Company, the complainants in said original action; that as a part of said decision the court filed written findings and a written opinion as to the law controlling said case, and as to this question the court said:

"Under the Kansas antitrust act (Gen. St. 1909, sec. 6146), which provides that every person or corporation within or without the state, violating its provisions within the state, shall be denied the right to do business in the state, and authorizes the enforcement of such provision 'by injunction or other proceeding,' a state court has power to appoint receivers of the property within the state of a foreign corporation charged with violation of the act, and under



344 the state practice such remedy is not precluded because the legal relief of ouster is sought in the action.

"The appointment by a state court of a receiver of the property within the state of a foreign corporation engaged in interstate commerce does not amount to an unlawful interference with the right of such corporation to transact interstate commerce." (206 Fed. 777.)

These defendants, further answering, aver that the said John L. McKinney and the Fidelity Title and Trust Company, complainants as aforesaid, excepted to the findings of the court and regularly took their appeal to the circuit court of appeals of the eighth district of the United States in said cause, and that thereafter said cause came regularly on for hearing and was decided by said court December 4, 1913, and it was there held and decided by the honorable circuit court of the said district that the opinion and decision of the district court of the United States, heretofore set forth, should be affirmed, and in determining the questions arising on said appeal the court, speaking by the Hon. Wm. C. Hook, circuit judge, said:

"A foreign corporation engaged in interstate and local commerce may be adjudged guilty of a violation of the antitrust laws of the state, its license to do business in the state may be canceled, and a receiver for all its property therein appointed under the general laws in aid of the enforcement of the judgment; and it is no defense that such property included instrumentalities used by it in conducting its interstate business, or that the corporation by the same course of conduct has also violated the similar laws of the United States." (209 Fed. 300.)

And again, at pages 306-7, the court further said:

"There remains for consideration the contention that as applied to this case, the antitrust statutes of the State conflict with the Sherman act (Act July 2, 1890, c. 647, 26 Stat. 209, U. S. Comp. St. 1901, p. 3200), and hence must give way. In this connection it is unimportant

345 that the Kansas Natural Gas Company is a Delaware corporation instead of a corporation of Kansas. The character of its trade and commerce, interstate or local, determines the applicability of the antitrust laws of the nation or state and not the origin of its corporate existence. The term 'interstate corporation' is a convenient colloquialism but hardly accurate. In respect of the contention now being considered, the case would not be different had that company been organized under the laws of Kansas. Nor is it material that it transports some of the gas it deals in from Oklahoma into Kansas and from Kansas into Missouri by pipe lines. By express exemption it is not a common carrier subject to the interstate commerce act (act June 29, 1906, c. 3591 U. S. Comp. St. Supp. 1911, p. 1284, 34 Stat. 584), sec. 1, even would it matter were it otherwise. The point urged by counsel rests on the fact that the company is engaged in both interstate and local commerce and upon the assertion that the two are so intricately interwoven as to be inseparable. The claim of inseparable intricacy is not tenable. The two kinds of commerce are no more interwoven than with most railroads of the country and many manufacturing and mercantile

concerns. Whatever may be the origin and admixtures of the commodity dealt in or the common use of the same plant, equipment, and instrumentalities, the two kinds of commerce are distinguishable. The company is in no better position than if it were an ordinary industrial and mercantile concern of Kansas producing, buying, shipping, and selling, locally and in other states, grains, oils, or other commodities which lose their particular identity in the mass of that which is dealt in. Again, the property and business of the company which are wholly within the State of Kansas are not negligible incidents to which the state antitrust statutes are being forced; much of its property, including that obtained from the other corporations, is located there and much of its business is there transacted. The action of the State of Kansas was directed to the violation of the state statutes. The decree of the state court was expressly  
346 confined to the matters within its jurisdiction and subject to the local laws. There was no attempt to enforce the Sherman act."

These defendants therefore further aver that by the aforesaid decisions and holding of the courts it has been fully determined and adjudicated that the plaintiff receivers are engaged in intrastate commerce subject to the local laws and police power of the State of Kansas and the jurisdiction of the Public Utilities Commission for said State, and the plaintiffs are engaged in the same commerce in Missouri and subject to the said power of the State of Missouri and its said Public Service Commission, and that the plaintiffs are not engaged wholly in interstate commerce, and that the properties under their control are not instrumentalities of interstate commerce of such nature as to deprive the defendants Public Utilities Commission for the State of Kansas or the Public Service Commission of the State of Missouri of jurisdiction over it, and that said plaintiffs, having acquiesced in said holdings and principles of law announced by the courts in the said cases, and having in this cause alleged that this case is dependent upon and ancillary to the case of *John L. McKinney et al. v. Kansas Natural Gas Company*, No. 1351, Equity, and *Fidelity Title and Trust Company v. Kansas Natural Gas Company*, No. 1-X, Equity, as averred in plaintiffs' bill of complaint, paragraph 1, which these defendants in no wise admit, and that said findings and principles of law having become the law of said cases, and of this case, and all of said matters having been fully determined, the plaintiffs are estopped from averring to the contrary herein, and from causing a retrial of said issues in this suit.

## VII.

These defendants, above named, further answering the bill of complaint of the plaintiffs herein, aver that said bill of complaint reveals upon its face that the plaintiffs cannot recover and are not entitled to the relief prayed for in said bill of complaint, for the reason that it appears from said bill, and particularly in paragraphs XXII and XXXII and the prayer thereof, that plaintiffs ask this Court to exer-

cise a power beyond its jurisdiction, to wit: the power of making and prescribing rates and charges of a public utility corporation, which is exclusively a legislative power and function.

These answering defendants further aver that in paragraphs 347 XXII and XXXII of the plaintiffs' bill of complaint it is averred and set forth that any schedule or rate for natural gas below thirty-seven cents per thousand cubic feet for gas delivered to consumers in all other cities in the State of Missouri except St. Joseph, and twenty-six and two-thirds cents for plaintiffs' proportion of the revenue for gas delivered at St. Joseph, is and will be unreasonably low, unremunerative, non-compensatory and confiscatory; and it is further averred, set forth and prayed in sub-paragraphs (c) and (h) of the prayer of said bill of complaint that these answering defendants be restrained from interfering with plaintiffs putting into effect reasonable rates and from putting into effect the rates provided in Exhibit "F" to said bill of complaint and similar rates for cities in Missouri.

These answering defendants further aver that it thus appears from the face of plaintiffs' said bill that plaintiffs are not invoking the jurisdiction of this Court for the purpose of having declared the present rates and charges for natural gas supplied in the cities of the State of Missouri confiscatory, non-compensatory and unremunerative, but for the purpose of having this Court, by its order and decree, fix and establish rates for natural gas to be hereafter and in the future charged and exacted from the consumers in the said cities of Missouri, which said purpose and proposed action so averred and prayed for these answering defendants aver is not properly within the jurisdiction of this Court, but it is exclusively a legislative function and power, and that, therefore, said bill of complaint fails to show any equitable cause for relief properly cognizable by this Court.

## Second.

These answering defendants, having objected to the jurisdiction of this court arising upon the points of law disclosed upon the face of the bill of complaint, and having moved to dismiss this suit for want of jurisdiction, further answering, say:

## I.

The above-named defendants deny that the bill of complaint herein is dependent upon and ancillary to the causes entitled John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N, Equity, now pending in this court, and further deny that this action is brought for the purpose of protecting the property now in the potential pos-  
 348 session of this court in said causes and of enforcing the jurisdiction of this court in said causes.

These defendants specifically deny that the matter and amount in

controversy in this cause exceeds the sum or value of \$3000 exclusive of interest and costs.

These defendants specifically deny that the causes of action, if any such be stated in the bill of complaint filed here, arise under the constitution or laws of the United States.

These defendants do not know for what purpose the bill of complaint was filed herein, but nevertheless deny that the Public Service Commission for the State of Missouri have fixed rates which are unreasonably low or that are unremunerative, noncompensatory and confiscatory, or which amount to the taking of the property in the possession and control of these plaintiffs without just compensation and without due process of law, or that the Public Service Commission of the State of Missouri has issued any order interfering with interstate commerce.

These defendants deny that there is any relationship and acts of the Public Utilities Commission for the State of Kansas, and the Public Service Commission of the State of Missouri, or the attorneys and counsel of said Commission, either now or at any time, such that it is practicable to present here and determine said causes in one suit in this court, but allege that plaintiffs' pretended causes of action against the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri are wholly different and can not be joined as one cause of action, nor can the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri be joined as parties defendant in the same cause of action, nor are the pretended causes of action against the counsel for the Public Service Commission of the State of Missouri and the attorney for the Public Utilities Commission for the State of Kansas such that they can be joined in one cause of action, nor can the counsel for the Public Service Commission of the State of Missouri and the attorney for the Public Utilities Commission for the State of Kansas be joined in one cause of action such as is attempted in the suit at bar.

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## II.

These answering defendants admit that the defendants John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw and Eugene McQuillin are or were at the time of the filing of this bill of complaint the duly appointed, qualified and acting members of the Public Service Commission of the State of Missouri; that the defendant John T. Barker is the duly elected, qualified and acting attorney-general of the State of Missouri, but deny that he is a proper or necessary defendant herein; that the defendant William G. Busby was at the time of the filing of this bill of complaint the duly appointed, qualified and acting Counsel for the Public Service Commission of the State of Missouri; that the defendant members of the Public Service Commission of the State of Missouri, and the defendant Counsel for the Public Service Commission of the State of Missouri, are or were charged by the laws of the State of Missouri with the duty and obliga-

tion of executing and enforcing all of the laws affecting public utilities and other property.

These defendants admit that the defendant Fidelity Title and Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, and is trustee under a certain first mortgage and supplemental mortgages heretofore executed by the Kansas Natural Gas Company on its property here involved. That said Fidelity Title and Trust Company is complainant in two of the suits pending in this court referred to in the bill of complaint.

These defendants admit that the Delaware Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is the trustee under a certain second mortgage executed and delivered by the Kansas Natural Gas Company covering a part of the property here involved. That the said Delaware Trust Company is defendant in one of the suits mentioned in the bill of complaint.

These defendants admit that the Fidelity Trust Company is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania and is the trustee under a certain first mortgage and three supplemental mortgages executed and delivered by the Kansas City Pipe Line Company, whose property has been leased to the Kansas Natural Gas Company and is being operated by the plaintiff receivers.

These defendants admit that the Kansas City Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey. That all of the property of said Kansas City Pipe Line Company has heretofore been leased to the Kansas Natural Gas Company and is now, so far as it is situated in Kansas, in the possession of the plaintiff receivers of said Kansas Natural Gas Company, but deny "that said pipe lines of the Kansas City Pipe Line Company are of little or no use unless they be operated in conjunction with the balance of the system of the Kansas Natural Gas Company."

These defendants admit that the Marnet Mining Company is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, and that said Marnet Mining Company owns certain property and pipe lines in the State of Oklahoma, which said pipe lines and property form a part of the system of the Kansas Natural Gas Company, but deny "that all of the property of the said Marnet Mining Company is of but little value if separated from the system of pipe lines operated by the Kansas Natural Gas Company."

These defendants admit that John F. Overfield is the receiver of the property of the Kansas City Pipe Line Company, as in the bill of complaint alleged.

These defendants admit that the defendant Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and from 1904 to October, 1912, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas. That it has been duly

admitted to do business in the State of Kansas as a foreign corporation. That it owns and operates a system, by lease and otherwise, of pipe lines extending from the counties of Rogers, Wagoner and Tulsa, in the State of Oklahoma, northward to the Kansas-Oklahoma State line, and through the State of Kansas into the State of Missouri, which are more fully shown in the map referred to in the bill of complaint and filed with said bill. That since October, 1912, said system of pipe lines has been in the control of and operated by receivers of said Natural Gas Company.

These defendants admit the issuance of the order of September 22, 1914, made and entered in the cases of John L. McKinney et al. v. The Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company, and Delaware Trust-Company, No. 1-N, Equity, but deny that the said

351 George F. Sharritt is in the possession or control, actually or potentially, of any property involved in this suit by virtue of such order or otherwise.

### III.

These answering defendants admit that the said John M. Landon and R. S. Litchfield, plaintiffs, are in the actual possession and control of the property of the Kansas Natural Gas Company and the property under lease to it in the State of Kansas, as receivers of said company, appointed by the district court of Montgomery county, Kansas, and admit that the said John M. Landon and R. S. Litchfield are in the actual possession and control of the pipe-line system of the Kansas Natural Gas Company, including leased lines located in the States of Oklahoma and Missouri, but deny that they are in such possession as ancillary receivers of this court, but allege that they are in the actual possession of such property in Oklahoma and Missouri, as receivers appointed by the district court of Montgomery, county, Kansas.

### IV.

These answering defendants admit the allegation of the fourth division of the bill of complaint.

### V.

These answering defendants admit that on the 17th day of December, 1914, the first and second mortgage bondholders of the Kansas Natural Gas Company and the Kansas City Pipe Line Company, the Kansas Natural Gas Company, and the plaintiff receivers, John M. Landon and R. S. Litchfield, and the Marnet Mining Company, entered into a certain agreement and stipulation called "Creditors' Agreement," a copy of which agreement is attached to the plaintiffs' bill of complaint as Exhibit "A." But these defendants specifically deny that either the State of Kansas or the State of Missouri was a party to or affected by such agreement, and these defendants spe-



cifically deny the matters and things set up in said creditors' agreement.

These defendants specifically deny that the business carried on and conducted by the plaintiff receivers in the carrying on of business and commerce among different states of the Union, to wit, Oklahoma,

352 Kansas and Missouri, or that the same is exclusively under the control of the Congress of the United States, as confided to it by section 8 of article 1 of the Constitution of the United States, and allege that the business conducted by the plaintiff receivers is subject to the control and regulation of the States of Kansas and Missouri.

That on August 17, 1915, H. O. Caster, as attorney for the Public Utilities Commission for the State of Kansas, filed a suit in mandamus in the supreme court of the State of Kansas, against the plaintiff receivers herein; a copy of the application for such writ is attached to the answer of the Public Utilities Commission for the State of Kansas herein. That notice was duly had upon the plaintiff receivers, as defendants in such action, and in due time they filed in said court their answer and return; a copy of such answer and return is attached to and made a part of the answer of the Public Utilities Commission for the State of Kansas herein. That, as shown by said answer and return, the plaintiff receivers herein, as defendants in said action, alleged that the business so conducted by them was the carrying on of business and commerce among the different states of the Union, to wit, Oklahoma, Kansas and Missouri, and that it was exclusively under the control of the United States, as confided to it by section 8 of article 1 of the Constitution of the United States. Upon hearing duly had in such action and being well advised in the premises, the supreme court of the State of Kansas, in such action, being case No. 20,324 of the files of said court, duly filed its opinion (96 Kan. 372) and order, to the effect that the business as conducted by the plaintiff receivers was not the carrying on of business and commerce among the different states of the Union, and was not under the control of the Congress of the United States, but that the same was under the control of the Public Utilities Commission for the State of Kansas; a copy of the opinion of the Supreme Court of the State of Kansas in such action is attached to the answer of the Public Utilities Commission for the State of Kansas herein.

And the defendants also especially deny that the plaintiff receivers are and have been engaged in interstate commerce in the sale and distribution of natural gas in the defendant cities of St. Joseph, Weston, Kansas City, Deerfield, Nevada, Carl Junction, Oronogo, or Joplin, Missouri, or other places in the State of Missouri; but defendants say that all of the natural gas which is or has been piped or transported to Missouri by the plaintiff receivers is delivered and sold by the plaintiffs to local distributing companies in above named Missouri towns and cities and therefore sold and distributed  
353 by such local companies (and not by plaintiffs) to the consumers of such gas; that such gas is not transported, sold or



delivered by the plaintiff receivers to the consumers in the State of Missouri but only to the local distributing companies as aforesaid and there is not a continuity of movement or transportation of such gas from the plaintiff receivers in Oklahoma or Kansas to the consumers in Missouri but such gas is received, stored, sold and delivered by such local companies or dealers to the consumers as an article of intrastate commerce under and pursuant to contracts between the Kansas Natural Gas Company and such local companies and the franchises granted by the Missouri towns and cities to such local companies.

These defendants specifically deny all other allegations in the fifth subdivision of said bill of complaint, not herein specifically admitted.

#### VI.

These answering defendants admit all of the allegations of fact contained in the sixth subdivision of the bill of complaint herein, except with reference to the alleged orders of this court, purported to have been made on December 30, 1912, and on January 4, 1913, with reference to which orders these defendants allege that this court had no power, authority or jurisdiction to make any such alleged orders; and that if such orders were made, as alleged in said bill of complaint, they were wholly illegal and void; and this court, recognizing that said orders of December 30, 1912, and of January 4, 1913, were made without jurisdiction and were wholly null and void, has never pretended to enforce the same.

#### VII.

These answering defendants are without knowledge of the facts alleged in paragraph VII of the bill of complaint and therefore ask that plaintiffs be held to strict proof of any material allegation therein contained.

#### VIII.

These answering defendants are without knowledge of the facts alleged in paragraph VIII of the bill of complaint and therefore ask that plaintiffs be held to strict proof of any material allegations therein contained.

These answering defendants deny each and all of the allegations in subdivision nine of the bill of complaint filed herein, except such as are admitted in this subdivision of the answer.

These defendants allege that the opinion and order of the Public Utilities Commission, referred to in said bill of complaint as Exhibit K, were made and entered after a full and complete hearing had before said Commission, and are based upon the evidence there

adduced, and that the plaintiff receivers were present by their attorneys at all sessions of said Commission and participated in said hearing and had ample and full opportunity of presenting all evidence which they desired and full opportunity of cross-examining all witnesses, and that no evidence was considered by the Commission in making the findings of fact contained in said Exhibit "K" except such evidence as was produced at said hearing.

The defendants deny that said engineer testified that he did not include going value or going-concern value or any value of the property for the cost of attaching the business or as a going concern, or that said engineer did not allow values for said items, and deny that the fair and reasonable going value or development cost of said plant was on January 1, 1915, or now is \$2,637,400, and deny that the fair and reasonable value of said plant and property was on January 1, 1915, or now is more than the sum of \$11,632,211, and deny that said plaintiffs are entitled to a return of ten per cent upon the investment in said property, and deny that said Commission did not allow any intangible value in connection with said property, and deny that said Commission did not consider more than \$7,083,605.64 as the total value on which plaintiffs were entitled to earn a return, and deny that said Commission allowed no value for leaseholds derived by conveyance from Snyder, Barnsdall and

O'Neil, and deny that said leaseholds were at the time  
355 of their conveyance of the reasonable value of \$6,000,000, and deny that the life of said plant is only six years from January 1, 1915, and allege that said Commission in said Exhibit "K," in ascertaining the income derived from the production of natural gas, showed said income to be \$6,023,792.16 more than it actually was, but that this fact did not change the net income for the reason that an equal amount was included in the expenses of producing said gas in addition to the actual expense, thereby offsetting said item, and deny that the effect of this was to give the public the benefit of over \$6,000,000 worth of gas without charge, and deny that the reasonable value of gas produced from said leaseholds up to and including December 1, 1914, was in excess of \$6,023,792.16, and deny that said Commission erred in separating the property used in the production of natural gas from the property used in its transportation, and deny that the Commission erred in using 4 cents as the price to be paid for gas to be purchased in the future, and deny that such price will in the future be not less than 6 cents per thousand cubic feet, and deny that the Commission erred in estimating the increased revenue to be obtained on the schedule put in effect after the order of December 10, 1915, and deny that such increased revenue will be not more than \$75,059.53, and deny that said Commission erred in estimating and fixing the amount of operating expenses and taxes as \$510,536.14, and deny that the true amount required for these purposes is \$800,000 per year, and deny that said Commission omitted any items of operating expenses; and these defendants deny that expenditures for making extensions to new fields are proper items of operating expense, and admit that

the same were not included as such in the computations in Exhibit "K," and deny that it will be necessary to expend \$500,000 in the year 1916, and deny that it will be necessary to spend \$200,000 in each year thereafter for such extensions; and these defendants deny that the Commission allowed depreciation only on \$7,983,615.64, and deny that the true life of said plant is five years from January 1, 1916, and deny that \$11,632,211, less \$1,500,000, must be amortized during said time, and deny that said Commission allowed a return of only six per cent upon said investments, and deny that a return of less than ten per cent on the value of the property employed in said business is unreasonable and confiscatory, and deny that the sum of \$11,632,211 is the fair and reasonable value of the property upon which plaintiffs are entitled to earn a reasonable rate of return; and defendants allege that the true facts as to all of said matters are as set forth in this answer.

#### X.

These answering defendants do not know and are therefore unable to state the facts concerning the alleged valuations of the property of the Kansas Natural Gas Company in the States of Kansas, Missouri and Oklahoma, as set out in the tenth subdivision of the bill of complaint.

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#### XI.

These answering defendants are without knowledge of the facts alleged in paragraph XI of the bill of complaint and therefore ask that plaintiffs be held to strict proof of any material allegations therein contained.

#### XII.

These answering defendants specifically deny that there has been any decrease in gas pressure in the year 1915 as compared with the year 1914, and deny that the miscellaneous revenues for 1915 are less than those of 1914, and deny that future years will be less than for previous years, and deny that the table set out in the twelfth division of the bill of complaint correctly shows a comparison of the miscellaneous revenues for ten months of 1915 as compared with the same period of 1914.

#### XIII.

These answering defendants do not know whether or not expert engineers were employed by the Kansas Natural Gas Company to determine the life of the gas field, and do not know what investigations were made concerning said gas field, or what reports, if any, were made by said engineers to the Kansas Natural Gas Company or to any other person.

These defendants allege that there is now and has been since the formation of the Kansas Natural Gas Company an ample supply of

natural gas adjacent to its lines, which it could have secured without unreasonable expense.

These defendants deny the correctness of the map showing the trunk lines of the Kansas Natural Gas Company, Quapaw and Wichita Gas Companies, and Oklahoma Natural Gas Company, together with the analysis of said map, attached to the bill of complaint, marked Exhibit "L," and deny that the cost of gas has increased during the past year at least one cent per thousand cubic feet, owing to the short duration of the gas pools and fields. These defendants have no knowledge of the exact per cent of the gas which is supplied by plaintiff to consumers in Kansas or Missouri which is secured from Oklahoma, but admit that a large per cent is there purchased.

These defendants deny that, owing to the financial condition of the Kansas Natural Gas Company, very few leases have been purchased by that company or by plaintiff receivers or that practically all of the gas secured from Oklahoma has been purchased in Oklahoma at a specified rate per thousand feet, but allege the fact to be that with proper and prudent management the company would have been financially able to at all times make necessary and  
357 proper arrangements for procuring leases and for the purchase of gas.

These defendants do not know the per cent of gas which is lost through leakage, as alleged in said bill of complaint, but allege that if a large per cent thereof, as claimed in said bill of complaint, is actually so lost, that it is on account of the defective conditions of the lines of the plaintiff receivers.

These defendants deny that all of the evidence shows that the probable life of the gas field which may be profitably reached by the plant of the Kansas Natural Gas Company is six years from January 1, 1915, but allege that the evidence shows and the fact is that the probable life of such gas field will be much longer than six years.

These defendants specifically deny that the said six years as the life of said gas plant is also determined by the State of Kansas in the Creditors' Agreement, and deny that said period of six years was adopted as the probable life of said gas plant by the said Public Utilities Commission of the State of Kansas in its opinion of July 16, 1915, attached to plaintiffs' bill of complaint and marked Exhibit H.

These defendants specifically deny that the plant of the Kansas Natural Gas Company at the end of six years will have no value whatever, except as scrap; but allege, as stated above, the life of said gas fields and said plant is much longer than said six years, and that said plant at the end of said period will have a large and going value; and they further deny that at the end of said six-year period, or at the end of the life of said gas fields and the usefulness of said gas plant, the scrap value will not exceed \$1,500,000, but allege that at such time such value will largely exceed such sum.

These defendants further deny that the difference between the total value of the plant as of date January 1, 1915, and the scrap value

at the end of the life of the plant is \$10,132,211; and deny that such sum must be amortized in five years from January 1, 1915; and deny that the revenues for the year 1915 have been insufficient to amortize any part of the plant value during 1915; and deny that it will require the sum of \$500,000 for the first year and \$200,000 per year for each of the succeeding four years in order to procure  
358 the annual additional supply of gas necessary to maintain the same volume of gas supplied to consumers as is now transported and distributed, and deny that nothing less than ten per cent per annum is a fair and reasonable rate of return on the property employed and used in said business; and deny that the table therein set out shows the true and correct amount of gross revenue which is necessary for this plant to obtain in order to meet operating expenses, repairs, secure future gas supply and provide for the amortization of the plant and a fair return on the property employed in the service.

### XV.

These answering defendants deny that the table set out in the fifteenth division of plaintiffs' bill of complaint shows the correct amount of revenues which the order of December 10, 1915, will produce in the State of Kansas, and the revenues in which the rates now in existence will produce in the State of Missouri.

These defendants further deny all the other allegations of the fifteenth division of the plaintiffs' bill of complaint.

### XVI.

These answering defendants deny that the tables set out in the thirteenth and fifteenth sub-divisions of the plaintiffs' bill of complaint are typical of the years of the remaining life of said plant; and further deny that the plaintiffs have been or are engaged in interstate commerce in the production, transportation or sale of natural gas in either Oklahoma, Kansas or Missouri.

These defendants do not know whether said Kansas Natural Gas Company or said federal receivers or the plaintiff herein have or do deliver or sell gas to domestic consumers in the State of Oklahoma or conduct or carry on any business of or as a public utility therein.

And these defendants are also without knowledge of the allegations in said paragraph XVI in relation to rates in Kansas.

### XVII.

These answering defendants are also without knowledge of the facts alleged in paragraph XVII of the bill and ask that plaintiffs be held to strict proof of the same.

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### XVIII.

These answering defendants are without knowledge of the facts alleged in paragraph XVIII of the bill of complaint and ask that the

plaintiffs be held to strict proof of the same as against these defendants.

### XIX.

These answering defendants are without knowledge of the facts stated in paragraph XIX of the bill and ask that plaintiffs be held to strict proof of the same.

### XX.

These answering defendants specifically deny every allegation of fact contained in the paragraph XX of the bill of complaint.

### XXI.

These answering defendants admit that John M. Atkinson and John Kennish, two of the five members of the Public Service Commission of the State of Missouri, held a conference with the Public Utilities Commission of the State of Kansas on the twenty-seventh day of September, 1915, but deny that after or as a result of such conference, the said John M. Atkinson, either for himself individually or for said Missouri Commission, announced or was authorized to announce that the said Missouri Commission would not permit a higher rate to be charged in the cities in the State of Missouri than was charged in the border cities in the State of Kansas, and these defendants deny that the said Missouri Commission has ever since such conference or announcement maintained or adhered to an arbitrary policy of not permitting an increase in rates in such Missouri towns and cities over and above such rates charged in the Kansas towns and cities. That the said statement or announcement of the said John M. Atkinson as intended, made and published in the Kansas City Times and Kansas City Journal on September 28, 1915, was simply that no increase in gas rates in the State of Missouri would be authorized by the said Missouri Commission until the Missouri towns and cities using natural gas were notified and had a "day in court," and then only when such increased rates were justified by the facts before the Commission.

360 These defendants further allege that the Public Service Commission Law of the State of Missouri provides that before the said Commission may fix the rates to be charged by any gas corporation it shall hold a hearing after having given all persons or corporations affected thereby notice and an opportunity to be heard; that in determining the rates to be charged for gas the Commission shall consider such evidence as is before it with due regard, among other things, to a reasonable average return upon the capital actually expended and to the necessity of making reservation out of the income for surplus and contingencies; that it is provided by said law that the findings, decisions and orders of said Commission shall be recorded in the office of the Commission and served upon every person and corporation to be affected thereby and shall be published

in accordance with the provisions of such law and the rules of the Commission; that the said Commission and its members are without power or authority under said law to fix or establish rates to be charged for gas save and except in the manner provided in said law; and that the announcement, if made, of the policy of said Commission by the verbal statement of the said John M. Atkinson was not made as the legal or official announcement of the said Missouri Commission but as the announcement simply of the individual view or opinion of the said John M. Atkinson, and the same is and was not any legal basis for any cause of action whatever against the defendants herein.

These answering defendants further admit that on the thirteenth day of September, 1915, proposed schedules of rates to be effective November 1, 1915, were filed by the Carl Junction Gas Company and the Oronogo Gas Company, being local gas companies in the towns of Carl Junction, Missouri, and Oronogo, Missouri, respectively, with the Public Service Commission for the State of Missouri, prescribing a rate of thirty cents net for said towns of Carl Junction and Oronogo, and that on the twenty-ninth day of October, 1915, said Public Service Commission suspended said schedules of rates for a period of one hundred twenty days from and including November 1, 1915, but defendants deny that the said Carl Junction Gas Company and Oronogo Gas Company are or were the agents of these plaintiffs and deny that the said Commission has ever since refused to permit said rates to be put into force and effect and deny that the suspension of said rates was because of any policy or plan by said Commission of not allowing higher rates in Missouri than in Kansas, as alleged by the plaintiffs.

361 These defendants further answering state that it is provided in and by section 70 of the Public Service Commission law of Missouri that upon the filing with said Commission by any gas company of a schedule stating a new rate that the said Commission shall have authority upon reasonable notice to enter on a hearing concerning the propriety of such new rate, and pending such hearing the said Commission may suspend the operation of such proposed new schedule for a period of not exceeding one hundred twenty days and that the said schedule of new rates filed by the said Carl Junction Gas Company and the Oronogo Gas Company were suspended by said Commission for a period of not exceeding one hundred twenty days only, and only pending such hearing by the Commission as to the propriety of such proposed rate, and was not definitely or finally suspended or canceled by the said Commission; that thereafter on the seventeenth day of January, 1916, and before the expiration of such period of suspension the said proposed schedules of new rates so filed by the said Carl Junction Gas Company and Oronogo Gas Company were by the voluntary act and election of such gas companies themselves canceled, withdrawn and dismissed from the files and records of the said Commission; all of which will more fully appear from a true certified copy of the order of said Commission suspending the said schedule filed by the Carl Junction Gas Company; a certified copy of the order of said Commission permitting the with-



drawal or dismissal of the said schedule filed by the Carl Junction Gas Company; a certified copy of the order of said Commission suspending the schedule so filed by the Oronogo Gas Company, and a certified copy of the order of said Commission permitting the withdrawal or dismissal of such schedule filed by said Oronogo Gas Company; the said four exhibits being attached hereto and marked respectively "A," "B," "C" and "D."

These defendants further answering allege that this suit was commenced by the plaintiff receivers on the — day of December, 1915, while the legislative action or proceeding instituted by the said Carl Junction Gas Company and Oronogo Gas Company, by the filing of such schedules with said Missouri Commission, was pending and undetermined before the said Commission; that by reason of the pendency of the legislative investigation and determination by the said Missouri Commission into the propriety of the said proposed new schedule of gas rates at Carl Junction, Missouri, and Oronogo, Missouri, as aforesaid, and the fact that such legislative proceed-

362 ing in such State tribunal was undetermined and unfinished at the time of the commencement of this suit in the Federal court, the plaintiffs, even if such local gas companies were their agents, are and were without right, power or authority to institute and prosecute this suit against these defendants, and are also estopped and prohibited under and by virtue of the rule and law of comity obtaining between the Federal and State tribunals from instituting and prosecuting this suit against the defendants; and that as the said Missouri Commission made no final order or decision with reference to such proposed rates at Carl Junction, Missouri, and Oronogo, Missouri, and the fact that such proposed schedules were voluntarily withdrawn and dismissed by the said companies filing the same, the action of said State Commission in temporarily suspending the said schedules for the purpose only of an investigation and determination of the propriety of the same is and was no legal basis whatever for the institution and prosecution of this suit against these defendants.

These defendants further answering deny that the St. Joseph Gas Company is or was an agent or distributing company of the Kansas Natural Gas Company or of these plaintiff receivers at the city of St. Joseph, Missouri, but these defendants allege the fact to be that the said St. Joseph Gas Company is and was at all times mentioned in plaintiffs' bill a local, independent gas company at said city purchasing its supply of gas from these plaintiff receivers and itself selling and distributing the same to the consumers of the city of St. Joseph, Missouri.

These defendants further answering admit that on September 29, 1914, the said St. Joseph Gas Company filed with the Public Service Commission of the State of Missouri a proposed new schedule to be effective November 1, 1914, whereby it sought to raise the rate for natural gas in the said city of St. Joseph from 40 cents to 60 cents per thousand cubic feet; and admit that on October 19, 1914, the said Missouri Commission issued an order suspending said rate and made further orders from time to time extending the suspension of said rate pending an investigation and determination of the pro-

priety of the same until November 27, 1915, when the said Missouri Commission after a hearing rendered its finding and opinion that the said St. Joseph Gas Company had failed by its evidence to justify such increase of the rate at St. Joseph, Missouri, and refused to issue its order permitting such increase.

These defendants further answering deny that the said Missouri Commission found that the return on the property employed  
363 by the said St. Joseph Gas Company in the public service in the distribution and sale of natural gas alone was only 2.42 per cent, and deny that the said Commission refused the said increase of gas rates at St. Joseph, Missouri, because of any policy on the part of said Commission to not allow higher rates in the State of Missouri than in the State of Kansas; and deny that the said Missouri Commission in its said order directed the St. Joseph Gas Company to cancel its contract with these plaintiff receivers or with Kansas Natural Gas Company; and these defendants allege that they are without knowledge of the fact that the St. Joseph Gas Company has instituted suit in the District Court of Montgomery county, Kansas, to cancel said contract with the plaintiff receivers or with the Kansas Natural Gas Company and state that if such suit has been filed or prosecuted in the District Court of Montgomery county, Kansas, it has been done without notice to either the said Missouri Commission or the city of St. Joseph, Missouri, or the consumers of gas therein.

These defendants further answering deny that the sum of 26  $\frac{2}{3}$  cents per thousand cubic feet which the St. Joseph Gas Company has been paying the plaintiff receivers as the receivers' proportion of the 40 cent gas rate charged at St. Joseph, Missouri, is the same as paid by other local gas companies for such gas to the plaintiff receivers; deny that the 17 cents which the said Missouri Commission found was a reasonable price for the St. Joseph Gas Company to pay the plaintiff receivers for the gas consumed at St. Joseph, Missouri, is unreasonably low, noncompensatory, nonremunerative, or confiscatory, or would amount to an undue preference in favor of consumers of gas at St. Joseph, Missouri, in violation of the Act of Congress called the "Clayton Law"; deny that by reason of the longer haul or transportation of gas to St. Joseph, Missouri, there is any considerable difference in the leakage or in the cost of transportation than in the transportation of such gas by the plaintiff receivers to Atchison, Kansas, and other towns located similarly with St. Joseph, Missouri; and deny that the rate of 26  $\frac{2}{3}$  cents to the plaintiff receivers per thousand cubic feet is unreasonably low, noncompensatory, nonremunerative and confiscatory, as alleged by the plaintiffs.

These defendants further answering deny that the said Missouri Commission in its said finding and order of November 27, 1915, found or held the said rate of 40 cents per thousand cubic feet of gas  
364 at St. Joseph, Missouri, to be just or reasonable, or that the said Commission therein refused to raise or increase said rate, or that the said Commission in its said finding and order did anything excepting to refuse or cancel the said rate proposed by the plaintiffs in the sum of 60 cents per thousand cubic feet for natural

gas; and deny that the said finding and order of the Commission in relation to natural gas rates at St. Joseph, Missouri, is or was any legal or equitable basis for the institution or prosecution of this suit by the plaintiffs against these defendants.

Further answering paragraph twenty-one of the bill, these defendants say, however, that if it is found and held by the court that the said Missouri Commission by its said opinion and order of November 27, 1915, found and held said 40 cent rate for natural gas at St. Joseph to be just and reasonable, or that the said Commission refused to permit or allow any increase of such rate at St. Joseph, Missouri, then these defendants allege that such finding and order of the Commission is and was supported by substantial evidence before the Commission; that the said Public Service Commission of the State of Missouri has been especially vested by the General Assembly of the State of Missouri with the legislative power and function of investigating and fixing rates for the sale and distribution of natural gas in the State of Missouri, and that its said finding and conclusion of November 27, 1915, based upon substantial evidence as aforesaid, in relation to gas rates at St. Joseph, Missouri, are binding and conclusive upon this Honorable Court and the same should not be set aside by the decree or enjoined by the process of the court.

These defendants further answering deny that the present rate of 40 cents for natural gas at St. Joseph is unjust or unreasonable or confiscatory.

## XXII.

These answering defendants deny that any rate for natural gas below 37 cents per thousand cubic feet delivered to consumers in the State of Missouri, excepting St. Joseph, and that 26  $\frac{2}{3}$  cents for plaintiffs' proportion of the gas delivered in St. Joseph, is or will be unreasonably low, unremunerative, noncompensatory and confiscatory; and deny that the Public Service Commission of the State of Missouri has prescribed any such confiscatory rates; and deny that the plaintiffs have been or will be deprived of property without due process of law or without compensation in the transportation 365 or sale of gas to consumers in Missouri; and also deny that any orders of said State Commission suspending proposed schedules of rates or prescribing any rates in the State of Missouri are void or in contravention of the Fourteenth Amendment to the Constitution of the United States or is an interference with interstate commerce in violation of section 8 of article 1 of the Constitution of the United States.

## XXIII.

These answering defendants deny that the Public Service Commission of the State of Missouri has prescribed any void or arbitrary gas rates in the State of Missouri and deny that the plaintiffs have no adequate remedy except such relief as may be obtained by this suit to annul any gas rates prescribed by said Commission and to restrain

said Commission from interfering with the plaintiffs putting in reasonable rates; but these defendants state that if it is held that the Public Service Commission of the State of Missouri has fixed or prescribed any such arbitrary or confiscatory rates in the State of Missouri, then these defendants allege that the plaintiffs had an ample and adequate remedy under the provisions of the Public Service Commission Law of Missouri against such arbitrary and confiscatory rates as is pleaded by these defendants under paragraph 21 of this answer, which plea of the defendants is here referred to and adopted as the defendants' plea in this paragraph of the answer.

These defendants further answering paragraph 23 of the bill deny that the present gas rates in effect in Missouri are unreasonable, unremunerative, noncompensatory or confiscatory.

#### XXIV.

These answering defendants deny that if the Public Service Commission of the State of Missouri accepts the basis of allocation of property used in the transportation of gas as between Kansas and Missouri made by the Public Utilities Commission of the State of Kansas, that the rates charged the Missouri cities (except Kansas City) will necessarily or properly be higher than the rates charged to the border cities in Kansas on account of the gas being transported further, or the leakage or for other causes; and deny that the said Missouri Commission has announced any policy of suspending all schedules of rates in Missouri higher than rates in the border cities of Kansas;

and deny that any announced policy of said Missouri Commission will require the plaintiffs to violate any of the provisions of the Act of Congress of October 15, 1914, known as the "Clayton Law" as alleged by the plaintiffs; and also deny that the said Missouri Commission has or does now threaten to suspend any schedule in the State of Missouri prescribing a higher proportion than 17 cents per thousand cubic feet as plaintiffs' proportion of the rate charged for gas delivered at St. Joseph, and a higher rate than 28 cents per thousand cubic feet for gas delivered at Kansas City and other points in the State of Missouri as alleged by the plaintiffs.

#### XXV.

These answering defendants admit the allegations contained in paragraph numbered twenty-five of plaintiffs' bill of complaint.

#### XXVI.

These answering defendants deny that the plaintiffs are prevented and intimidated from putting into effect a schedule or reasonable rates for gas in Missouri, because of the penalties provided by the Statute of Missouri or because of the suspension by the Public Service Commission of Missouri of the plaintiffs' proposed schedules of rates, or because of any announced policy of said Commission to suspend

such rates which are higher than the rates charged in the border cities of Kansas; and deny that if the plaintiff receiver should raise the schedule of rates to be collected, and upon a judicial investigation into their right to do so, it should be determined that such raise of rates was not valid that then the fines and penalties provided in the Missouri Statute would approximate the prohibitory sum stated by the plaintiffs.

These defendants state that ample and adequate remedies are provided in and by the Public Service Commission Law of Missouri, whereby these plaintiffs may and could have proceeded before the said Missouri Commission for an order allowing and permitting plaintiffs to charge just and reasonable gas rates in any town or city in the State of Missouri; that an adequate and ample remedy is provided in and by sections 111, 113 and 114 of said law whereby any decision or order of the said Commission in such proceeding before it for reasonable rates may be reviewed in both the circuit court and supreme court of the State of Missouri by writ of certiorari or review;

that it is provided in and by section 112 of said Law that any order of the said Commission in such proceeding may be stayed by any circuit court pending such writ of certiorari or review therein upon the applicant for such suspending order giving a bond to be approved by the court for the payment of damages caused by the delay in enforcement of the order of the Commission; that it is provided in and by section 114 of said law that the judgment of the said circuit court rendered on review of any order of the said Commission may also be suspended pending an appeal to the Supreme Court of the State by the applicant giving a like bond with conditions as required in the bond given, pending review in the Circuit Court; and that it is also provided in section 106 of said law that if the defendant in any action to recover any penalties or forfeitures under the provisions of said law shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for the violation of an order or decision of the Commission, the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in said law, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding.

## XXVII.

These answering defendants deny that because of the constraint and intimidation of the penalties provided by the Public Service Commission Law of Missouri, that the plaintiffs have been required to keep in effect any unlawful schedule prescribed by the said Missouri Commission or to abandon their right to act independently of any such void and illegal orders, or that by virtue of such facts any of the orders of said Commission are void and unconstitutional as depriving the plaintiffs of their property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States, or that the plaintiffs, by reason of the said penalties provided for the failure to conform to the orders of the said

Commission, have been precluded from asserting their rights and challenging in the courts the validity of said orders except at the risk of becoming subject to unusual and excessive penalties and as a result of which the plaintiffs are denied the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

These defendants further deny that by reason of any acts of the said Missouri Commission or said penalty statute of the State  
368 of Missouri in connection with changes and charges not made with the consent and approval of said Commission, that the plaintiffs are deprived of their property without due process of law or are compelled to transport and deliver gas to consumers in Missouri for less than the cost of said service and at a loss for such service, or that the plaintiffs are without adequate remedy at law from such situation, excepting by this suit in equity; but the defendants say, that the plaintiffs have and had an adequate, ample and speedy remedy in all such matters under the provisions of the Public Service Commission Law of Missouri, as pleaded by these defendants under paragraphs twenty-one and twenty-six of this answer, to which reference is here made.

## XXVIII.

These answering defendants state that they are without knowledge of the facts pleaded in paragraph twenty-eight of the bill of complaint and therefore ask that the plaintiffs be held to strict proof of any material allegations therein contained as against these defendants.

## XXIX.

These answering defendants deny that any rates prescribed by the Public Utilities Commission of the State of Kansas or the Public Service Commission of the State of Missouri will take all or the greater part or any part of the property now in the possession of the plaintiffs or in any way interfere with the possession and control of this court over property potentially in its charge and custody.

## XXX.

These answering defendants deny that the plaintiffs are without adequate remedy at law in the matters set forth in their bill of complaint, or that they will suffer irreparable injury unless accorded the injunctive relief prayed for.

## XXXI.

That the thirty-first paragraph of plaintiffs' bill of complaint consists of mere conclusions based upon previous averments of fact in said bill, all of which have been fully answered by these defendants, and which these defendants now again specifically deny.



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## XXXII.

That the thirty-second paragraph of plaintiffs' bill of complaint consists of mere conclusions based upon previous averments of fact in said bill, all of which have been fully answered by these defendants, and which these defendants now again specifically deny.

## XXXIII.

These defendants admit that the defendant distributing companies, for themselves and not as the agents of the plaintiffs or of the Kansas Natural Gas Company, are furnishing gas to consumers in Kansas and Missouri under contracts originally made with the Kansas Natural Gas Company, which contracts were assumed and adopted by the plaintiff receivers, and ever since their appointment the plaintiff receivers have been selling and furnishing gas to such local companies under the terms of such supply contracts; that such contracts were valid and binding in every respect and were entered into by all the parties with a full knowledge of all the facts relating thereto, and that with careful and competent management the Kansas Natural Gas Company and the plaintiff receivers would have been and would now be fully able to supply all the gas which they may have been required to furnish under the terms of such contract.

These defendants specifically deny that any of the defendant cities within the State of Missouri are attempting in any manner to establish the rates at which said gas is to be sold within said cities, or establish and provide the rules and regulations governing the sale and distribution thereof, excepting by voluntary agreement, but allege the fact to be that the said distributing companies are under the control and supervision of the Public Service Commission of the State of Missouri.

The defendants are not informed and have no knowledge that any contracts between the Kansas Natural Gas Company and said distributing companies or any franchises granted by the defendant cities to said Kansas Natural Gas Company contain any provisions similar to those averred and set out in paragraph thirty-three of the plaintiffs' bill of complaint, or of which the same are typical; and further aver that if such provisions are contained in any of the said contracts or franchises that they are not sufficiently identified  
370 in plaintiffs' bill of complaint to enable the defendants to determine the truth of said averments.

The defendants specifically ask that the plaintiffs be put upon their proof as to such allegations and to all of the other averments of fact in the thirty-third subdivision of the said bill of complaint.

## Third.

These answering defendants, having fully traversed and answered the bill of complaint filed herein, further answering say:



## I.

That in 1903 R. M. Snyder and associates formed a copartnership, known as the New York Oil and Gas Company, and acquired nearly 18,000 acres of gas leases, upon which they developed a supply of gas and secured a franchise to use the streets and alleys of Independence, Kan., to supply gas to the citizens thereof. During the same year said Snyder and associates obtained from the Consolidated Gas, Oil and Manufacturing Company and the Independence Gas Company, corporations then owning a plant for the sale and distribution of gas in the city of Independence, an option to buy said plant in Independence and some 80,000 acres of leases located principally in the counties of Montgomery and Chautauqua, in Kansas, paying for said option the sum of \$10,000. The full purchase price for said property was to be \$550,000. During the same year R. N. Barnsdall and James O'Neil acquired about 90,000 acres of leases and brought in some producing gas wells thereon, located principally in Allen, Neosho, Wilson and Labette counties, Kansas, and organized the Kansas Natural Gas Company.

In 1904 the said Barnsdall and Snyder and their associates consolidated their propositions and increased the stock of the Kansas Natural Gas Company from \$6,000,000 to \$12,000,000, and each group of associates transferred to the Kansas Natural Gas Company their various properties herein enumerated; the said Barnsdall and associates received for their property \$6,000,000 of the capital stock of the Kansas Natural Gas Company, and Snyder and his associates received the remaining \$6,000,000 of said capital stock. Said Snyder and associates received in addition thereto the sum of \$900,000 in money, \$540,000 of which was to be devoted to the payment of the balance of the purchase price of the properties of the Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company; that the \$900,000 paid to Snyder and his associates was realized from the sale of the first mortgage bonds of the Kansas

371 Natural Gas Company; that the said Kansas Natural Gas Company thereafter acquired other leases, all of which said leases cost the said Kansas Natural Gas Company not to exceed \$4,100,000, and said sum includes the value of all material used in the wells; and these defendants allege that all of the said leaseholds in the aggregate have not, during the time herein mentioned, been worth to exceed \$4,000,000; that the value of the gas and oil marketed from said leases during all the years from the organization of the Kansas Natural Gas Company up to December 31, 1914, was not in excess of \$6,652,944.83, and that the expenses in connection with the production of said oil and gas so sold from said leases was at least \$3,630,171.48.

That the Kansas City Pipe Line Company and the Marnet Mining Company are in fact subsidiary companies to the Kansas Natural Gas Company, and the property of the three companies is one contiguous whole and all used in producing and transporting natural gas from the Mid-Continent gas fields to the consumers within the

States of Kansas and Missouri; that all of said property is in the actual possession and being operated by these plaintiff receivers as one property, and will be hereafter referred to as one property under the name of the Kansas Natural Gas Company. The following table shows the amount of capital stock and bonds issued by each of these three companies:

**Kansas Natural:**

Common stock .....	\$12,000,000
First-mortgage bonds .....	4,000,000
Second-mortgage bonds .....	4,000,000

**Kansas City Pipe Line Company:**

Stock .....	4,500,000
Bonds .....	4,745,000

**Marnet Mining Company:**

Stocks .....	2,500,000
Bonds .....	2,000,000

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**\$33,745,000**

The statement shows that these companies have issued bonds of the face value of \$14,745,000, for which they received \$13,404,250. Of this amount \$1,035,000 was invested by the Kansas Natural Gas Company in the bonds of the Marnet Mining Company, leaving a balance of \$12,369,250 outside money actually received from the sale of said bonds.

Defendants allege that table 2 of Exhibit "K" of the bill of complaint is a statement showing the true and correct investment and property at the close of each year, together with the accrued depreciation and the net investment and division as between the transportation and production property of the said Kansas Natural Gas Company from the time it actually began business to December 31, 1914.

## II.

These answering defendants further allege that from the time the said Kansas Natural Gas Company began its business, April 15, 1904, to December 31, 1914, that its revenues derived from its business were ample and sufficient to properly amortize its transportation and production property, to adequately maintain the same, and afforded the said Kansas Natural Gas Company, above such proper depreciation and maintenance, a return of 11.32 per cent per annum on the entire investment in said properties, as is more fully shown by tables 3 and 4, set out in Exhibit "K" attached to plaintiffs' bill of complaint and to the answer of the Kansas Utilities Commission herein, and which are here referred to.

## III.

These answering defendants, further answering, allege that the value of the property of the Kansas Natural Gas Company as a going concern in the hands of the plaintiff receivers, as found by the engineer of the Kansas Commission, on the 1st day of January, 1915, was \$8,994,811.03; that said valuation is made up of the production and transportation properties of the said Kansas Natural Gas Company; that the following items, which compose the production property of the said company, are as follows:

Wells .....	\$605,539.20
Leaseholds .....	1,126,359.34
Drilling and pulling tools .....	3,660.00
Warehouses, tools used in connection with wells, ....	56,379.53
Proper proportion of overhead expenses, .....	119,205.39
Total deductions .....	<u>\$1,911,205.39</u>

373 That for a number of years the Kansas Natural Gas Company, and at the present time the receivers thereof, have purchased a large percentage of the gas sold and distributed by said gas company and receivers; that said plaintiff receivers are now purchasing at least 92½ per cent of all gas transported and sold or distributed by them, and are producing from their said leases not to exceed 7½ per cent of the gas so transported, sold or distributed.

These defendants allege that the value of said leases and wells is speculative and can not be definitely fixed, for the reason that should said wells on said leases become exhausted in the near future, then the value of said leases would be much less than the present value thereof assigned to them by the Commission's engineer; that should additional wells, furnishing considerable quantities of gas, be brought in in the near future, then the real value of said leases would be considerably greater than the said assigned value; and for these reasons these defendants allege that the said producing property in the hands of the said receivers should be separated from the total value of the property in the hands of said receivers, and that the said receivers should be allowed for the gas actually produced by them from said leases the same price which they are compelled to pay in the open market for gas; that by so dividing said property the value of said leases and wells is automatically, accurately and correctly fixed, and provides the plaintiffs at all times with a reasonable rate for the gas produced therefrom.

These defendants allege that the value of said wells, leaseholds, drilling and pumping tools, and warehouse tools used in connection with such wells, and a proper proportion of the overhead expenses in the aggregate, was estimated by the engineer of the Public Utilities Commission for the State of Kansas to be \$1,911,205.39, as of January 1, 1915.

These defendants further allege that the Public Utilities Commission for the State of Kansas had no way of actually arriving at the true value of said leases, wells and other producing property other than as is herein explained, and therefore they assigned to it the estimated value placed thereon by the Commission's engineer, to wit, \$1,911,205.39, for the purposes of the aforesaid division between the transportation and production properties, and deducted that amount from the total value of said property as found by the said engineer.

374 These defendants further allege that the present fair and reasonable value of the property used and useful for the transportation and distribution of natural gas in both Kansas and Missouri, and now in the possession of the plaintiff receivers, was, on January 1, 1915, the amount found by the Commission's engineer, less the said value of the leaseholds and other producing property assigned by Commission's engineer, to wit, the sum of \$7,083,605.64.

The Kansas Commission had jurisdiction over only the property used in Kansas, and sought to provide only a reasonable return thereon to the receivers on such property as was used for supplying its consumers in Kansas, and that in order to accomplish this result it divided the value of the whole transportation property between Kansas and Missouri, as aforesaid, according to the uses made thereof in supplying the customers of the plaintiffs in the States of Kansas and Missouri. The method employed by the Kansas Commission in making such division is fully and completely set out in Table I of Exhibit "K," attached to plaintiffs' bill of complaint, and to the answer of the Kansas Commission, which table is here referred to.

That the fair value of the transportation property used in transporting gas from the places of production to consumers within the State of Kansas, as shown by said table, is \$3,221,379.49, and to consumers in the State of Missouri is \$3,862,226.15, which said amounts these defendants allege are a fair value of the property in the possession of the plaintiff receivers used and useful in the supplying of gas to their customers within the State of Kansas and the State of Missouri, and amounts to 45.48 per cent of the value of the transportation property in Kansas and 54.52 per cent in Missouri.

These defendants further allege that the said Kansas Natural Gas Company began making its investments in the year 1905, and continued making such investments up to January 1, 1915; that a fair average date of the total investment is January 1, 1907, and that the life of said transportation property, from the first day of January, 1915, is not less than 12 years in the field in which it is now employed, and the defendants allege that notwithstanding the uncertainty of the supply of gas in parts of the Mid-Continent field, the amount of gas now being transported through said transportation property and available for said purposes to the plaintiff receivers is not greatly diminished from the largest amount heretofore transported by them through said lines, and was greater in the year of 1915 than in the year of 1914, and that the said Mid-Continent gas field is being constantly developed and extended and its total

375 production at the present time is greater than in the past, and its full extent and capacity for production is still unknown.

These defendants allege that the order of the Public Utilities Commission of December 10, 1915, is based upon the past history and present condition of said Mid-Continent gas field and is not predicated upon a speculative decrease in the production of the said Mid-Continent gas field, and that the said basis is the only legal, fair and certain method of fixing said values.

#### IV.

Plaintiff receivers in their bill of complaint rest their claim for the future needs of gas, their future operating expenses and maintenance, upon the amount of gas transported and sold by them during the year 1914, except that for the year 1916 they allege that they should be entitled to \$500,000 for the extension of their pipe lines into other gas fields, alleging that the same is a proper maintenance charge, but which these defendants allege to be a capital charge.

These defendants allege that during the year 1914, the plaintiffs transported and delivered to their consumers in the States of Kansas and Missouri 18,199,544 M. cu. ft., and said amount is fully shown by the following table:

Sold from field lines.....	678,717 M. cu. ft.
Used in compressor stations.....	1,409,413 "
Sold from main-line taps.....	277,838 "
Sold through dist. companies.....	15,833,576 "
Total .....	18,199,544 M. cu. ft.

That to supply the same amount of gas in the future as was supplied during the year 1914 these plaintiff receivers would not need to buy or produce in excess of 25,671,445 M. cu. ft., making allowance for all leakage and waste in the same per cents as alleged in plaintiffs' bill of complaint.

These defendants further allege that the plaintiff receivers during the first nine months of the year 1915 sold more gas than during the similar months for 1914 and at only a slight increase in cost, as is more fully shown in detail by table at page 47 of the printed answer of the Kansas Commission herein.

That the plaintiff receivers are able to purchase a sufficient quantity of gas at not to exceed four cents per thousand cubic feet at the wells, and that said receivers have not and are not paying for gas on the average to exceed four cents per thousand cubic feet at the  
376 wells, based upon the pressure at which said receivers sell gas to their consumers.

These defendants further answering allege that the total operating expenses of the said receivers of the Kansas Natural Gas Company's property for the year 1914 were \$841,289.88, but that said operating expenses included the sum of \$28,663.90 taxes paid by said receivers

on a large sum of money on hand, which said sum has since been distributed under the so-called creditors' agreement, and that said sum so paid for taxes should be eliminated from an estimate for future operating expenses.

That the receivership expenses for the year 1914 were \$137,463.11, which, however, cover a period of more than two years and include the costs of expensive litigation, a large part of which said amount should not be allowed for future operating expenses.

These defendants allege that a reasonable amount for the services and expenses of said receivers and attorneys is not in excess of \$40,000 per annum.

These defendants allege that the total operating expenses and taxes, based on the same expenses for the year 1914, should not be in excess of \$812,625.98 per annum; that the total operating expenses of the entire plant operated in Oklahoma, Kansas and Missouri, including a proper allowance for gas purchased, treating the gas produced upon the company's leases the same as that purchased, is not in excess of \$1,936,794.67; that the total operating expense of the said plant after deducting therefrom the amount of expenses incurred directly in the production of gas, and in addition thereto a proper proportion of expense common to both the production and transportation, is not to exceed \$1,626,652.83, which said amount is the total expense of obtaining, transporting and distributing gas; that the said \$1,626,652.83 should be divided between Kansas and Missouri according to the use made of said property in transporting and delivering gas to plaintiffs' consumers within the States of Kansas and Missouri respectively.

That on this basis that portion of said expense which should be assigned to the State of Kansas would not exceed the sum of \$780,269.57, and to the State of Missouri not exceeding the sum of \$846,383.26; all of which said allegations in reference to said operating expenses is more fully shown in a table at page 49 of the answer of the Kansas Commission herein.

## V.

377 These defendants further answering allege that the fair present value of the property in the possession and under the control of these receivers, and used and useful for transporting and distributing gas, as of January 1, 1915, is not in excess of \$7,083,605.64.

That the fair life expectancy of said property is at least twelve years from said January 1, 1915; that the amount necessary to completely amortize the present value of the said plant during the said life expectancy is not to exceed \$590,300 per annum, which said amount should be divided between the States of Kansas and Missouri on the basis of the use of said property in transporting and distributing gas to the plaintiff receivers' customers within the said States of Kansas and Missouri; i. e., 45.48 per cent should be assigned to Kansas and 54.52 per cent should be assigned to Missouri, as is more fully set out in paragraph three of the third division of this answer.

That upon this basis the amount properly to be charged to the State of Missouri is not in excess of \$321,382 per annum.

## VI.

These answering defendants further allege that these plaintiff receivers have not properly and efficiently managed the said properties in their possession and under their control, but have wasted the revenues of the company in interminable and expensive lawsuits. The leaseholds have been exhausted, and they have neglected to make proper effort to obtain an additional supply of gas necessary to meet the demands of the company's markets. Leases that were available for them have been obtained by other companies operating in the same field. That said receivers are now failing and neglecting to secure an adequate quantity of gas to supply their customers.

These defendants deny that the plaintiffs are entitled to any relief whatsoever, or any part of the relief in said bill of complaint demanded, and allege that the plaintiffs have no standing in this court or in any court of equity.

And defendants pray in all things the same benefit and advantages of this, its answer, as if it had moved to dismiss said bill of complaint, and that a hearing be granted them upon the issues of law arising upon the face of the bill of complaint, as set forth in the first  
378 division of this answer, and that the bill of complaint be dismissed as against these defendants.

Second, that should the bill of complaint not be dismissed as against these defendants before a final hearing of this cause these defendants pray that the bill of complaint be dismissed as against them, and that they go hence without day, and that they have judgment for their costs.

WILLIAM G. BUSBY,  
ALEX. Z. PATTERSON,  
JAMES D. LINDSAY,  
*Solicitors for Above Defendants.*

STATE OF MISSOURI,  
*County of Cole, ss:*

Alex. Z. Patterson, being first duly sworn on his oath, deposes and says: that he is one of the solicitors for the defendants filing the above and foregoing answer, that he has read the foregoing answer, knows the contents thereof and states that the facts therein alleged are true, according to his best knowledge and belief.

ALEX. Z. PATTERSON.

Subscribed and sworn to before me this 13th day of May, 1916.

MARY KNOWLMEYER,  
*Notary Public.*

My commission expires Dec. 13, 1916.



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## EXHIBIT "A."

STATE OF MISSOURI,

*Public Service Commission:*

At a Session of the Public Service Commission Held at Its Office in  
Jefferson City on the 29th Day of October, 1915.

Case No. 807.

Present: Edwin J. Bean, Acting Chairman; John Kennish, How-  
ard B. Shaw, Eugene McQuillin, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Carl  
Junction Gas Company.

*Order.*

It appearing that the Carl Junction Gas Company has heretofore, on September 13, 1915, filed with the Commission a proposed new schedule of rates, entitled its P. S. C. Mo. No. 1, Third Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, effective November 1, 1915, containing certain new rates and charges applicable to the gas service afforded by said company to the public at Carl Junction and Smithfield, Missouri, said new rates and charges constituting an increase of five cents (5c.) per One Thousand (1,000) cubic feet in the net charges for gas, lighting and heating and gas engine service.

It further appearing that the rights and interest of the public appear to be injuriously affected by said proposed increase of rates; and it being the opinion of the Commission that the effective date of said proposed schedule of new rates and charges contained in said Carl Junction Gas Company's P. S. C. Mo. No. 1, Third Revised Sheet No. 1, should be postponed pending a general investigation heretofore entered upon by the Commission in the matter of natural gas service and rates, in order that the Commission may determine the reasonableness and lawfulness of said proposed rates and charges.

Now, upon due consideration, it is

380      Ordered: 1. That the Commission, upon its own initiative without formal pleading, under and by virtue of the authority conferred upon the Commission by section 70 of the Public Service Commission Law, enter upon a hearing concerning the propriety and lawfulness of the proposed new rates and charges contained in said Carl Junction Gas Company's P. S. C. Mo. No. 1, Third Revised Sheet No. 1, on file with the Commission.

Ordered: 2. That the operation of the proposed new rates and charges contained in said schedule be suspended, and that the use of said rates and charges be deferred for the period of One Hundred and

Twenty (120) days from and including November 1, 1915, unless otherwise ordered by the Commission.

Ordered: 3. That this order shall take effect on this date, and that the Secretary of the Commission shall forthwith serve on said Carl Junction Gas Company a certified copy of this order, and that a copy of this order be filed with said schedule in the office of the Commission.

By THE COMMISSION.

[SEAL.] T. M. BRADBURY, *Secretary*.

STATE OF MISSOURI,

*Office of the Public Service Commission, ss:*

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission at Jefferson City, this 12th day of May, 1916.

(Signed)

T. M. BRADBURY, *Secretary*.

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EXHIBIT "B."

STATE OF MISSOURI,

*Public Service Commission:*

At a Session of the Public Service Commission Held at Its Office in Jefferson City on the 17th day of January, 1916.

Case No. 807.

Present: John M. Atkinson, Chairman; John Kennish, Howard B. Shaw, Edwin J. Bean, Eugene McQuillin, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Carl Junction Gas Company.

*Order.*

It appearing to the Commission that the Carl Junction Gas Company has heretofore, on January 15, 1916, by formal notice, withdrawn its P. S. C. Mo. No. 1, Third Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, effective November 1, 1915, containing certain proposed new rates and charges applicable to the gas service afforded by said company to the public at Carl Junction and Smithfield, Missouri, said proposed new rates and charges constituting an increase in the net charges for gas, lighting and heating, and gas engine service. It therefore appearing to the Commission that this proceeding should not be further prosecuted, after due consideration, it is

Ordered: 1. That the above entitled cause be and the same is hereby dismissed.

Ordered: 2. That this order shall take effect on this date.

By THE COMMISSION.

[SEAL.] T. M. BRADBURY, *Secretary*.

STATE OF MISSOURI,

*Office of the Public Service Commission, ss:*

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission at Jefferson City, this 12th day of May, 1916.

(Signed)

T. M. BRADBURY, *Secretary*.

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EXHIBIT "C."

STATE OF MISSOURI,

*Public Service Commission:*

At a Session of the Public Service Commission Held at Its Office in Jefferson City on the 29th Day of October, 1915.

Case No. 808.

Present: Edwin J. Bean, Acting Chairman; John Kennish, Howard B. Shaw, Eugene McQuillin, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Oronogo Gas Company.

*Order.*

It appearing that the Oronogo Gas Company has heretofore, on September 13, 1915, filed with the Commission a proposed new schedule of rates, entitled its P. S. C. Mo. No. 1, Third Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, effective November 1, 1915, containing certain new rates and charges applicable to the gas service afforded by said company to the public at Oronogo, Missouri, said new rates and charges constituting an increase of five cents (5c.) per One Thousand (1,000) cubic feet in the net charges for gas, lighting and heating, and gas engine service.

It further appearing that the rights and interest of the public appear to be injuriously affected by said proposed increase of rates; and it being the opinion of the Commission that the effective date of said proposed schedule of new rates and charges contained in said Oronogo Gas Company's P. S. C. Mo. No. 1, Third Revised Sheet No. 1, should be postponed pending a general investigation hereto-

fore entered upon by the Commission in the matter of natural gas service and rates, in order that the Commission may determine the reasonableness and lawfulness of said proposed rates and charges. Now, upon due consideration, it is

Ordered: 1. That the Commission, upon its own initiative without formal pleading, under and by virtue of the authority  
383 conferred upon the Commission by section 70 of the Public Service Commission Law, enter upon a hearing concerning the propriety and lawfulness of the proposed new rates and charges contained in said Oronogo Gas Company's P. S. C. Mo. No. 1, Third Revised Sheet No. 1, on file with the Commission.

Ordered: 2. That the operation of the proposed new rates and charges contained in said schedule be suspended, and that the use of said rates and charges be deferred for the period of One Hundred and Twenty (120) days from and including November 1, 1915, unless otherwise ordered by the Commission.

Ordered: 3. That this order shall take effect on this date, and that the Secretary of the Commission shall forthwith serve on said Oronogo Gas Company a certified copy of this order, and that a copy of this order be filed with said schedule in the office of the Commission.

By THE COMMISSION.

[SEAL.] T. M. BRADBURY, *Secretary*.

STATE OF MISSOURI,

*Office of the Public Service Commission, ss:*

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission, at Jefferson City, this 12th day of May, 1916.

(Signed)

T. M. BRADBURY, *Secretary*.

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## EXHIBIT "D."

STATE OF MISSOURI,

*Public Service Commission:*

At a Session of the Public Service Commission Held at its Office in  
Jefferson City on the 17th day of January, 1916.

Case No. 808.

Present: John M. Atkinson, Chairman; John Kennish, Howard  
B. Shaw, Edwin J. Bean, Eugene McQuillin, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Oronogo  
Gas Company.

*Order.*

It appearing to the Commission that the Oronogo Gas Company  
has heretofore, on January 15, 1916, by formal notice, withdrawn  
its P. S. C. Mo. No. 1, Third Revised Sheet No. 1, cancelling its  
P. S. C. Mo. No. 1, Second Revised Sheet No. 1, effective November  
1, 1915, containing certain proposed new rates and charges applicable  
to the gas service afforded by said company to the public at Oronogo,  
Missouri, said proposed new rates and charges constituting an in-  
crease in the net charges for gas, lighting and heating, and gas engine  
service. It therefore appearing to the Commission that this proceed-  
ing should not be further prosecuted, after due consideration, it is

Ordered: 1. That the above entitled cause be and the same is  
hereby dismissed.

Ordered: 2. That this order shall take effect on this date.

By THE COMMISSION.

[SEAL.] T. M. BRADBURY, *Secretary.*

385 STATE OF MISSOURI,

*Office of the Public Service Commission, ss:*

I have compared the preceding copy with the original on file in  
this office, and I do hereby certify the same to be a correct transcript  
therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission, at  
Jefferson City, this 12th day of May, 1916.

(Signed)

T. M. BRADBURY, *Secretary.*

Filed in the District Court on May 15, 1916. Morton Albaugh,  
Clerk.

386 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

No. 136-N.

386½ In the District Court of the United States for the District  
of Kansas, First Division.

In Equity.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.

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*Decree.*

In this case the application of John M. Landon, as Receiver of the Natural Gas Company, for an interlocutory injunction against the Public Utilities Commission of Kansas; Joseph L. Bristow, C. F. Foley and John M. Kinkel, as such Commission; H. O. Caster, as attorney for such Commission; S. M. Brewster, as Attorney General of the State of Kansas; John T. Barker, as Attorney General of the State of Missouri; William G. Busby, as attorney for the Public Service Commission of the State of Missouri; John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw and Eugene McQuillan, the Public Service Commission of the State of Missouri, and others, came on for hearing, and the final hearing thereof was commenced before Honorable Walter H. Sanborn, U. S. Circuit Judge, Honorable Ralph E. Campbell, U. S. District Judge, and Honorable Wilbur F. Booth, U. S. District Judge, a court constituted in accordance with the provisions of Section 266 of the Judicial Code, as Amended, (1 U. S. Comp. Stat., Sec. 1143, Page 388 519) on April 24, 1916, and continued from time to time until it was completed on May 25, 1916.

The following named attorneys appeared for the defendants below as specified:

Mr. William G. Busby, Mr. Alex Z. Patterson and Mr. James D. Lindsay, for the Public Service Commission of the State of Missouri, the individual members thereof, and for John T. Barker, as Attorney General of the State of Missouri.

Mr. H. O. Caster and Mr. Fred Jackson, for the Public Utilities Commission of the State of Kansas, the individual members thereof, and for S. M. Brewster as Attorney General of the State of Kansas.

Mr. J. W. Dana, for The Kansas City Gas Company and the Wyandotte County Gas Company.

Mr. J. A. Harzfeld and Mr. A. F. Evans, for Kansas City, Missouri.

Mr. William E. Stringfellow, for the St. Joseph Gas Company.

Mr. T. F. Doran, for the Consumers Light, Heat and Power Company.

Mr. Charles A. Loomis, for the Ottawa Gas and Electric Company and other distributing Companies.

389 Mr. C. L. Faust, for the City of St. Joseph, Missouri.

Mr. Charles Blood Smith, for the Fidelity Title & Trust Company.

Mr. A. M. Baird, for the City of Oronogo, Missouri.

Mr. E. F. Camerson, for the City of Joplin, Missouri.

Mr. C. E. Small, for the Kansas City Gas Company and the Wyandotte County Gas Company.

And now, after deliberation, it is adjudged and decreed:

1st. That the rates in force on January 1, 1911, Laws of Kansas, 1911, Chap. 238, Section 301, for the sale and delivery of natural gas by the Receiver or the Natural Gas Company, to consumers in Kansas, either directly or through intermediaries, that is to say, to consumers at the following places and the cents below named:

	Independence .....	.20
	Elk City .....	.25
	Coffeyville .....	.20
	Liberty .....	.25
	Altamont .....	.25
390	Oswego .....	.25
	Columbus .....	.25
	Scammon .....	.25
	Weir City .....	.25
	Galena and Empire .....	.25
	Cherokee .....	.25
	Pittsburg .....	.25
	Parsons .....	.25
	Thayer .....	.25
	Colony .....	.25
	Welda .....	.25
	Richmond .....	.25
	Princeton .....	.25
	Ottawa .....	.25
	Baldwin .....	.25
	Lawrence .....	.25
	Topeka .....	.25



	Tonganoxie .....	.25
	Leavenworth .....	.25
	Atchison .....	.25
	Wellsville and Le Loup .....	.25
	Edgerton .....	.25
	Gardner .....	.25
	Lenexa .....	.25
	Merriam and Shawnee .....	.25
	Kansas City .....	.25
391	Olathe .....	.25
	Ft. Scott .....	.30
	Moran .....	.30
	Bronson .....	.30
	Caney (Not now supplied) .....	...

were, on December 10, 1915, and still are, non-compensatory, unreasonably low and confiscatory.

2nd. That the next rates fixed by the Utilities Commission of the State of Kansas by its order of December 10, 1915, for the sale and delivery, either directly or through intermediaries, of natural gas by the receiver of the Natural Gas Company, to consumers in Kansas, that is to say, "for domestic gas in Montgomery County, 23 cents per thousand cubic feet except at Elk City, where the present rate of 25 cents is to remain; boiler gas in said county 10 cents per thousand cubic feet. In all other counties except those supplied by the Gunn pipe line 28 cents per thousand cubic feet; in the counties supplied by the Gunn pipe line, the present rate of 30 cents per thousand cubic feet; and on all boiler gas, except in Montgomery County, 12½ cents per thousand cubic feet," then were, and still are, non-compensatory, unreasonably low and confiscatory.

392 3rd. That because the rates above specified are non-compensatory, unreasonably low and confiscatory the Public Utilities Commission of Kansas, Joseph L. Bristow, C. F. Foley, John M. Kinkel, the members thereof, H. O. Caster, its attorney, S. M. Brewster, the Attorney General of the State of Kansas, and all the other parties to this suit interested in such rates, and all the agents, servants, attorneys, employees and successors of each and all of them, be, and they are hereby, enjoined and prohibited, until the final hearing and decision of this suit, or the further order of this court, from putting or maintaining in effect, or attempting to put or maintain in effect, by legal proceedings, or otherwise, against the Receiver or the Natural Gas Company, any of said rates, and from enforcing, or causing the enforcement of, by legal proceedings, or otherwise, against the Natural Gas Company or the Receiver, or their Agents, attorneys, servants or employees, any penal provisions of the Laws of Kansas, 1911, Chapter 28, Section 238, or of any Laws of Kansas, on account of the failure or refusal of the receiver of the Natural Gas Company to put or maintain in effect such rates, or any of them, and that the writ of injunction of this court issue to enforce this decree.

393 4th. That the injunction and decree hereby shall take effect, and the writ of injunction hereon shall issue, on

condition, and not otherwise, that within sixty (60) days from the entry of this decree the Receiver, or some one in his behalf, shall make and file in this court a bond or undertaking to the United States for the benefit of all parties interested, in the sum of \$750,000.00, with security approved by Honorable Ralph E. Campbell, District Judge, conditioned that the Receiver will pay no more upon the principals of the debts of creditors who were parties to the creditors' agreement of December, 1914, or to the Fidelity Title & Trust Company, Trustee, until \$750,000.00 has been invested in the necessary extensions of the pipes of the Natural Gas Company, and the necessary compressors, to enable the Receiver to furnish to his customers and the customers of the Natural Gas Company, a reasonably adequate gas supply, that he will proceed speedily to make these investments, that he will invest therein at least \$500,000.00 within six months after the entry of this decree, that he will pay such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained

394 by the injunction hereby decreed, that in case the final decision of this suit should grant the Receiver and the Natural Gas Company no relief, or in case the injunction decreed herein shall be adjudged to have been improvidently issued by the final decision of that question, he will pay back to each of the consumers of the gas he furnishes herein, the excess paid by such consumer therefor above what he would have paid at the rates fixed by the order of the Commission of December 10, 1915, and that he will keep, or cause to be kept, accounts showing such excess open at all times to the inspection of the court, of such consumers and their agents.

5th. That this court reserves exclusive jurisdiction of such bond of the parties thereto, who by executing the same become parties to this suit, of the enforcement of the obligations of the bond and of the recovery of damages for any breach thereof.

6th. That this court reserves jurisdiction of the subject matter of this application for an injunction, and of the parties thereto, and reserves its power and authority to add to, take from, modify or supplement the injunction hereby decreed, or any other provision of this decree, at any time during the pendency of this suit.

7th. That any other or further injunction than that hereby granted is hereby denied without prejudice, however, to  
395 another or supplemental application upon newly discovered evidence, new or subsequent facts or occurrences.

Dated this 3rd day of June, 1916.

WALTER H. SANBORN,  
*U. S. Circuit Judge.*  
RALPH E. CAMPBELL,  
*U. S. District Judge.*  
WILBUR F. BOOTH,  
*U. S. District Judge.*

Filed in the District Court on June 3, 1916. Morton Albaugh,  
Clerk.

*Opinion of Court.*

Mr. John H. Atwood, Mr. Robert Stone, Mr. Chester I. Long and Mr. T. S. Salathiel, appeared in behalf of the receiver.

Mr. H. O. Caster and Mr. Fred S. Jackson, appeared in behalf of the defendant Public Utilities Commission of the State of Kansas.

Mr. William G. Busby and Mr. Alex Z. Patterson, appeared in behalf of the defendant Public Service Commission of the State of Missouri; and in behalf of John T. Barker, as Attorney General of the State of Missouri; and in behalf of the members thereof. (Mr. James D. Lindsay, appeared with them on the brief.)

Mr. J. A. Harzfeld and Mr. A. F. Evans, appeared for defendant Kansas City, Missouri.

Mr. William E. Stringfellow, (Messrs. Olin, Butler, Stebbins & Stroud, and Messrs. Culver & Phillip, were with him on the brief) appeared for intervenor St. Joseph Gas Company.

Mr. J. W. Dana and Mr. C. E. Small appeared for The Kansas City Gas Company and The Wyandotte County Gas Company.

Mr. T. F. Doran, appeared for the Consumers Light, Heat and Power Company.

397 Mr. Charles A. Loomis appeared for the Ottawa Gas & Electric Company and other distributing companies.

Mr. Charles L. Faust, appeared for the City of St. Joseph, Missouri.

Mr. Charles Blood Smith, appeared for the Fidelity Title & Trust Company.

Mr. A. M. Baird, appeared for and on behalf of the City of Oronogo, Missouri.

Mr. E. F. Cameron, appeared for and on behalf of the City of Joplin, Missouri.

Before Sanborn, Circuit Judge, and Campbell and Booth, District Judges.

*Per Curiam:*

John M. Landon is the receiver of the property of the Natural Gas Company, a corporation of the State of Delaware, by appointment of the District Court of Montgomery County, Kansas, and of the United States District Court of the District of Kansas, and he is operating the business and property of that company under the direction of the former court. That company is directly and indirectly the owner of the pipe line extending from gas fields in the State of

398 Oklahoma to thirty-seven cities in Kansas and eight cities in Missouri, and by means of the receiver is conducting natural gas from Oklahoma to these cities and their inhabitants, where it is distributed under contracts between the natural gas company and other corporations that for convenience are termed distributing companies. The receiver obtains about 92½% of his gas from fields in Oklahoma and about 7½% from fields in Kansas. He purchases the gas he obtains from Oklahoma and produces from lease-holds of the company most of that obtained from fields in Kansas. He supplies about 46% of his gas to the Kansas cities and

towns and about 54% of it to cities and towns in Missouri. On December 10, 1915, the Public Utilities Commission of the State of Kansas made an order to the effect among other things, that the net rates for the sale of natural gas by the receiver to the public in the State of Kansas should be:

"For domestic gas in Montgomery County, 23c. per thousand cubic feet except at Elk City, where the present rate of 25c. is to remain; boiler gas in said county 10c. per thousand cubic feet.

"In all other counties except those supplied by the Gunn Pipe Line 28 cents per thousand cubic feet; in the counties supplied by the Gunn Pipe Line, the present rate of 30 cents per thousand cubic feet; and on all boiler gas, except Montgomery County, 12½ cents per thousand cubic feet."

As the rate of 28 cents named in this order applies to much the larger part of the gas affected by the order the rates so fixed have been and will be termed the 28 cent rate. The receiver has brought this suit against the members of the Public Utilities Commission of the State of Kansas and the Attorney General of that state to prevent by the injunction of this court the enforcement of the order fixing this 28 cent rate on the ground that it is unreasonably low, confiscatory of the property and destructive of the business of the natural gas company and violative of the constitution of the United States.

He has made the distributing companies through which, and the cities to which, he furnishes gas parties defendant. He has also made the members of the Public Service Commission of the State of Missouri parties defendant has set forth a complaint and prayed an injunction somewhat similar against them. After the commencement of the suit an application for an interlocutory injunction against the enforcement of the rates fixed by the orders of the commissions was made and has been heard in accordance with the

provisions of Section 266 of the Judicial Code as amended, 1 U. S. Comp. Stat., Section 1243, Page 519.

The crucial question for decision upon this application for an injunction by the court constituted under Section 266 is whether or not the 28 cent rate is confiscatory or unreasonably low. Ten days have been devoted to the reception of evidence and the hearing of arguments. Time has been taken for examination of evidence and briefs and for deliberation and consultation. Many issues of fact and of law have been presented that were proper for consideration but that are not controlling of the decision of the question at issue. The Act of Congress requires that the hearing on this application "shall be given precedence and shall be in every way expedited"; and the situation of the property in the hands of the receivers and of the parties to this litigation is such that delay may be as fatal to the interests of all concerned as an adverse decision. For these reasons the court pretermits reference to matters that are not indispensable to the determination of the crucial question in hand, as well as discussion of those that are indispensable to such a question, and confines itself to a statement of the conclusions which the law and the evidence in this opinion compel.

One of the bases of the conclusion and order of the commission is the following table which is copied from its opinion:

Table No. 5.—Kansas Natural Gas Company.

## Statement of Estimated Revenue and Requirements for the Ensuing Year Based on 1914 Figures, Revised as Previously Explained, for the State of Kansas

	Requirements.	Transportation.	Kansas.
402			
25,671,445 M cubic feet of gas at 4c .....		\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation .....		510,536.14	223,245.11
Receivership expenses .....		32,228.00	14,093.30
Uncollectible gas accounts .....		12,555.07	6,359.14
Taxes, Kansas City Pipe Line .....		33,288.27	16,860.51
Taxes, Marnet Mining Company .....		10,497.35	5,316.91
Maintaining organization, Marnet Mining Company .....		690.20	349.59
Total .....		\$1,626,652.83	\$780,269.57
*Present value of transportation property, \$7,083,605.64; depreciation on basis of twelve years .....		\$590,300.00	\$268,468.44
Requirements exclusive of a return on property investment .....		\$2,216,952.83	\$1,048,738.01
*Return on present value .....	\$7,083,605.64		
Add for working capital .....	200,000.00		
Total .....	\$7,283,605.64 at 6% .....	\$437,016.35	\$198,755.00
		\$2,653,969.18	\$1,247,493.01

\*The division of these items between Kansas and Missouri, has been made on the basis of the use of the property as shown in Table I.

## Estimated Revenue.

Gas sales, 1914 .....	\$1,192,089.82
†Gas used in compressor stations (on basis of use) .....	31,737.70
Total .....	<u>\$1,223,827.52</u>
Estimated revenue from proposed increased rates .....	171,513.63
Total estimated revenue from Kansas .....	<u>\$1,395,341.15</u>
Deduct requirements as above .....	1,048,738.01
Estimated net revenue .....	<u>\$346,503.14</u>
Which is equal to a return of 10.46% on the present value \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,605.64, or	
Total estimated revenue for Kansas .....	\$1,395,341.15
Less requirements including a 6% return .....	<u>1,247,493.01</u>
Surplus .....	<u>\$147,848.14</u>

†This item is placed here to balance an equal sum included in the expenditures. It is a bookkeeping entry solely.

403 The Commission found the reproduction value of the property of the gas company less depreciation for age and use to be \$7,083,605.64, the probable life of the going concern to be twelve years, amortized the \$7,083,605.64 by the allowance of one-twelfth thereof \$590,300.00 as a yearly requirement for its operation and allocated all the requirements between Kansas and Missouri on the basis of 45.48% to Kansas and 54.52% to Missouri. The evidence before the commission, a great volume of evidence which was not before the commission, including a disclosure of the actual results of the operation of the property during the first four months of the year 1915 under the 25 cent rate which existed before the commission established a 28 cent rate, and the results of its operation during the first four months of the year 1916 under the 28 cent rate, evidence of the exhaustion of gas fields, of the increase of the cost of gas, of the value of the property of the company, and of every other conceivable issue relative to the general question has been presented to this court. Upon nearly every issue this evidence is conflicting and the determination of some of these issues is difficult. "And yet," as the Supreme Court said in *Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins*, 176 U. S. 167, 172, "This

404 difficulty affords no excuse for a failure to examine and solve the questions involved." Bearing this caution in mind and conceding the present value of the property of the company to be \$7,083,605.64 as the commission found it, a deliberate consideration of the entire case has forced our minds to these findings and conclusions which in our view are determinative of the real question to be decided.

A supply of gas adequate to the reasonable needs of the customers of the natural gas company for domestic lighting, cooking and heating is the real desideratum in this case. Without it no rate will be compensatory. The company now has no such supply, it can not get such a supply without adequate extensions to its pipe lines. It can make such extensions by the expenditure of a reasonable amount of money. It cannot make such extensions without such money and it cannot get the money to make them without compensatory rates for the gas it procures and sells. Any rate which will not compensate it for making the necessary extensions to secure such a supply, for paying its other necessary expenses of operation and a reasonable income on the value of its property is unavoidably confiscatory, because without these extensions it must lose its

405 customers, cease its operation, and the value of its property must greatly decrease.

In the earlier years of its operation the natural gas company produced most of its gas from its leaseholds in Kansas, but the fields so leased have been gradually exhausted until it is able to produce therefrom only about 7½% of the gas it transports and sells. In order to get gas it has already extended its pipes far into the State of Oklahoma where it purchases and when it transports to the cities of Kansas and Missouri 92½% of its gas. It is conceded that the business of the company is temporary, that the exhaustion of the



fields which it can reach with permissible extensions must eventually come and that the time when it can not longer reach fields from which it can obtain gas cannot be delayed many years. The creditors' agreement of December, 1914, which provided for the payment of the bonded debts of the company within six years and for the expenditure of \$1,500,000.00 for extensions and additional gas supply, indicates that they estimated the life of the company as a going concern at six years from that date. The opinion of the Kansas Commission based upon this creditors' agreement provided for the payment of the bonded debts of the company except  
406 the principal of the second mortgage bonds within the six years 1915, 1916, 1917, 1918, 1919 and 1920, and for the expenditure by the receiver for extensions and additional gas supplies of \$1,500,000.00. The life of the company as a going concern is necessarily unknown and unknowable, a matter of opinion, and yet the court must determine what it probably is, and a consideration of the evidence, of the history of the gas fields in Kansas and Oklahoma, of the testimony of witnesses familiar with that history, with the fields and with the production, purchase, transportation and sale of gas has brought the minds of all the members of the court to the conclusion that the probable life of the natural gas company as a going concern is approximately six years from this date, June 3, 1916.

The creditors by their agreement provided for an expenditure of \$1,500,000.00 within six years from December, 1914, for the extensions of the pipes of the company and an additional supply of gas. The Kansas Commission in its opinion, founded upon that creditors' agreement, made a like allowance. The extensions contemplated have not been made and the exhaustion of the available  
407 gas fields has proceeded for seventeen months since the creditors' agreement and for about eleven months since the opinion and finding of the commission founded upon it. In order to procure and maintain a reasonably adequate supply of gas for the coming winter it is necessary for the receiver to extend the pipe lines fifty or sixty miles and to construct compressors at an aggregate expense of at least \$750,000.00 to \$900,000.00 during the first year after the filing of this opinion. And it is the opinion of the court that in order to procure and maintain such a supply of gas during the six years of the probable life of the company as a going concern it will be necessary for the receiver to expend for extensions and compressors at least \$750,000.00 the first year and \$200,000.00 in each of the five years thereafter, amounting in all to \$1,750,000.00. As the life of the company as a going concern is six years the salvage value of the pipes and other materials at the end of the six years when they will be no longer useful in their places in the ground is estimated to be \$262,500.00 and deducting this from the \$1,750,000.00 leaves \$1,487,500.00 which must be returned within the six years. The commission in its finding and estimates made no allowance for these extensions.

The commission allowed \$1,026,857.80 yearly for the pur-

408 chase of 25,671,445 M cubic feet of gas at four cents per cubic foot. Gas is constantly becoming more difficult to procure, the cost of it in the fields has increased and is increasing as the fields one after another are exhausted, and the evidence that has been produced before this court has convinced us that the gas requisite reasonably to supply the customers of the natural gas company will cost at least six cents per M cubic foot, and that on this account there should be allowed as a part of the requirements of the receiver and the company two cents more per M cubic foot yearly than the amount which was allowed by the commission, that is to say \$513,428.90.

The commission allowed for interest six per cent annually on \$7,283,605.64 or \$437,916.64. The business of and the investment in the property of this gas company is of the most precarious and hazardous nature. Seven per cent per annum is deemed a just and reasonable allowance on investments in railroads and in the property of water, artificial gas and lighting companies of a permanent nature, and at least eight per cent per annum should be allowed in this case, or an increase of the amount allowed by the commission of two per cent on \$7,283,605.64 or \$145,672.10.

409 The commission allowed \$590,300.00 which is one-twelfth of \$7,083,605.64 for future depreciation of the property of the company on the basis that the life of the company as a going concern would be twelve years. As the evidence has convinced that its life will not exceed six years there should have been allowed \$590,300.00 more each year during the six years than was allowed by the commission.

Turning now to the table of the commission quoted above the result is that, laying aside other considerations and conceding the substantial correctness of the commission's other findings for the purpose of the decision of this application for injunction, its estimates of the requirements of the company and of the receiver for the first and the succeeding five years of the life of the gas company as a going concern were too low by the following amounts:

410

On account of estimating twelve years instead of six years as the life of the going concern by . . . . .	\$590,300.00
On account of lack of allowance for extensions by . . . . .	247,916.00
On account of estimate of cost of gas at four cents per M cubic foot instead of six cents per M cubic foot by . . . . .	513,428.90
On account of allowance of six per cent instead of eight per cent interest . . . . .	145,672.10
Total . . . . .	<u>\$1,497,317.00</u>

The commission assigned to the Kansas property 45.48 per cent of its estimated revenue and requirements; 45.48 per cent of \$1,497,317.00 is \$680,979.00. The commission estimated that upon the

basis stated in its table a surplus of \$147,848.14 would be produced. Deducting this estimated surplus from the \$680,979.00 it appears that its estimated revenue falls short by \$533,131.10 of producing an amount sufficient to pay the necessary expenses of the maintenance and operation of the property and business of the natural gas company and a reasonable interest upon the present value of its property.

The experience of the future may, and it is hoped that it will, teach that the necessary requirements of the receiver and the  
411 company will be less than those which the evidence convinces the court will be indispensable to provide and maintain an adequate supply of gas for the customers, to operate the business of the company and to return a fair income upon the value of its property. The opinion of the court can rest only on the evidence before it, and upon that evidence it is its opinion that a less rate than thirty-two cents per M cubic foot will be found insufficient to accomplish this result. But even if there are errors in some of the conclusions to which the court has arrived, and even if they are so great as to reduce the necessary increase of the requirements fixed by the commission by one-half, still moneys must be provided for the extensions of the pipes of the company, for which the commission allowed nothing; the amount it allowed for the cost of gas and the interest rate which it fixed were largely too low, twelve years was too high an estimate for the life of the plant and in the opinion of the court there is no escape from the conclusions that the 28 cent rate is not and will not be compensatory, that on the other hand it is unreasonably low, confiscatory and violative of the Constitution of the United States, and  
412 that the complainant is entitled to the interlocutory injunction of this court to prevent its enforcement pending the hearing of this cause upon its merits.

The creditors by their agreement consented that there should be reserved during the year 1915 \$500,000.00 out of the annual earnings for that year and \$200,000.00 annually thereafter for extensions, betterments and additional gas supply upon condition that the properties were being operated on a compensatory rate. Those amounts have not been so reserved and applied and yet \$1,000,000.00 has been paid on the principal of the creditors' debts during these years. Under these circumstances the rights of the public, that is to say, of the customers of the gas company, to a reasonably adequate supply of gas from the receiver and the company at a rate that is not unreasonably high, are superior to the rights of the creditors to the payment of their debts, and the making of necessary extensions of the pipes and the construction of the requisite compressors to procure and furnish to these customers that reasonably adequate supply, must be made primary in the administration of this estate and the payments upon the principals of debts of the creditors secondary. To this end the issue of the injunction herein will be conditioned  
413 upon the giving by the receiver, or by some one on his behalf, of a bond or undertaking in the sum of \$750,000.00 with adequate security that he will pay no more upon the principals of the debts of the creditors who were parties to their agree-

ment of December, 1914, or to the Fidelity Title and Trust Company, until \$750,000.00 has been invested in the necessary extensions and compressors and that he will proceed speedily to make them and will invest therein at least \$500,000.00 within six months after the issue of the injunction herein.

Elaborate arguments have been made and extensive briefs have been submitted on the questions whether the gas which the receiver is buying, carrying and selling, is an article of interstate or of intrastate commerce, whether he is engaged in interstate or intrastate commerce, and if, in the former whether the rate fixed by the commission directly or indirectly burdens or interferes with interstate commerce. These questions have received examination and consideration. Their decision, however, is not indispensable to the determination of the question before this court, for, if the gas is not an article of interstate commerce and if the business of the

receiver in dealing with it is not interstate commerce, nevertheless, this court has plenary jurisdiction to adjudge the issue whether or not the 28 cent rate is unreasonably low or is confiscatory and to enforce its adjudication by injunction under the Public Utilities Act of Kansas, Laws of 1911, Chap. 238, Sec. 21; *State v. Flannelly*, 154 Pac. 235, 237, Rights created or provided by the statutes of the states to be pursued in the state courts may be enforced and administered in the national courts, either at law, in equity, or in admiralty, as the nature of the rights or remedies may require. "A party by going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality. The wise policy of the constitution gives him a choice of tribunals." *Davis v. Gray*, 16 Wall. 203, 221; *Ex parte McNeil*, 13 Wall. 236; *Darragh v. H. Wetter Mfg. Co.*, 78 Fed. 7, 14; 23 C. C. A. 609, 616 and cases there cited; *Broderick's Will* 21 Wall. 503, 520; *Cowley v. Railroad Company*, 159 U. S. 569, 583. Discussion of these questions is therefore omitted, but the members of the court are unanimously of the opinion (1) that the gas purchased or procured in Oklahoma, transported from Oklahoma and sold or delivered by the receiver or by the Gas

Company to parties in Kansas or Missouri, is an article of interstate commerce as is the gas procured in Kansas and sold or delivered by them, or either of them, to parties in Missouri, (2) that this gas, which is probably at least 95 per cent of all the gas the receiver or the company handles, does not lose its interstate character by the fact that a small portion, probably not exceeding 4 per cent of the gas, they handle, is procured and delivered in Kansas, is an article of intrastate commerce and is inseparably mingled in the pipes with the interstate gas, (3) that the purchase or procuring of interstate gas in Oklahoma, its transportation, sale and delivery by the receiver, or the Gas Company to parties in Kansas and Missouri, is interstate commerce, and the receiver and the company are engaged in interstate commerce, (4) that the enforcement by a state through its officers of any legislative act preventing interstate commerce in this article of interstate commerce, either by a direct prohibition of such commerce in this article by state

law, or by an inhibition of a sale of the article in the state at any price whatever, or at any price above a price so low that the laws of trade make it impossible to purchase or procure it in another state and to sell and deliver it in the prohibiting state at that price  
416 with profit, substantially burdens and unduly interferes with interstate commerce in violation of the commerce clause of the Constitution of the United States.

Counsel for the Public Utilities Commission of Kansas argue that the issues relative to the interstate or intrastate character of the business and gas of the Receiver are rendered res adjudicata between him and the Commission by the judgments of the Supreme Court of Kansas in *State ex rel. Caster v. Flannelly*, 152 Pac. 22, and *State ex rel. Caster v. Flannelly*, 154 Pac. 235, to which the Receiver and the Commission were parties and in which that court in its opinions expressed the view that this business and this gas was not of an interstate character. But reasons given by courts in their opinions for conclusions they reach which are not necessary to and are not embodied in or made parts of the adjudications which they render do not work the estoppel of res adjudicata. One of the judgments of the Supreme Court in the case mentioned was founded on its decision that Judge Flannelly had no jurisdiction of the case before him for the sole reasons that the summons against the Commission and its members, and the service thereof, were unauthorized and void.

The other judgments were the denial of the petition of the  
417 receivers for an injunction against the Commission to prevent it from putting the 28 cent rate in force, and this was founded on the ground that the receiver had already voluntarily put it in force and no longer pressed in that court for relief against it and the other was the dismissal of the mandamus proceeding because there was no longer any function for it to perform. The opinion and conclusion that the business and the gas of the receiver were not of an interstate character was unnecessary and immaterial to any of these judgments and for that reason the court is of the opinion that the questions in relation to the interstate or intrastate character of the business or gas of the receiver and of the Natural Gas Company were not rendered res adjudicata by the adjudication of the Supreme Court of Kansas in the cases to which reference has been made.

Now as to the Missouri defendants. First, have the receivers establish their right to the preliminary injunction prayed against the Missouri Public Service Commission? In paragraph 2 of the bill it is alleged that on September 27, 1915, the Public Service Commission of Missouri held a conference with the Public Service Commission of Kansas, after which John M. Atkinson, as chairman of the Missouri Commission, and for the Commission,  
418 announced that the Missouri Commission would not permit a higher rate to be charged in the cities of Missouri than was charged in the border cities of Kansas. In support of this allegation affidavits were introduced, from which it appears that about September 28, 1915, the three members of the Kansas Commission and two members of the Missouri Commission, held a private conference in

the Baltimore Hotel at Kansas City, Missouri, after which one of the members of the Missouri Commission, stated that: "If application is ever made to the Missouri Commission for an increase of natural gas rates in these Missouri cities which are supplied with gas by distributing companies buying from the Kansas Natural, no action will be taken until all the cities have been given a hearing. Neither will the Commission, if called upon to take action, agree to a higher rate in Missouri cities—all of which are upon the border, than in cities of Kansas similarly situated. This applies with particular force to Kansas City, Missouri, and Kansas City, Kansas, which the Commission regards as practically one city."

Certainly this statement of a single member of the Commission, made under these circumstances, outlining what he believed would be the action of the Commission in the future in case the question of these rates should be brought before it, furnishes no ground in itself for the granting of the injunctive relief prayed.

It is further alleged that on September 13, 1915, the local distributing companies of Oronogo, and Carl Junction, Missouri, filed with the Missouri Commission schedules prescribing a rate of 30 cents for each of those towns, which the Commission suspended and has ever since refused to permit said rates to be put into effect. Under the law of that state the Commission may upon the filing of a proposed schedule of rates, suspend its operation pending a hearing. It does not appear that a hearing as to these last mentioned rates has ever been had so that it cannot be said what will be the action of the Commission as to such rate, and it further appears that the applications for the allowance of such schedules have been since withdrawn.

So far as concerns the case of the plaintiff, the receiver, against the Missouri Commission as to the order of the Missouri Commission in relation to the St. Joseph rates, it will be noted that the order of the Missouri Commission complained of was entered at a proceeding to which neither the receiver nor the Kansas Natural Gas Company was a party. The order entered in that proceeding was directed only against the St. Joseph Company. In the course of its opinion the Commission said:

"The company (St. Joseph Company) has been paying the Kansas Company 26-2/3 cents per thousand cubic feet, while other distributing companies are paying 16-2/3 cents, except the local company in Kansas City, Missouri, which pays 16.87 cents. The Kansas Company is not before us, and we have no jurisdiction over the contract between that company and the defendant, under which the latter receives its gas from the former. However, it is well recognized that in rate-making cases only reasonable charges, as operating expenses, will be allowed against the public. \* \* \*

The increase from 40 to 60 cents prayed by the St. Joseph Company was denied. There is nothing in the order of the Missouri Commission to prevent the receiver continuing to collect from the St. Joseph Gas Company his proportion of the rate as provided by the contract. So long as the St. Joseph Company continues to collect the 40 cent rate the Receiver may under his contract collect as his



proportion the 26-2/3 cents. A consideration of all the evidence does not convince us that 26-2/3 as the proportion of the St. Joseph rate received by the Receiver is unreasonably low, noncompensatory, unremunerative or confiscatory. Therefore, no ground is shown in reference to the Missouri Public Service Commission's order regarding St. Joseph rates that entitles the receiver to the preliminary injunction prayed.

So far as concerns the application of the St. Joseph Gas Company for an interlocutory injunction as against the Attorney General of the State of Missouri and the officers of the Public Service Commission of that State as prayed in what it terms its intervening bill of complaint in this case, it appears that the original bill of the Receiver, plaintiff, both the St. Joseph Gas Company and the Attorney General and Public Service Commission of Missouri were made parties defendant. By its answer filed in this case on January 28, 1916, the St. Joseph Gas Company states that it has no knowledge, save as is alleged in said bill, as to the several allegations thereof and leaves the complainant, receivers, to make such proof thereof as they may be advised is material and further states that it has no interest in the result of the receiver's suit or in the matters to be litigated herein and specifically disclaims any such interest and prays to be dismissed with its costs. At the hearing upon the application of the Receiver in Kansas City, the St. Joseph Gas Company, through counsel, asked and was granted leave within a certain time thereafter to file an intervening bill.

It has now filed what it styles its intervening bill of complaint, and upon the allegations therein contained it bases its application for the interlocutory order above referred to. The Attorney General of Missouri and the Public Service Commission of that State challenge the jurisdiction of this court in this cause to grant such relief to the St. Joseph Gas Company. In view of the fact that that Company and the aforementioned Missouri defendants were all made parties to the original bill, what the St. Joseph Gas Company terms its intervening bill is in reality a cross action or cross bill against its codefendants, the Attorney General and the Public Service Commission of Missouri.

In *Stuart v. Hayden*, 72 Fed. 402, the Circuit Court of Appeals for this circuit said:

"A cross bill is brought either to aid in the defense of the original suit or to obtain a complete determination of the controversies between the original complainant and the cross complainant over the subject matter of the original bill. If its purpose is different from this, it is not a cross bill although it may have a connection with the general subject of the original bill. It may not interpose new controversies between co-defendants to the original bill, the decision of which is unnecessary to a complete determination of the controversies between the complainant and the defendant over the subject matter of the original bill. If it does so, it becomes an original bill, and must be dismissed, because there cannot be two original bills in the same case. *Story Eq. Pl. Sec. 3890*; *Cross v. De Valle*, 1 Wall. 1, 140; *Ayres v. Carver*, 17 How. 591; *Rubber*



Co. v. Goodyear, 9 Wall, 807, 809; Stonemetz Printer's Mach. Co. v. Brown Folding Mach. Co., 46 Fed. 851; Fidelity Trust & Safety Vault Co. vs. Mobile St. Ry. Co., 53 Fed. 850, 852; McMullen v. Ritchie, 57 Fed. 104."

In *Gilmore v. Bort*, 134 Fed. 658, it is said:

"The purpose of a cross-bill is either (1) to obtain a discovery in aid of a defense to the original bill, or (2) to obtain full relief to all parties touching the matters of the original bill. Story's Eq. Pl. par. 389. And it must be made to appear that a settlement of the controversy presented by the cross-bill is fairly necessary in order to enable the court to fully dispose of the matter of the original bill. It is auxiliary to the original suit, and a dependency upon it, and should not introduce any new or distinct matter not embraced in the original bill. Neither may it introduce new controversies between the co-defendants in the original bill, the decision of which is in no way necessary to a complete determination of the controversy between the complainant and the defendants over the subject matter of the original bill. If it does, it is not a cross-bill but an original bill and should be dismissed. *Cross v. De Valle*, 1 Wall., 5; *Rubber Co. v. Goodyear*, 9 Wall., 807; *Stewart v. Hayden*, 72 Fed. 402, 18 C. C. A. 618."

The relief sought as set forth in the prayer of what is termed the intervening bill is that should the court find and decree that the matter of the division of the proceeds received from the consumers for gas sold in St. Joseph or the amount paid by the St. Joseph Gas Company to the Kansas Natural Gas Company, or its receiver, for gas is a matter within the jurisdiction and control of the Public Service Commission of Missouri, that the court should further find and decree that 17 cents per thousand cubic feet, the amount fixed by the Missouri Public Service Commission as the maximum operating charge which it will allow against the public as the cost of gas, is an insufficient and unreasonably small operating charge, the enforcement of which results in the confiscation of intervenor's property as set forth in the bill, and that the court find and determine whether 26-2/3 cents per M cubic foot is a fair, reasonable and proper sum to be paid by the intervenor to the Kansas Natural Gas Company, or its receiver, for gas and a fair and reasonable operating charge against the public as the cost of gas, and that the aforementioned Missouri defendants be temporarily and permanently enjoined and restrained from attempting to enforce the provisions of the order and decisions of the Missouri Commission or authorizing or directing the institution of any suit or action against the intervenor, or its officers, agents, or employees for the recovery of any penalties because of its failure to observe such order.

A careful consideration of the allegations of this intervening bill, which we treat as a cross-bill, convinces us that it neither serves to aid in the defense of the original suit nor to obtain a complete determination of the controversies between the original complainant and the several defendants to the original bill. In our judgment it interposes new controversies between co-defendants to the original bill the decision of which is unnecessary to a complete determination of the

controversies between the complainant receiver and the several defendants to the original bill over the subject matter of that bill. It is in the nature of an original controversy between the St. Joseph Gas Company and the several Missouri defendants, and the fact that in the determination of this controversy it may and probably will become necessary to consider questions very similar to those  
426 involved in this case as between the receiver and the several defendants to the original case, makes it none the less a new and distinct controversy of which, in the present state of the record, we conclude we have not jurisdiction to grant the relief prayed by the St. Joseph Gas Company, and its application for an interlocutory injunction will, therefore, be denied.

It has not been and is not necessary for this court as at present constituted to determine the validity of the city ordinances, the contracts between the cities and the distributing companies, the contracts between the distributing companies and the Natural Gas Company and the duties and obligations of the Receiver under them in order to adjudicate the issues it was constituted to decide and for that reason no opinion is expressed or adjudication made concerning them.

Filed in the District Court on June 3rd, 1916. Morton Albaugh, Clerk.

427 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS  
et al., Defendants.

*Reply to Answer and Counter Claim of Kansas City Gas Company.*

Comes now the plaintiff and for his reply to the answer and counter claim of the Kansas City Gas Company, alleges:

1.

That he denies that the defendant Kansas City Gas Company receives its natural gas from him under and pursuant to certain contracts and writings dated November 17, 1906, and December 3, 1906, and denies that said contracts are in full force and effect. But alleges that the same have been disavowed by this receiver and that conditions under which said contracts were entered into have so changed, as contemplated in said contracts, that the Kansas Natural Gas Company and this plaintiff are and were justified in dis-

avowing and cancelling said contracts, as is more fully set up in the bill of complaint and supplemental bill of complaint and the exhibits thereto attached filed in this cause. That he denies that the receivers of said Kansas Natural Gas Company have continued to supply said defendant with natural gas under said contract.

2.

That plaintiff is without adequate knowledge as to all facts set out in paragraph- 13, 14 and 15 of said counter claim and hence neither admits nor denies the same.

428 That plaintiff is without knowledge as to the averments in paragraph 17 of the counter claim, except that he denies that the Kansas Natural Gas Company represented through its supply contract, or otherwise, that it would at all times be able to furnish an adequate and sufficient supply of natural gas to enable said defendant to distribute and sell the same in sufficient quantities for lighting, cooking, domestic heating, furnaces, industrial power, boiler and manufacturing purposes; but alleges that the supply contract on its face shows that the supply of natural gas was limited and uncertain, and the said Kansas Natural Gas Company did not assume to furnish sufficient and adequate supply of natural gas for said purposes. That said supply contracts were made in view of the location of the then known gas belt in Southeastern Kansas and with the expectation that a sufficient supply could be obtained from said field, but that the source of supply has receded. That the Kansas Natural Gas Company and its receivers has continued to extend its pipe lines to greater and greater distances year after year, until natural gas is supplied to the defendant from distances and points never in the contemplation of the parties at the time the said supply contracts were entered into. All as more fully appears from the bill of complaint and the supplemental bill of complaint filed in this cause. That by reason of the premises the said supply contracts are not and have not been for some time in force and effect. That the plaintiff is without accurate information as to the allegations contained in the 18th and 19th paragraphs of said counter claim, and hence neither denies nor admits the same.

JOHN H. ATWOOD,  
ROBERT STONE,  
CHESTER I. LONG,

*Solicitors for Plaintiff.*

Filed in the District Court on Oct. 11, 1916. Morton Albaugh, Clerk.

429 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON, Receiver, Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF KANSAS et al., Defendants.

*Petition to Dissolve Injunction and Supplemental Answer, Counter-  
claim and Cross-bill of the Wyandotte County Gas Company.*

C. E. Small, J. W. Dana, Solicitors.

August 29, 1916.

429½ In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON, Receiver, Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF KANSAS et al., Defendants.

*Petition to Dissolve Injunction and Supplemental Answer, Counter-  
claim and Cross-bill of the Wyandotte County Gas Company.*

Comes now The Wyandotte County Gas Company, defendant in the above entitled cause, and for its petition to dissolve the interlocutory temporary injunction issued herein, and for its supplemental answer, counterclaim and cross-bill of complaint against the Kansas Natural Gas Company and John M. Landon, its Receiver, herein-after referred to as plaintiffs, alleges, avers and states the following facts, to-wit:

1. That The Wyandotte County Gas Company is a corpora-  
430 tion duly organized and existing under and by virtue of the  
laws of the State of Kansas, and a citizen and resident of said State and of the First Division of the Judicial District of Kansas, and is engaged in the business of distributing and selling natural gas to Kansas City, Kansas, and Rosedale, Kansas, and the inhabitants thereof under and pursuant to certain franchises granting the use of the public ways of said cities for such purpose. That the defendant, Kansas Natural Gas Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and the plaintiff, John M. Landon, is its Receiver, agent, attorney and representative; and that the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of \$3,000.

2. That on December 13, 1904, the mayor and council of Kansas City, Kansas, duly passed, approved and caused to be published Ordinance No. 6051 of said city, providing, among other things, for the distribution and sale of natural gas "for lighting, heating, power and manufacturing purposes"; that the rates for general consumption might commence at 25 cents per thousand cubic feet and increase from time to time to 35 cents per thousand cubic feet, and that the rates for power and manufacturing purposes might be determined by "special contracts with consumers at less than the general rates then in force, based upon the amount of gas used and the conditions of the contract; provided that the grantees should charge no greater rates for natural gas than those mentioned in a certain ordinance to be passed in Kansas City, Missouri; that said ordinance of Kansas City, Missouri, was thereafter passed and named a schedule of rates commencing at 25 cents per thousand cubic feet and increasing from time to time to only

30 cents per thousand cubic feet, thereby limiting said Kansas

431 City, Kansas, ordinance; that said Ordinance No. 6051 of Kansas City, Kansas, was duly accepted by the grantee and has since been duly assigned to The Wyandotte County Gas Company and is still in force and effect, except that the rates mentioned therein have been decreed to be legislative and not contractual as between your petitioner and the state of Kansas and Kansas City, Kansas (State of Kans. v. Wyandotte County Gas Co., 88 Kans. 165; The Wyandotte County Gas Co. v. State of Kans., 231 U. S. 622), a true and correct copy thereof being filed herewith, marked "Exhibit A" and made a part hereof.

3. That on March 21, 1905, the mayor and council of Rosedale, Kansas, duly passed, approved and caused to be published Ordinance No. 295 of said city, providing for the furnishing of natural gas "for manufacturing, heating, illuminating and all other purposes for which natural gas or manufactured gas may be used," and fixed a schedule of rates for general consumption commencing at 35 cents per thousand cubic feet and increasing from time to time to 50 cents per thousand cubic feet; provided that the rates charged in Rosedale should never exceed the rates charged in Kansas City, Kansas; that said ordinance was duly accepted by the grantees and has since been duly assigned to The Wyandotte County Gas Company and is still in force and effect, and said rates have been decreed to be contractual in said The Wyandotte County Gas Company cases referred to in the last preceding paragraph, a true and correct copy thereof being filed herewith, marked "Exhibit B" and made a part hereof.

4. That on February 1, 1906, The Kansas City Pipe Line Company as first party and The Wyandotte Gas Company as second party duly entered into a certain contract in writing providing for a supply of natural gas to said The Wyandotte Gas Company; that thereafter said contract was duly assigned by first party to the Kansas Natural Gas Company and all the rights acquired and the obligations thereof assumed by said Company; and thereafter said contract was duly assigned by the second party to The Wyandotte County Gas Company and the rights acquired and the obligations thereof assumed by said Company; and your

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petitioner is now and long has been obtaining its supply of natural gas for distribution and sale in said cities under and pursuant to said contract; a true and correct copy thereof being filed herewith, marked "Exhibit C" and made a part hereof.

5. That said contract recited that first party was the owner of gas lands and leases and a pipe line for the conveying of natural gas to Kansas City and desired to contract to transport and furnish a supply of gas to second party; and that second party was the owner of a franchise for the distribution and sale of natural gas in Kansas City, Kansas, said franchise being marked "Exhibit I" and attached to said contract, the same being the aforesaid Ordinance No. 6051; that first party agreed during the period of said franchise, until December 14, 1924, to supply and deliver natural gas to second party at a pressure of 20 pounds at Kansas City "in such amount as will at all times supply the demand for all purposes of consumption," subject to accidents, interruptions and failures under certain conditions, and "for the compensation" of a certain percentage of the gross receipts from the sale of such gas; and that "the party of the second part agrees to buy from the party of the first part all the gas it may need to fully supply the demand for domestic

433 consumption in said city of Kansas City, Kansas, or elsewhere in Wyandotte county, and to pay to party of the first part for the natural gas which it shall receive from said party of the first part for all purposes \* \* \* a sum equal to 62½ per cent of such gross receipts. The party of the second part makes no agreement with the party of the first part respecting the rates at which it shall sell natural gas to any consumer in Kansas City, Kansas, or elsewhere in Wyandotte county, but expressly reserves to itself the right to charge its consumers for natural gas any rates not exceeding those mentioned in said ordinance, which it may agree upon with said consumers; but if it shall, at any time, agree to sell gas to domestic consumers or any persons other than manufacturers at less than the rates mentioneed in said ordinance \* \* \* and the party of the first part shall be unwilling to accept as its compensation therefor \* \* \* 62½ per cent \* \* \* of the gross receipts of the party of the second part as aforesaid for the gas so sold, the party of the first part shall be under no obligations to furnish the gas so sold at such lower prices and the party of the second part shall be at liberty to obtain the same from such other sources as it may find available." The contract provides for a check on the amount of sales and gross receipts and monthly settlements and payments for the gas furnished and sold on said percentage basis; and relieves first party from liability in damages for accidents, interruptions and shortages, but provides that "said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers."

6. That said Ordinance No. 6051, attached to said contract, marked "Exhibit I" and thereby made a part thereof, provided for  
434 the suspension of the supply of manufactured gas and for the distribution and sale of natural gas to Kansas City, Kansas,

and its inhabitants for a period of 20 years from December 14, 1904, and provided in Section 6 that "should the grantee find at any time hereafter during the life of this franchise that the supply of natural gas at points contiguous to the mains from which it obtains its supply, or in the natural gas fields of southeastern Kansas, is inadequate to warrant it in continuing to supply natural gas under the terms of this ordinance, it shall not be longer required so to do, but may proceed to furnish and supply manufactured gas;" that by reason of the premises said Kansas Natural Gas Company, by assuming the obligations of said supply contract as will hereinafter more fully appear, agreed to furnish your petitioner natural gas for the term of said ordinance, and to use all due diligence to acquire and deliver the same in such amount as will at all times fully supply the demand and warrant your petitioner in continuing to supply natural gas under the terms of said Ordinance No. 6051 and at the prices therein named.

7. That on February 2, 1906, the day after the execution of said supply-contract, said Kansas City Pipe Line Company duly leased to the Kaw Gas Company, then the operating company of the Kansas Natural Gas Company, all its pipe lines, gas lands and properties and said Kaw Gas Company assumed all of the obligations of the Pipe Line Company to the Wyandotte Gas Company, under said supply-contract dated February 1, 1906. Paragraph fifth of said lease providing:

"Fifth. The lessee hereby assumes and covenants to perform all the obligations assumed by the lessor under the terms of an agreement, dated February 1, 1906, between the lessor and the Wyandotte Gas Company for the supply of natural gas to Kansas City, Kansas, and Wyandotte County, in said State, copy of which is attached hereto, and marked Exhibit A. \* \* \* The lessee agrees that if the gas wells hereby demised situated in the territory of the lessor do not furnish a sufficient volume of gas, or if the pipe line of the lessor shall not have a delivery capacity sufficient to supply the demands for gas in the cities of Kansas City, Kansas, and Kansas City, Missouri, it, the lessee, will supplement said gas supply from its own gas wells up to an amount equal to fifty (50) per cent of the gas, which by the use of due diligence in connecting existing wells and drilling new ones, it may be able to produce from the territory now or hereafter controlled by it; and will construct at its own cost and expense, or, so far as any of the bonds of the lessor in this lease referred to may be available for the purpose, at the cost and expense of the lessor, the additional pipe lines necessary for the delivery of gas to supply such demands, whether from the lessor's or the lessee's territory. Provided, however, that if the expectation of continuance of the supply of gas shall not be sufficient to warrant the laying of an additional pipe line at any time, the lessee shall not be required to do so, whatever the demand for gas in said cities; provided further, that it is the intent of the parties that the provisions of this clause shall not be so construed as to in effect require the lessee to lay a line for manufacturing purposes mainly or only."



8. That by reason of the premises, the Kaw Gas Company assumed and agreed to furnish your petitioner natural gas for the term of said Ordinance No. 6051, and to use *all due diligence to acquire* and deliver the same in such amounts as will at all times  
436 fully supply the demand and in such amounts and at such pressure as will warrant your petitioner in continuing to supply natural gas under the terms of said ordinance and at the prices therein named.

9. Thereafter and on November 19, 1906, The Kansas City Pipe Line Company and Kaw Gas Company executed another lease, similar to the lease of February 2, 1906, for the purpose of making said lease conform to the franchise-ordinance of Kansas City, Missouri, which had been passed since the execution of the first lease and containing the same provisions for the assumption of obligations by the Kaw Gas Company to furnish the said Wyandotte Gas Company a supply of gas as above quoted. That said Kaw Gas Company was organized by the Kansas Natural Gas Company as an operating company and thereafter transferred all of its property, business and contracts to the Kansas Natural Gas Company.

10. That thereafter and on January 1, 1908, The Kansas City Pipe Line Company again duly leased all its pipe lines, leaseholds, wells and productions to the Kansas Natural Gas Company, in which lease said Kansas Natural Gas Company assumed and undertook to perform the obligations of said The Kansas City Pipe Line Company to furnish your petitioner a supply of gas under said contract dated February 1, 1906, paragraph fifth thereof reading as follows:

"The lessee hereby assumes and covenants to perform all the obligations assumed by the lessor under the terms of an agreement dated February 1, 1906, between the lessor and the Wyandotte Gas Company for the supply of natural gas to Kansas City, Kansas, and Wyandotte County in said state, a copy of which is attached hereto and marked 'Exhibit A.' \* \* \*

437 the gas wells hereby demised situate in the territory of the lessor do not furnish a sufficient volume of gas, or if the pipe line of the lessor shall not have a delivery capacity sufficient to supply the demands for gas in the cities of Kansas City, Kansas, and Kansas City, Missouri, it, the lessee, will supplement said gas supply from its own gas wells up to an amount equal to 50 per cent of the gas which, by the use of due diligence in connecting existing wells and drilling new ones, it may be able to produce from the territory now or hereafter controlled by it; and will construct at its own cost and expense, or, so far as any of the bonds of the lessor in this lease referred to may be available for the purpose, at the cost and expense of the lessor, additional pipe lines necessary for the delivery of gas to supply such demands, whether from the lessor's or the lessee's territory. Provided, however, that if the expectation of continuance of the supply of gas shall not be sufficient to warrant the laying of an additional pipe line at any time, the lessee shall not be required to do so, whatever the demand for gas in said cities; provided further, that it is the intent of the parties that the provisions of this clause

shall not be so construed as to in effect require the lessee to lay a line for manufacturing purposes mainly or only."

11. That by reason of the premises, said Kansas Natural Gas Company assumed the obligations of said Kansas City Pipe Line Company and Kaw Gas Company, and undertook and agreed to furnish your petitioner natural gas for the term of said Ordinance No. 6051 until December 14, 1924, and to use all due diligence to acquire and deliver the same in such amount as will at all times  
438 fully supply the demand, and in such amounts as will warrant your petitioner in continuing to supply natural gas under the terms and at the rates named in said ordinance, and to furnish your petitioner and the Kansas City Gas Company 50 per cent of the gas which, by the use of due diligence, said Kansas Natural may be able to produce or control from time to time, and to construct pipe lines of a carrying capacity sufficient to supply the demands of your petitioner for gas for domestic consumption but not for manufacturing purposes only; and to furnish said natural gas for general consumption measured at the consumers' meters for a consideration equal to  $62\frac{1}{2}$  per cent of the gross receipts from the sale thereof at 27 cents per thousand cubic feet at the present time ( $62\frac{1}{2}$  per cent being 16.875 cents) and 30 cents per thousand cubic feet from and after November 19, 1916 ( $62\frac{1}{2}$  per cent being 18.75 cents.)

A true and correct copy of said lease of January 1, 1908, is filed herewith, marked "Exhibit D" and made a part hereof; said leases of February 2, 1906, and November 19, 1906, being substantially the same in form and identical in substance.

12. That your petitioner has expended large sums of money for high pressure belt lines, reducing stations, appliances and equipment for the distribution and sale of said natural gas, and has accepted and undertaken the distribution and sale of natural gas under said Ordinances No. 6051 of Kansas City, Kansas, and No. 295 of Rosedale, Kansas, relying upon said contract; and that said contract has never been modified, rescinded, canceled or disavowed, and is now in full force and effect and binding upon said Kansas Natural Gas Company and its receiver, and entitles your petitioner to a supply  
439 of gas and to sell the same at 30 cents per thousand cubic feet after November 19, 1916, and to pay the Kansas Natural Gas Company and its receiver the consideration of  $62\frac{1}{2}$  per cent of your petitioner's receipts from the sale thereof, amounting to 18.75 cents per thousand cubic feet therefor measured at the consumers' meters, less deductions for non-collectible bills.

13. That the preliminary injunction issued in the above entitled cause on August 1, 1916, enjoins the Public Utilities Commission of Kansas, their counsel and the Attorney General of said State, from enforcing the 28-cent rate approved by said Commission; and provides that "all the other parties to this suit interested in such rates, and all the agents, servants, attorneys, employees and successors and each and all of them, be and they are hereby enjoined and prohibited until the final hearing and decision of this court, or the further order of this court, from putting or maintaining in effect, or

attempting to put or maintain in effect, by legal proceedings or otherwise, against the receiver or the Kansas Natural Gas Company, any of said rates." That said 28-cent rate allowed by the Commission and enjoined by this court is in excess of the 27-cent rate which said Kansas Natural Gas Company and its receiver have agreed your petitioner may charge and collect from consumers in Kansas City, Kansas, and Rosedale, Kansas, under said supply contract of February 1, 1906.

14. That in order to collect the 30-cent rate which plaintiffs have agreed to in said supply-contract, on and after November 19, 1916, your petitioner has filed with the Public Utilities Commission of Kansas a schedule changing the rate from 28 cents net to 30 cents net per thousand cubic feet, effective on and after said date, together with an application for the approval thereof by the Commission and provided by the act, and will prosecute the same to final decision before said date; a true and correct copy of said schedule and application are filed herewith marked "Exhibit E" and made a part hereof.

15. That on March 9, 1916, your petitioner filed its verified answer in the above entitled cause, in which it set forth a counter claim for a supply of gas from plaintiffs under and pursuant to said contract of February 1, 1906, and prayed a specific performance of said contract, and that the Receiver of said Kansas Natural Gas Company be ordered and required to furnish, supply and deliver to your petitioner at or near the corporate limits of Kansas City, Kansas, at a pressure of 20 pounds "natural gas in such amount as will at all times supply the demand for all purposes of consumption," as provided in said contract; said answer being referred to and made a part hereof, and printed and attached hereto as Exhibit "X" for the convenience of the court.

16. That this court, Justice Walter H. Sanborn, Circuit Judge; Ralph E. Campbell and Wilbur F. Booth, District Judges, sitting as constituted for the sole purpose of hearing the application for an interlocutory temporary injunction, pretermitted consideration and decision of the binding force and effect of said supply-contract existing between your petitioner and the Kansas Natural Gas Company and its Receiver, the Court saying:

"The crucial question for determination upon this application for an injunction by the court constituted under Section 266 is whether or not the 28-cent rate is confiscatory or unreasonably low. \* \* \*

Many issues of fact and of law have been presented that were proper for consideration but that are not controlling of the decision of the question at issue. The act of Congress requires that the hearing on this application 'shall be given precedence and shall be in every way expedited'; and the situation of the property in the hands of the receivers and of the parties to this litigation is such that delay may be as fatal to the interests of all concerned as an adverse decision. For these reasons the court pretermits reference to matters that are not indispensable to the determination of the crucial question in hand, as well as discussion of those that are indispensable

to such a question, and confines itself to a statement of the conclusions which the law and the evidence in its opinion compel."

After analyzing and finding the 28-cent rate allowed by the Commission to be confiscatory, the Court held:

"It has not been and is not necessary for this court *as at present constituted* to determine the validity of the city ordinances, the contracts between the cities and the distributing companies, *the contracts between the distributing companies and the Natural Gas Company and the duties and obligations of the Receiver under them* in order to adjudicate the issues *it was constituted to decide* and for that reason no opinion is expressed or adjudication made concerning them." (Italics are ours.)

17. That by reason of the foregoing said supply-contract is continued in full force and effect as between your petitioner and plaintiffs, and the net legal effect of the decree of injunction is merely to restrain said Commission from enforcing said 28-cent rate, but not to disturb said supply-contract and the rates therein fixed and agreed upon, leaving said contract and the status thereof and rights  
442 of the parties thereto to be adjudicated by this court as now constituted.

18. That if plaintiffs are engaged in interstate commerce, as alleged in their bill of complaint, and if they are not under the supervision, jurisdiction and control of the Public Utilities Commission of Kansas, then said plaintiffs have no right, power or authority, either directly or indirectly, to cancel, disavow, rescind, abrogate or repudiate said supply-contract and the same is in full force and effect.

19. That plaintiff's bill of complaint states:

"That this bill of complaint is dependent upon and ancillary to the causes entitled John L. McKinney et al. vs. Kansas Natural Gas Company, No. 1351, Equity; and Fidelity Title & Trust Company vs. Kansas Natural Gas Company and Delaware Trust Company, No. 1-N, Equity, now pending in this Court, and is brought for the purpose of protecting the property now in the potential possession of this Court in said causes, and of enforcing the jurisdiction of this Court in said causes."

That upon the hearing of this cause on the motion of the Missouri defendants to quash the service of subpoena on them, this court took jurisdiction of the above entitled cause under Section 56 of the Judicial Code, on the ground that this case is dependent upon and ancillary to the above named causes No. 1351 and No. 1-N; and that the plaintiff John M. Landon was a receiver appointed by this court in said causes.

20. That thereafter and on June 3, 1916, this court issued its interlocutory injunction in the above entitled case and provided:  
443 "That this Court reserves jurisdiction of the subject matter of this application for an injunction and of the parties hereto, and reserves its power and authority to add to, take from, modify or supplement the injunction hereby decreed or any other provision of this decree at any time during the pendency of this suit."

That by reason of the pendency in this court of said McKinney and foreclosure suits, and the dependent character of this cause upon

said original suits, and the reservation of jurisdiction over the subject matter and parties in the decree last above quoted, this court has assumed jurisdiction to adjudicate the rights, duties and obligations of the parties and the Receiver under said supply-contract as will hereinafter more fully appear.

21. That in the cases of *John L. McKinney v. Kansas Natural Gas Company and Fidelity Title & Trust Co. v. Kansas Natural Gas Company*, above referred to, pending in this court, this court, the Honorable John C. Pollock and the Honorable Ralph E. Campbell, sitting, did on October 9, 1912, appoint receivers of the Kansas Natural Gas Company, of whom George F. Sharritt is still acting, in which order said Receiver is directed "to continue the operation of the present pipe line system and natural gas business of the defendant company and every part and portion thereof, and to run, manage, conduct and operate such pipe lines and property as the defendant Company holds, controls or operates under leases, contracts, arrangements or otherwise. All of which is to be done until the further order of the Court as heretofore done, run or operated by the defendant

Company; but the Court expressly reserves to itself the right  
444 to pass upon, approve, disapprove, disavow and cancel any and all leases, arrangements and contracts of every nature, kind and description, under and by virtue of which the defendant Company has been or is now operating any of its leased lines and property; or selling or furnishing any of its gas for distribution and sale; or buying and acquiring any gas for use and transportation through its operated lines; and no such lease, arrangement or contract shall be regarded as binding or taken by the Receivers until expressly ordered by this Court in these proceedings; and nothing herein contained shall be considered or taken as in any way accepting, approving, satisfying or adopting any such lease, arrangement or contract." That by reason of the foregoing order this court reserved to itself the right to approve and disapprove and avow and disavow said supply-contracts; said order is hereby referred to, marked "Exhibit F" and made a part hereof. (See Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, cases No. 4179, 4195 and 4196, page 103, filed herewith.)

22. That thereafter, on the application of John M. Landon and R. S. Litchfield, Receivers, appointed by the District Court of Montgomery County, Kansas, and on January 24, 1914, this court, Honorable Smith McPherson sitting, issued a "conventional" order directing the Receivers appointed by this Court to deliver to said state Receivers all the properties of the Kansas Natural Gas Company owned, controlled, operated and leased "to be retained, operated and controlled by said John M. Landon and R. S. Litchfield as Receivers, or their successors, as long as they shall retain and operate the prop-  
erty of said Kansas Natural Gas Company located in the State  
445 of Kansas; unless this court shall earlier resume possession; and when they shall cease to operate the property of said company in Kansas, then all the property of Kansas Natural Gas Company then in their possession and undisposed of in Kansas,

Oklahoma and Missouri shall be delivered to the receivers of this court"; said order further providing that said State Receiver should accept and receipt for said property on the terms of said order of this court, and that the judge of the District Court of Montgomery County, Kansas, should issue an order directing said State Receiver to so accept and receive the same and "authorizing the acceptance of said property under the terms of this order"; that thereafter said property was duly delivered and receipted for in the manner provided by said order; a true and correct copy of said order of January 24, 1914, is hereby referred to, marked "Exhibit G" and made a part hereof. (See Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, cases No. 4179, 4195 and 4196, page 649.)

23. That an appeal was prosecuted from said order of January 24, 1914, and thereafter on September 22, 1914, pursuant to the mandate of the Circuit Court of Appeals, this court entered an order in said McKinney and foreclosure suits directing the delivery to said John M. Landon and R. S. Litchfield, Receivers, of all the property of the Kansas Natural Gas Company in the state of Kansas, said order providing, however, as follows:

"It is further ordered, adjudged and decreed that this Court through its said receiver, George F. Sharritt, shall retain the potential possession of the estates, properties and assets of the Kansas Natural Gas Company, including the leasehold estates and 446 contracts of and with The Kansas City Pipe Line Company and Marnet Mining Company, situate in the states of Kansas, Missouri and Oklahoma or elsewhere in this the Eighth Judicial Circuit; but the said John M. Landon and R. S. Litchfield and their successors shall have the right as receivers to retain the actual possession, control and management of the estate, property, money, funds, assets and earnings of the said Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and Marnet Mining Company situated in the states of Kansas, Missouri and Oklahoma or elsewhere; under the terms and conditions expressed in the order of this court made January 24, 1914, as modified herein."

The only modification being that the rights of all parties should be reserved during said state receivership. That by reason of the foregoing orders this court has reserved jurisdiction to pass upon, construe and adjudicate said supply-contract existing between your petitioner and plaintiffs; a true and correct copy of said order of September 22, 1914, is filed herewith, marked "Exhibit H" and made a part hereof.

24. That thereafter and on January 9, 1915, on application of said John M. Landon and R. S. Litchfield they were appointed ancillary Receivers in the states of Oklahoma and Missouri in said McKinney and foreclosure suits and continued as such until April 1, 1916, whereupon said R. S. Litchfield departed this life and said John M. Landon was appointed sole ancillary Receiver of all the property and assets of the Kansas Natural Gas Company, The Kansas City Pipe Line Company and the Marnet Mining Com-



pany located in the Eastern District of Oklahoma and the Western District of Missouri; said order further providing:

"It is further ordered, adjudged and decreed that the receiver of this court, George F. Sharritt, shall retain the reversionary estate and potential possession of the estate, properties and assets of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and the Marnet Mining Company, situated in the Eastern District of Oklahoma or the Western District of Missouri, or elsewhere in this the Eighth Judicial District."

25. Your petitioner further avers, on information and advice of counsel, that on February 15, 1913, the District Court of Montgomery County, Kansas, in the case of State of Kansas v. the Independence Gas Company, Consolidated Gas, Oil & Manufacturing Company, and the Kansas Natural Gas Company, No. 13476, issued a decree of "limited ouster" for alleged corporate abuses and monopolistic practices against the defendants, and appointed John M. Landon and R. S. Litchfield Receivers for the correction of such abuses; that said order directed said Receivers to take possession of the property, estate and business of the Kansas Natural Gas Company, and

"It is further ordered that said receivers shall exercise all such powers as are usually exercised by receivers and all such as are necessary or convenient to the proper conduct by them of the business of the defendant corporations, and they shall discharge all such duties as are within the line, scope or purpose of their appointments.

\* \* \* It is further ordered that the receivers of this court,

448 for the Kansas Natural Gas Company and the Consolidated Gas, Oil and Manufacturing Company, as rapidly as they can familiarize themselves with the details of the business and properties of the defendants, work out a tentative plan for the segregation of the properties of said defendants and to report to the court the feasibility of such plan, to the end that these receiverships be terminated and the corporate abuses of these defendants be speedily corrected, and the corporate management of these corporate properties, if possible, returned to its owners and officers thereof as contemplated by law."

That there was no power or authority conferred upon said Receiver to cancel, abrogate or disavow said supply-contract existing between your petitioner and the Kansas Natural Gas Company; on the contrary, said decree of said court enjoined and restrained the Kansas Natural and this defendant "from advancing the price of gas or participating in any attempt to advance the price of gas to the consumers in the state of Kansas without the express order and permission of the Public Utilities Commission of the state of Kansas or of this court, until the final disposition of this action or the further order of this court or the judge thereof"; a true and correct copy of the "Opinion, Findings of Fact and Conclusions of Law" of said District Court dated February 15, 1913, is marked "Exhibit I, page 295," and made a part hereof, found in Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, filed herewith. (See page 326.)

26. That said John M. Landon, as Receiver of the District Court of Montgomery County, Kansas, or as ancillary Receiver appointed



by this court, has not been authorized or empowered by any order or decree of either court to abrogate, cancel or disavow said supply-contract; that there has been no complaint filed in either of said courts for the cancellation, abrogation or disavowal of said contract; that the Receivers of this court, original and ancillary, have operated under said contract and observed the terms and conditions thereof since their appointment October 9, 1912, and said John M. Landon has operated under said contract and observed the terms and conditions thereof ever since his appointment by the state court, and his appointment by this court, wherefore said contract is now in full force and effect.

27. That said state case pending in the District Court of Montgomery County, Kansas, is a suit in quo warranto for the ouster of the Kansas Natural Gas Company for corporate abuses and monopolizing the production and supply of natural gas; that there are no pleadings filed in that court and cause praying for the foreclosure of any mortgages or the marshaling of assets and determination of priorities of claims against the Kansas Natural Gas Company or its estate, and that said court in said cause has no power, authority or jurisdiction to order and decree a cancellation or disavowal of said supply-contract, for the reason that said contract may be disavowed, if at all, only in a court of equity in a proper proceeding for the foreclosure of mortgages and upon the petition and in the interest of the prior and superior equities and liens of mortgagees and creditors.

28. That notwithstanding the total want of authority, as above shown, said John M. Landon has and now is threatening to abrogate, disavow and repudiate said supply-contract, and shut off the supply of gas to your petitioner in total disregard of the obligation of said contract and his duty in respect thereof.

29. That on June 17, 1916, said John M. Landon, by T. S. Sala-thiel, his attorney, mailed a printed circular to your petitioner, purporting to notify your petitioner to appear in the District Court of Montgomery County, Kansas, and offer evidence to guide the Receiver in the establishment of a rate for natural gas to be charged consumers in Kansas City, Kansas, and Rosedale, Kansas, to which communication your petitioner replied that it did not, under the circumstances, care to enter into any negotiations for the modification or cancellation of its aforesaid supply-contract and desired to continue the same in full force and effect. A true and correct copy of said circular and answer thereto are hereto attached, marked "Exhibits J and K" and made a part hereof; that there was no complaint filed against said supply-contract, no service of summons made upon your petitioner, no hearing had thereon, and no order, judgment or decree of the court made with respect thereof, and no authority given by order of court to said Receiver to issue said circular purporting to modify, abrogate and disavow said contract.

30. That thereafter and on August 4, 1916, said John M. Landon, without authority or order of court, mailed to your petitioner a communication purporting to notify your petitioner of the modification of said supply-contract by changing the rates agreed to therein from 27 cents net to 38 cents gross per thousand cubic feet for gas de-

livered, and the minimum bill from 50 cents to \$1.00, to become effective from and after the August, 1916, meter readings; all  
451 in total disregard and violation of said supply-contract. True and correct copies of said letter and schedule are hereto attached, marked "Exhibits L and M," respectively, and made a part hereof.

31. That thereafter and on August 11, 1916, said John M. Landon, Receiver, by John H. Atwood, and without authority or order of court, sent by registered mail a communication purporting to notify your petitioner of a further, different and inconsistent modification of said supply-contract by changing the price from 62½ per centum of the gross receipts from a given schedule of rates for gas delivered at the consumers meters to 18 cents per thousand cubic feet for gas metered and delivered to your petitioner at the city limits, to become effective on and after September 1, 1916. A true and correct copy of said communication is hereto attached, marked "Exhibit N" and made a part hereof.

32. That, on the following day, August 12, 1916, said John M. Landon mailed to your petitioner a further notice repudiating said 18-cent notice sent out by Mr. John H. Atwood and certain newspaper notices given out by other counsel, Mr. Robert Stone, of Topeka, Kansas, said August 12 notice indicating that the only modification in the 38-cent schedule issued by said Receiver on August 4 was that your petitioner might fix such minimum charge as its necessities require. A true and correct copy of said communication is hereto attached, marked "Exhibit O" and made a part hereof.

33. That on August 18, 1916, your petitioner answered said communications, adhering to its rights to a supply of gas under and pursuant to said supply-contract and at the rates and prices  
452 therein agreed to and construing said suggestions as offers to modify said supply-contract and specifically declining such offers. A true and correct copy thereof is hereto attached, marked "Exhibit P" and made a part hereof. That on August 23, 1916, the Kansas Natural Gas Company and John M. Landon by their counsel, T. S. Salathiel, answered said letter of your petitioner, dated August 18, 1916, and, without authority or order of court, claimed the right to charge and collect 18 cents for said natural gas metered at the city limits; that on August 26, 1916, your petitioner, by its counsel, answered said communication of August 23, 1916, adhering to its former position and standing upon its supply contract. Copies of said letters being hereto attached, marked Exhibits "P1" and "P2," and made a part hereof.

34. That your petitioner has at all times, and now is, accepting and receiving said natural gas under and pursuant to the terms, provisions and conditions of said supply-contract, and is now, and has during all of said time, paid the consideration agreed to therein for said gas and duly performed all the terms and conditions thereof on its part, and has offered and intends to continue so to do; that, notwithstanding the foregoing facts, said John M. Landon and his attorneys, counselors, agents and representatives are threatening to, and your petitioner has reason to believe they will, shut off the supply

of gas to your petitioner to the great and irreparable loss and damage of your petitioner and the injury, inconvenience, discomfort and loss of the consumers and the public, unless restrained and enjoined by order of this Honorable Court.

35. Your petitioner further shows to the court that by Chapter 238 of the 1911 Session Laws of Kansas, hereby referred to and made a part hereof, the Kansas Natural Gas Company and its Receiver and the business conducted by them are subject to the jurisdiction and control of the Public Utilities Commission of said State; that by Section 20 thereof plaintiffs, including the Receiver, are required to file with the Public Utilities Commission a schedule of the changes in rates or the joint rate for the joint service rendered by your petitioner and the plaintiffs desired to be made and put in force by them, and that any changes attempted to be made are unlawful without such filing and the consent of said Commission; that plaintiffs have not filed with the Commission the changes desired and suggested in said letters and communications and the same are, therefore, illegal and void. That the preliminary injunction issued by this court was not a license to plaintiffs to charge rates at will in total disregard of contracts, statutes and law, but a restraint upon the Kansas Commission, preventing it from enforcing said 28-cent rate; the duty still remaining upon plaintiffs to file with said Commission the desired and proper schedule of rates; and thereupon, under the order of this court, the duty would devolve upon said Commission to allow the same.

36. Your petitioner further avers that in the case of the State of Kansas on Relation of John Marshall, Attorney for the Public Utilities Commission v. The Wyandotte County Gas Company, 88 Kans. 165, the District Court of Wyandotte County, Kansas, issued its perpetual injunction and final decree enjoining your petitioner from increasing its rates to consumers or charging or collecting any rate other than such as may be authorized and ordered by the Public Utilities Commission of the State of Kansas; that the Supreme Court of the State of Kansas and the Supreme Court of the United States affirmed said judgment and the same is now final and conclusive upon your petitioner, 88 Kans. 165, 231 U. S. 622, said judgment being hereby referred to and made a part hereof. That by reason thereof your petitioner would be subject to citation and committal for contempt if it undertook to put into force and effect any of the changes suggested by plaintiffs, without the order and approval of the Public Utilities Commission.

37. That under Chapter 238 (assuming that your petitioner was willing to modify said supply-contract), it would take your petitioner 30 to 60 days to file said proposed changed schedule or rates and obtain a hearing and decision thereon by the Public Utilities Commission of Kansas; and if said Commission denied to your petitioner the authority to charge the rates proposed in said letters and communications, then and in that event your petitioner would be no longer warranted in continuing to supply natural gas under the terms of Ordinance No. 6051 of Kansas City, Kansas and would not be longer required so to do, but would be obligated to proceed to

furnish and supply manufactured gas, as required by Section 6 of said ordinance. That it would require your petitioner at least one year to construct, reconstruct and assemble fuels and material for operating its gas works at Kansas City, Kansas; by reason of the foregoing facts, even if your petitioner was minded to modify its supply contract and put into effect said rates, said pretended notices are wholly unreasonable as to time.

38. Your petitioner avers and shows to the court that said 38-cent gross rate (35 cents net), and said \$1.00 minimum bill, in actual practice, result in average charges per thousand cubic feet, depending upon the amount of gas used, as shown by the following table:

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Table I.

Cubic feet used.	Monthly bill.	Average rate per thousand.
1,000.....	\$1.00	100 c
2,000.....	1.00	50
3,000.....	1.35	45
4,000.....	1.70	42.5
5,000.....	2.05	41
6,000.....	2.40	40
7,000.....	2.75	39.28
8,000.....	3.10	38.75
9,000.....	3.45	38.33
10,000.....	3.80	38
11,000.....	4.15	37.72
12,000.....	4.50	37.5
13,000.....	4.85	37.31
14,000.....	5.20	37.14
15,000.....	5.55	37
16,000.....	5.90	36.87
17,000.....	6.25	36.76
18,000.....	6.60	36.66
19,000.....	6.95	36.57
20,000.....	7.30	36.5
21,000.....	7.65	36.43
22,000.....	8.00	36.36
23,000.....	8.35	36.30
24,000.....	8.70	36.25
25,000.....	9.05	36.2
26,000.....	9.40	36.15
27,000.....	9.75	36.11
28,000.....	10.10	36.07
29,000.....	10.45	36.03
30,000.....	10.80	36

39. That even in the winter months more than 70 per cent in number of your petitioner's consumers use 10 thousand cubic feet of gas, or less than that quantity per month, and more than

456 85 per cent in number use 20 thousand cubic feet or less per month; that your petitioner is informed and believes that natural gas at the average prices per thousand cubic feet shown by said table (as for example, an average price of 38 cents for a monthly consumption of 10 thousand cubic feet and 36½ cents for 20 thousand) will not compete with coal and other fuels in this community for domestic heating purposes; that by reason thereof said average prices, as shown by said table, resulting from said 35-cent rate and \$1.00 minimum bill, will eliminate the greater portion of the domestic heating business; that with a loss of said domestic heating business, your petitioner and said Kansas Natural Gas Company and its Receiver would be reduced to a lighting and cooking gas business basis, which is the field occupied by manufactured gas, and that the elimination and loss of said domestic heating business would reduce the income and earnings of your petitioner and the plaintiffs from 40 to 60 per cent, and would so impair the earnings and income of plaintiffs that they would no longer be able to operate their pipe line system and furnish natural gas to your petitioner and the other cities and towns in Northeastern Kansas and Northwestern Missouri.

40. That the normal and reasonable loss in distribution is approximately 10 per cent of the gas delivered at the city limits, as mentioned in "A Statement by the Kansas Natural Gas Company," published in the Kansas City Post on August 20, 1916, in the Kansas City Journal on August 22, 1916, in the Kansas City Star on August 23, 1916, and in the Kansas City Times on August 24, 1916 (over the names of W. W. Splane, M. L. Benedum, G. T. Braden, L. C. McKinney, V. A. Hays, L. J. Snyder and R. A. Long), wherein it is said "the waste of gas by distributing companies in good condition, that is the normal leakage, should not be more than 10 per cent" (see "Exhibit R," mentioned in paragraph 41 and hereto attached); that the loss in distribution in your petitioner's plant does not exceed 10 per cent; that under such conditions your petitioner would, under said 18-cent price, be required to buy and pay for 1,111 cubic feet of gas at the city limits for each thousand cubic feet delivered at the consumers' meters, which would cost your petitioner 19.998+ cents, or substantially 20 cents per thousand cubic feet for each 1,000 cubic feet at consumer's meter. That if your petitioner were required to pay such price for gas it could not afford to distribute and sell the same at a price which would compete with coal and other fuels for domestic heating purposes, and its business would be reduced to a lighting and cooking business basis, and your petitioner and the said Kansas Natural Gas Company and its Receiver would thereby lose the major portion of said heating business and the income derived therefrom, resulting in such great reduction in income and earnings that said Kansas Natural and its Receiver would be no longer able to operate their pipe line system and plant.

41. Your petitioner further avers, on information and belief and the statement of officers and stockholders of the Kansas Natural Gas

Company, published August 22, 1916, a true copy of which is hereto attached, marked "Exhibit R," and made a part hereof, that said Kansas Natural Gas Company is now solvent and financially able to furnish an adequate supply of natural gas; that it has assets in excess of liabilities from three to six million dollars; that it is about to authorize the issue of nine million dollars par value additional capital stock, which has been subscribed and underwritten by responsible parties, viz.: W. W. Splane, M. L. Benedum, G. T. Braden,

458 L. C. McKinney, V. A. Hays, L. J. Snyder and R. A. Long, at 50 cents on the dollar, resulting in Company assets of four million five hundred thousand dollars; that by reason thereof said Kansas Natural Gas Company and its Receiver are amply able to perform all the contracts of said Company, including said supply-contract existing between your petitioner and said Company, dated February 1st, 1906; and said Company, in law and equity, should be, by this Honorable Court, required to fully and specifically perform the same by furnishing your petitioner a full and adequate supply of natural gas for all purposes of consumption, at a pressure of 20 pounds at Kansas City, until the expiration of said contract December 14, 1924.

42. That none of the bondholders or mortgagees of the Kansas Natural Gas Company have filed any petition, motion or application on the ground of prior or superior equities, in either the State or Federal courts in any proceedings pending therein, to disavow, cancel and set aside said supply-contract as being destructive of their securities; that neither the Kansas Natural Gas Company nor its Receiver in the interest of said Company or its stockholders has any right in law or equity to abrogate or disavow said contract in the interest of said Company or its stockholders; and that your petitioner has and claims a prior, superior and paramount right and equity under said supply-contract to an adequate supply of gas at the rates therein agreed to for itself and the public it serves, to any rights, claims or demands of the Kansas Natural Gas Company or its stockholders.

43. That if your petitioner should attempt to put into effect any of the rates suggested in the aforesaid letters it would be met with citations for contempt in the case above mentioned in the District Court of Wyandotte County, Kansas, and by injunctions and criminal prosecutions; that mass meetings have been held in Kan-  
459 sas City, Kansas, protesting against said increase in rates and the consumers are advised and pledged among themselves to refuse payment thereof and to resist by injunction and other court proceedings the turning off of the supply for non-payment of bills at said 38-cent rate. That it will require a complete reorganization of the office force and bookkeeping system of your petitioner to charge and collect said new rates and keep account of the excess over the rates fixed by contract and the order of the Commission of Kansas of December 10th, 1915; that by the order of this court and bond given, said Receiver is required to keep, or cause to be kept, accounts showing such excess and to refund the



same, if it shall be finally determined that the preliminary injunction was wrongfully issued; that your petitioner will be put to great cost and expense in making such collections and in making such refund, amounting to many thousands of dollars; that the difference between the 28-cent rate now in force and said 38-cent rate on an adequate supply of gas during the winter of 1916-17 will amount to many thousands of dollars, and your petitioner will be obligated to refund said amount to said consumers, if said preliminary injunction is not finally sustained; that said Receiver will have spent said money for ill-advised pipe line extensions and wildcat exploiting of fields and the same will be lost and not forthcoming to reimburse your petitioner to enable it to make said refund; that by reason thereof and many other facts and conditions too numerous to mention, your petitioner has no protection under the terms and provisions of the bond given by John M. Landon, Receiver, as Principal, and the Fidelity and Casualty Company of New York, as Surety.

460 44. Your petitioner further states and shows to the court, on information, belief and advice of counsel, that on January 5th, 1912, Honorable John S. Dawson, attorney-general of Kansas, commenced said case in the District Court of Montgomery County, Kansas, entitled "State of Kansas, plaintiff, v. The Independence Gas Company, The Consolidated Gas, Oil and Manufacturing Company, and The Kansas Natural Gas Company, defendants, No. 13476," hereafter referred to as the "state case." A true and correct copy of the original petition filed therein is filed herewith, marked "Exhibit Q" and made a part hereof.

45. That said suit was commenced by the State under the authority of Chapter 81 of the General Statutes of Kansas, 1909, relating to monopolies and unlawful combinations in restraint of trade, hereby referred to and made a part hereof, and to correct alleged monopolies and corporate abuses, as provided for in Section 1728 of the General Statutes of Kansas, 1909, which reads as follows:

"Sec. 1728. Dissolution of Insolvent Corporation.—Any corporation which is insolvent or which perverts or abuses its corporate privileges may be dissolved by order of the district court having jurisdiction, on petition of the attorney-general, supported by positive affidavit; and if the court finds that the petition is true it may appoint a receiver to wind up the affairs of the corporation and decree its dissolution: Provided, That the court may, at its discretion, appoint a receiver at the time of the filing of the petition by the attorney-general: Provided also, That if the dissolution of any such corporation is not considered by the court to be either necessary or advisable, and that the corporate abuses can be corrected without dissolution, receivers may be appointed to manage the corporate property and business under the supervision of the court  
461 until fully corrected, after which the corporate management and property may be returned to the owners and managers thereof; and the court may remove any officers responsible for the



abuse and mismanagement of the corporate property and business, and may order the calling of an election of the stockholders to fill such vacancies."

46. That said petition did not allege the insolvency of the Kansas Natural Gas Company, nor did the State in said suit attempt to wind up the affairs of said Company, nor to liquidate its indebtedness; but the only purpose of said suit was to inquire into, determine and correct the alleged corporate abuses complained of by the producers and consumers of natural gas; that said suit was a suit in quo warranto, penal in its nature, and not designed nor intended as an equitable proceeding for the administration of the estate of said Company, the marshaling of assets or the determination of priorities.

47. That in September, 1912, a hearing was had upon said petition and interrogatories propounded to and answered by the officers of the Company, as provided by the penal statutes relating to monopolies, and the case taken under advisement; that on February 15th, 1913, the court rendered its "opinion, findings of fact, conclusions of law, restraining order, injunction and decree." A true and correct copy thereof marked "Exhibit I" and made a part hereof is found in Vol. 1, Transcript of Record, U. S. Circuit Court of Appeals, pp. 295 to 333, filed herewith.

48. That as shown on page 329 of said "Exhibit I," the court decreed a forfeiture of the charter and corporate privileges of The Independence Gas Company; ordered The Consolidated Gas, 462 Oil and Manufacturing Company to forthwith resume its corporate business of producing, distributing, delivering and selling natural gas according to the terms of its corporate charter and according to the methods and customs used in its corporate business before it disabled itself so to do through the transfer of its gas properties and gas business to the Kansas Natural Gas Company, and appointed George T. Guernsey and A. W. Shulthis Receivers to accomplish that end, and appointed R. S. Litchfield and John M. Landon Receivers of Kansas Natural Gas Company to correct the abuses complained of against that Company in the following terms (p. 333, "Exhibit I"):

"It is further ordered that the receivers of this court, for the Kansas Natural Gas Company and the Consolidated Gas, Oil and Manufacturing Company, as rapidly as they can familiarize themselves with the details of the business and properties of the defendants, work out a tentative plan for the segregation of the properties of said defendants and to report to the court the feasibility of such plan to the end that these receiverships be terminated and the corporate abuses of these defendants be speedily corrected, and the corporate management of these corporate properties, if possible, returned to its owners and officers thereof as contemplated by law.

And the court for the time being hereby retains jurisdiction and control of each of the above named defendants and their properties until the terms of this decree are finally, fully and completely established; and it is further ordered and adjudged that the defendants pay the costs of this proceedings; and jurisdiction is further

retained for the purpose of hereafter fixing and determining the allowance of attorneys' fees for plaintiff's attorneys and jurisdiction is further retained by the court to make such other and further orders as may seem meet and proper and as the progress of the proceedings demands.

THOS. J. FLANNELLY, *Judge.*"

49. That said order was in the nature of a decree of "limited ouster," so designated by the court in its opinion, looking to the correction of the abuses complained of, the dissolution of the monopolistic relations between the defendants and the speedy return of the property to its owners; there was nothing in the pleadings before the court or in the evidence to enlarge the scope of the State's case.

50. That thereafter during the pendency of the applications of said Receiver and the attorney-general made to this Court for the surrender of the property of the Kansas Natural by the Receiver appointed by this Court to said State Court Receiver on the plea of comity and prior jurisdiction, numerous motions and supplemental and amended petitions were filed by the attorney-general and his assistants, Chester I. Long, John H. Atwood, T. S. Salathiel and O. P. Ergenbright, in said State case, for the purpose, as claimed by said attorneys, of protecting and strengthening the jurisdiction of said court in its efforts to obtain possession of said properties; all of which said pleadings have been by the State withdrawn, as will hereinafter more fully appear, leaving said case standing upon the original petition; said supplemental and amended petitions being marked exhibits and made a part hereof, as follows:

Supplemental petition marked "Exhibit Q-1, p. 661"; second supplemental petition marked "Exhibit Q-2, p. 680"; third supplemental petition, or motion to extend receivership on ground of insolvency marked "Exhibit Q-3, p. 689"; fourth supplemental petition marked "Exhibit Q-4, p. 681"; fifth supplemental petition marked "Exhibit Q-5, p. 678"; sixth supplemental petition marked "Exhibit Q-6, p. 683," all found in Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, filed herewith.

51. That on December 6, 1913, Hon. John S. Dawson, attorney-general, and O. P. Ergenbright, T. S. Salathiel, Chester I. Long and John H. Atwood, assistant attorney-generals, filed in the said State case a motion (above indicated as third supplemental petition, "Exhibit Q-3") for an order extending the appointment of said Receivers on the ground of insolvency of the Kansas Natural Gas Company, which said motion was on said date sustained and the receivership so extended; that said proceedings were had, as stated by said attorneys at the time, merely for the purpose of protecting and strengthening the jurisdiction of said court and to enable it to enforce its decree theretofore rendered; and said motion or supplemental petition, together with all other amended and supplemental petitions, was thereafter and on December 29, 1914, withdrawn by the State, as will hereinafter more fully appear; a true and correct copy of the order sustaining said motion and extending said receivership is filed herewith, marked "Exhibit Q-3, page 689," and

made a part hereof, found in Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, filed herewith.

52. That the Hon. John S. Dawson, attorney-general, did on February 18, 1913, file in this Court in said McKinney and foreclosure suits a petition or application setting forth the pendency of said State case and the prior jurisdiction and right of possession of the State court to the property of the Kansas Natural Gas Company, for the purpose of enforcing its judgment and decree under Section 1728, G. S. 1909, on the ground that said State court was powerless to enforce its judgment because the property of the Kansas Natural Gas Company was at the time in the possession of Receivers appointed by this Court in said McKinney suit No. 1351 and said foreclosure suit No. 1-N; a true and correct copy of said petition being marked "Exhibit P, page 290" and made a part hereof, found in Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, herewith filed.

53. That the purposes of said petition and application to this Court were to enable the State of Kansas to collect its judgment for costs and attorneys' fees rendered in said State case, and to correct the abuses complained of therein, and to dissolve the monopolistic combination found to exist and to appoint Receivers for those purposes only; there was no apparent intent to enlarge the purpose or scope of that case beyond the issues raised in the original petition and the judgment of the court rendered on February 15, 1913, upon the original petition and evidence then before the court.

54. That on January 24, 1914, this Court, Hon. Smith McPherson sitting, in causes No. 1351 and No. 1-N aforesaid, entered an order directing its Receiver to deliver over to the State court all the property and funds of the Kansas Natural Gas Company (except \$75,000 reserved for expenses) situate in the states of Kansas, Missouri and Oklahoma, upon certain conditions therein named; a true and correct copy of said order being marked "Exhibit G, page 649" and made a part hereof, found in Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, herewith filed.

55. That the purpose of said order was to enable the Receiver, John M. Landon, to operate said property as a unit and going concern while said state court was executing the decree theretofore rendered correcting the abuses complained of and found by the court.

56. That thereupon certain creditors and claimants against the Kansas Natural Gas Company and estate and Federal Receivers appealed from said order to the Circuit Court of Appeals, and said appellate court, after modifying said order of January 24, 1914, saving and reserving the rights of said appellants against the Kansas Natural, Federal Receivers and the estate, affirmed the decision of this Court and issued its mandate directing the delivery of said property to the Receivers of the state court; said opinion and order being hereby referred to and made a part hereof, 217 Fed. 187.

57. That thereafter, on September 22, 1914, an order was entered in said McKinney and foreclosure suits, spreading said mandate and directing the delivery over of said property, but saving and reserv-

ing the reversionary estate and potential possession of said property in the Receiver of this Court, George F. Sharritt; a true and correct copy of said order being hereto attached, marked "Exhibit H," and made a part hereof.

58. That the sole purpose of said orders of January 24 and September 22, 1914, was to carry out and effectuate the decree of the state court directing the Receivers to familiarize themselves with the details of the business and properties of the defendants, work out a tentative plan for the segregation of the properties of said defendants, and to report to the court the feasibility of such plan, to the end that the receiverships be terminated and the corporate abuses of defendants be speedily corrected and the corporate management of the properties be returned to its owners and officers as contemplated by law; and to enable said court to tax, allow and pay the costs and attorneys' fees decreed therein on February 15, 1913.

59. That the conditions of said orders of January 24 and September 22, 1914, of this Court, were complied with and an order made by the District Court of Montgomery County, Kansas, so accepting said property; a true and correct copy thereof being filed herewith, marked "Exhibit S, page 658," and made a part hereof, found in Vol. I, Transcript of Record, U. S. Circuit Court of Appeals, herewith filed.

60. That the judgment of the state court entered February 15, 1913, for which said Receiver was appointed in said state case, has been fully enforced and performed; the costs and attorneys' fees have been allowed, taxed and paid; the officers, directors and managers of the Kansas Natural Gas Company claimed to have been responsible for the corporate abuses complained of have been removed under the supervision of the court, and other officers and directors have been elected and are now, and long have been, operating said property under the direction of the court and its receiver; and the Receiver and said newly elected officers, under the immediate control of the court, have been in exclusive possession, control and management of the property and business of the Kansas Natural since September 22, 1914, and all the alleged corporate abuses, if any there were, have been duly corrected, or would have been so corrected by the exercise of reasonable diligence on the part of said Receiver; that the Receiver has not complied with the order of the court to submit a plan for the segregation of the properties of the defendants and the return of said properties to their owners and officers as required by law and ordered by the court; but, on the contrary, said Receiver has found, after two years of active management and control, that in order to meet the demands of the public upon said properties for service and gas, no segregation and return of the leases to the Consolidated Company is possible; and that the expenditure of large sums of money for extensions, betterments and purchase of gas lands, leases and productions, is absolutely necessary to enable said property to render reasonably adequate service and perform its public and contractual obligations.

61. That by reason thereof said Receivers and the Hon. John S.

Dawson, Attorney-General, and said Kansas Natural and certain of its creditors and bondholders did, on December 17, 1914, sign a certain stipulation (erroneously labeled "Creditors' Agreement" on the cover of a pamphlet issued by the Receiver) and filed the same in said case December 29, 1914; a true and correct copy thereof being filed herewith, marked "Exhibit T," and made a part hereof.

62. That at the time said stipulation was signed and filed large sums of money, approximating \$2,000,000.00, were in the hands of said Receiver, which had accumulated during the Federal Receivership in said McKinney and foreclosure suits by reason of the nonpayment of maturing bonds and indebtedness of the Kansas Natural Gas Company; that said bondholders and creditors were demanding the distribution of said funds; that the same were held in numerous country banks in Montgomery County and the Receiver was drawing not to exceed 2 per cent interest thereon, while the Kansas Natural estate was incurring 6 per cent interest on said overdue bonds and indebtedness; that neither the state of Kansas

nor said Receiver had any interest in said fund, and they 469 were willing that the same be distributed to the creditors entitled thereto in such proportions as they might agree upon; provided, only, that said creditors and bondholders consent to the expenditure of certain sums out of earnings for extensions, betterments and additional gas supply; that by reason thereof and to avoid involving the case in which the state alone was plaintiff in long-continued litigation over the distribution of said funds and claims of priority thereto, and to secure said consent from said creditors to the diversion and application of a portion of the earnings of said property, applicable under their mortgages to the payment of bonds, to be expended for said extensions, betterments and gas supply in the sum of \$500,000 for the year 1915, and \$200,000 annually thereafter, the state of Kansas, by John S. Dawson, Attorney-General, and its Receivers, Landon and Litchfield, in so far as they represented the state, signed said stipulation.

63. Your petitioner is informed and believes that the state of Kansas has no purpose or desire at this time, and never has had, to enlarge the scope of its original suit as alleged in its original petition; that it does not intend to file any pleading in said court and cause to wind up the affairs of the Kansas Natural Gas Company, if such proceeding were authorized under Section 1728, G. S. 1909, or under the general law, which authority your petitioner denies; and that said state, by S. M. Brewster, Attorney-General, has filed a motion in the District Court of Montgomery County, Kansas, dismissing said case and praying the discharge of said Receiver; and that said state case should be dismissed and the Receiver therein discharged for the following reasons:

470 1. That the jurisdiction of this Court for the purpose of foreclosing the mortgages, marshaling the assets, determining the priorities and liquidating the indebtedness of the Kansas Natural, attached in the McKinney suit, No. 1351, and the foreclosure suit, No. 1-N, on or about October 8, 1912, and is prior to any jurisdiction for such proceedings which might be commenced in the District

Court of Montgomery County, Kansas; and upon the doctrine of comity heretofore invoked and observed in the proceedings in this Court relating to said property, the District Court of Montgomery County, Kansas, should now surrender and deliver to this Court in said last mentioned cases all the property and estate of the Kansas Natural Gas Company, for the purpose of enabling this Court to foreclose its mortgages, liquidate its indebtedness, determine its priorities and decree the sale of said properties.

2. That the District Court of Montgomery County, Kansas, has no extra-territorial jurisdiction to administer the estate of the Kansas Natural in the states of Oklahoma and Missouri, and is powerless to decree a sale and give good title thereto.

3. That this Court, in causes No. 1351 and No. 1-N, pending herein, has jurisdiction throughout the Eighth Judicial Circuit, including the states of Kansas, Missouri and Oklahoma, to administer said estate, decree the sale thereof and pass good title thereto.

4. That none of the creditors or bondholders of the Kansas Natural Gas Company have intervened in said state case praying the administration of said estate, the liquidation of its indebtedness or the winding up of its affairs; and your petitioner is informed and believes that such intervention would not be germane to or proper in said quo warranto state case.

5. That the Receiver, John M. Landon, by filing his "Dependent Bill" in case No. 136-N aforesaid, and alleging, "that this bill of complaint is dependent upon and ancillary to the causes entitled John L. McKinney et al. v. Kansas Natural Gas Company, No. 1351; and Fidelity Title & Trust Co. v. Kansas Natural Gas Company and Delaware Trust Company, No. 1-N, now pending in this Court, and is brought for the purpose of protecting the property now in the potential possession of this Court in said causes, and of enforcing the jurisdiction of this Court in said causes"; and making said Fidelity Title & Trust Company, said Fidelity Trust Company and said Delaware Trust Company trustees of all the mortgages on said properties, and all other parties interested in said Kansas Natural estate, parties defendant to said dependent bill; and causing the issuance of subpoenas to bring said parties and your petitioner into this Court and cause, and the original causes upon which this case is dependent, has, by virtue thereof, invoked the jurisdiction of this Court in the original causes No. 1351 and No. 1-N, and has, in legal effect, returned and surrendered to this Court, through its ancillary Receiver, John M. Landon, the possession of all the property and estate of the Kansas Natural Gas Company, and is now by the record estopped and barred from claiming any adverse right of possession to said property by the District Court of Montgomery County, Kansas.

6. That the state of Kansas has no interest in any claim or controversy between the Kansas Natural Gas Company or its stockholders and the bondholders and creditors of said Company, nor any adjudication or determination of such claim or controversy arising out of mortgages, bonds, contracts or said stipulation dated December 17, 1914; and said state should not maintain said state case for the pur-



pose of allowing parties to litigate, adjudicate and determine their several rights and claims therein.

472 7. That at the time said state case was commenced and Receiver appointed, the Kansas Natural Gas Company was denying the jurisdiction of the Public Utilities Commission of said state to regulate the rates and practices of said Company; that thereafter said Company and its Receivers, both State and Federal, submitted to and recognized the jurisdiction of said Commission; and that the passage of said Public Utilities Act, hereby referred to and made a part hereof, and the proceedings had thereunder relative to said Kansas Natural Gas Company, and the orders of said Commission directing said Company and its Receivers to acquire more and additional gas, operate to except and take said Kansas Natural Gas Company out of the operation of the anti-trust and monopoly laws of said state, for the reason that said Company and its business, rates, charges, practices and contracts, including its connections, combinations and relations with other pipe-lines, companies and properties are now all subject to regulation and control by the Public Utilities Commission of said state, as shown by the order of said Commission hereto attached, marked "Exhibit U," and made a part hereof.

8. That said long-continued receivership is not germane, necessary or incident to the purposes of said state case; and is a bar to the creditors, lienholders and mortgagees to pursue their rights and remedies, obstructs justice, and prevents the reorganization, rehabilitation and refinancing of said properties and business, resulting in a continuous decline and impairment in the public service and a default under and breach of the supply contract existing between your petitioner and the Kansas Natural Gas Company and its Receiver.

9. That the State of Kansas has by said stipulation ("Creditors' Agreement"), filed December 29, 1914, withdrawn all said  
473 amended and supplemental petitions filed in said state case. (See paragraph Second of Exhibit "T.")

64. Your petitioner further states and shows to the court that the course of business and conduct of said Receiver of applying all the earnings and income of said property and business to the payment of bonds and indebtedness, under said stipulation, and the failure of said Receiver to wisely expend the amounts consented to by the creditors for extensions, betterments and additional gas-supply, and more than such amounts if need be, is a perversion and abuse of the corporate functions of said Company, done under cover and color of law, and is a departure from the order of "limited ouster" in said case, and is in violation of the order of said court to said Receiver at the time of his appointment, directing him to devise a plan for the correction of said abuses and the return of said property to its owners, and is discredited by the interlocutory temporary injunction of this Court, in that said course of business prefers the rights of the stockholders to the rights of the customers and consumers, including the right of your petitioner to an adequate supply of gas as per the terms of said supply-contract.

65. That a "Protective Committee" of the stockholders of the



Kansas Natural Gas Company has been formed, consisting of R. A. Long, M. L. Benedum, G. T. Braden, W. W. Splane, E. P. Whitcomb, L. C. McKinney and V. A. Hays; that said committee has stated to the Governor and the Attorney-General of Kansas that they are willing to refinance and rehabilitate said Company and furnish an adequate supply of gas; and have formulated a plan for the issuance of \$9,000,000 additional capital stock for such purpose, and declared that it is to the best interest of said Company, its  
474 stockholders, creditors and the public that said Receiver be discharged and the property and management be restored to the Company, as shown by an agreement dated the 7th day of July, 1916, hereto attached, marked "Exhibit V," and made a part hereof.

66. Your petitioner alleges on information and belief that said agreement has been underwritten by responsible parties, including all of said stockholders' committee above named, and that by reason thereof said Company is perfectly solvent and able to perform all its contractual and public obligations, including its contract with your petitioner dated February 1, 1906, to furnish an adequate supply of gas at the price agreed upon therein, until December 14, 1924.

67. Your petitioner further states on information and belief that one Henry L. Doherty and associates have submitted a proposition to the Attorney-General and Governor of Kansas, in which they offer to purchase said properties at foreclosure sale and to refinance and rehabilitate the same and furnish a reasonably adequate supply of natural gas, as per the printed statement thereof hereto attached, marked "Exhibit W" and made a part hereof.

68. Your petitioner further shows to the court that the real parties in interest who signed said stipulation or so-called Creditors' Agreement, to-wit, said bondholders, are also the real parties in interest and the moving parties plaintiff in the aforesaid McKinney suit and foreclosure suit pending in this court; that the Kansas Natural Second Mortgage Bondholders have filed in said foreclosure suit their cross bill for the foreclosure of said second mortgage; that The Kansas City Pipe Line Company and its bondholders have filed in this court  
in said cases a petition of intervention for the adjudication of

475 their claims and indebtedness; that by reason thereof all the real parties in interest to said stipulation are real parties in interest, either plaintiffs or defendants, in said McKinney and foreclosure suits, and can not now maintain said state suit for the real purpose of ousting this court of jurisdiction in said causes, and as a bar to their own rights to maintain said McKinney and foreclosure suits, for the reason that said suits obstruct justice and prevent your petitioner from enforcing against the Kansas Natural Gas Company its right to an adequate supply of gas as per the terms and conditions of said supply-contract.

69. That neither the Kansas Natural Gas Company nor its stockholders have any right to maintain said state suit, for the reason that said Company, signing said stipulation by Eugene Mackey, its president, is defendant in both the McKinney and foreclosure suits pending in this court; and said Company has confessed its insolvency in

said cases and consented to a decree of foreclosure long prior to the signing and filing of said stipulation in said state case.

70. That the demands of the public and consumers upon your petitioner for an adequate and increased supply of gas are very great and increasing; that the Kansas Natural Gas Company and its stockholders have heretofore done nothing looking toward the refunding and refinancing of its indebtedness, rehabilitation of its system and business, and performance of its public and contractual obligations since the summer of 1912, but had practically deserted and abandoned said business and property to their creditors and bondholders from October 8, 1912, to the hearing of this case at St. Paul on April

26, 1916; that public policy demands that said property and  
476 business be maintained and operated as a public service corporation and in such a manner as to render efficient service; that if said Kansas Natural Gas Company and its stockholders are unable to perform their public and contractual obligations said property should be sold as expeditiously as possible at foreclosure sale, freed of such obligations, at an upset price to be fixed by the court, and to some responsible party making satisfactory proofs to the court of his or its ability to continue said property and business a going concern and to furnish the distributing companies and consumers on said system an adequate supply of natural gas.

71. That this application and supplemental answer, counterclaim and cross bill of complaint serves to aid the Public Utilities Commission of Kansas in its defense of the original bill of complaint, in that it is immaterial whether the rate allowed by the Kansas Commission is confiscatory or not, if the same has been agreed to by the Kansas Natural Gas Company by contract, and said contract has not been modified, rescinded or disavowed, as hereinbefore alleged; and said cross bill further serves to obtain a complete determination of the controversies between the complainant John M. Landon, as Receiver, and the several defendants to the dependent bill of complaint filed herein; that said matters were pretermitted by the order and opinion of this court on granting a temporary injunction herein and referred to this court as now constituted.

72. That except as herein admitted and as admitted in the answer of your petitioner filed herein on March 9, 1916, your petitioner denies the truth of each and every statement, allegation and averment made and contained in the plaintiff's bill of complaint and in the answer and joint bill of complaint filed herein by the Kansas Natural Gas Company, a corporation.

477 73. That your petitioner has no other plain, adequate or complete remedy at law and therefore files this application and supplemental answer, counterclaim and cross bill of complaint in this Honorable Court, where alone relief can be had.

478 Wherefore, the premises considered, your petitioner, The Wyandotte County Gas Company, prays this Honorable Court:

1. To dissolve the interlocutory temporary injunction granted herein, in so far as said order (if so intended) restrains this defendant from putting or maintaining in effect or attempting to put or

maintain in effect, by legal proceedings or otherwise, against the Receiver of the Kansas Natural Gas Company the rates and charges agreed to by said Kansas Natural Gas Company in said contract of February 1, 1906.

2. That the court require the Attorney-General of Kansas, Honorable S. M. Brewster, to state whether or not it is the intention of the State of Kansas to further prosecute said case pending in the District Court of Montgomery County, Kansas, in the name of the State of Kansas, and to state what, if any, corporate abuses still exist, requiring the continuation of said receivership and the possession and custody of said property by said court; and to show cause why said suit pending in the District Court of Montgomery County, Kansas, in the name of the State of Kansas, should not be dismissed and the Receiver therein discharged.

3. That under the orders of this court in the McKinney and foreclosure suits, to which this cause is dependent, issued January 24, 1914, and September 22, 1914, wherein this court retained the reversionary estate and potential possession of said property through its Receiver, George F. Sharritt, this court resume possession and control of said property through its said Receiver, George F. Sharritt, and proceed to final judgment in said McKinney and foreclosure suits.

479 4. That John M. Landon, as ancillary Receiver appointed by this court, be ordered to make a report of his receivership to this court.

5. That the Kansas Natural Gas Company and John M. Landon, its Receiver, be required to specifically perform said contract of February 1, 1906, and to furnish, supply and deliver to your petitioner, at or near the corporate limits of Kansas City, at a pressure of 20 pounds, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, for distribution and sale at the prices agreed upon and at the compensation provided for therein.

6. That the said John M. Landon and the Kansas Natural Gas Company, their agents, servants and employes, be perpetually enjoined from shutting off the supply of gas to your petitioner; and that pending the final hearing and determination of this cause said John M. Landon and the Kansas Natural Gas Company, their agents, servants and employes, be temporarily restrained from shutting off the supply of gas to your petitioner; that a writ of subpoena issue out of this Court for the said John M. Landon, Receiver, and the said Kansas Natural Gas Company ordering and directing them to answer this petition, counter-claim and cross-bill of complaint; and for such other and further relief to this Honorable Court may seem equitable and just.

THE WYANDOTTE COUNTY GAS  
COMPANY,

By C. E. SMALL,

J. W. DANA,

*Solicitors.*

480 STATE OF KANSAS,  
*County of Wyandotte, ss:*

W. H. McKenzie, being first duly sworn, deposes and says that he is the General Manager of The Wyandotte County Gas Company; that he has read and knows the contents of the foregoing petition, supplemental answer, counterclaim and cross-bill, and that the statements, allegations and averments therein made and contained are true, except such as are stated on information and belief and advice of counsel, and as to such affiant believes them to be true; and further affiant saith not.

W. H. McKENZIE.

Subscribed in my presence and sworn to before me this — day of —, 1916.

\_\_\_\_\_  
*Notary Public.*

My Commission expires — —, —.

Filed in the District Court on Oct. 11, 1916. Morton Albaugh, clerk.

481 Exhibit A, being natural gas franchise-ordinance No. 6051 of Kansas City, Kansas, dated 12/13/04, is omitted.

Exhibit B, being Natural gas franchise-ordinance No. 295 of Rose-dale, Kansas, dated 3/21/05, is omitted.

Exhibit C, being gas-supply-contract between The Kansas City Pipe Line Company and Wyandotte Gas Company, dated 2/1/06, is omitted.

Exhibit D, being lease between The Kansas City Pipe Line Company and Kansas Natural Gas Company dated 1/1/08, is omitted.

Exhibit E, being application and schedule for 30-cent rate by The Wyandotte County Gas Company, dated 7/29/16, is omitted.

Exhibit F, being order appointing Sharitt, Holmes and Mackey Receivers of Kansas Natural Gas Co., dated 10/9/12, is omitted.

Exhibit G, being order directing Federal Receivers to deliver to State Receivers, dated 1/24/14, is omitted.

Exhibit H, being order spreading mandate to deliver to State Receivers, dated 9/22/16.

Exhibit I, being opinion and decree of Judge Thomas J. Flannelly, dated 2/15/13, is omitted.

481a Exhibit J, being circular from Mr. Landon requesting The Wyandotte County Gas Company to offer evidence at Independence showing what rate should be charged, dated 6/12/16, is omitted.

Exhibit K, being answer of The Wyandotte County Gas Company, by Mr. Dana, to circular, Exhibit J, adhering to contract, dated 6/27/16, is omitted.

Exhibit L, being circular from Mr. Landon, requesting The Wyandotte County Gas Company to notify consumers of increase after August, 1916, meter-readings, dated 8/4/16, is omitted.

Exhibit M, being circular from Mr. Landon, proposing 38-cent rate, \$1.00 minimum and 3-cent discount, dated 8/4/16, is omitted.

Exhibit N, being letter from Mr. Landon, through Mr. Atwood's office, proposing 18-cent price at city limits, dated 8/11/16, is omitted.

Exhibit O, being letter from Mr. Landon, proposing change in minimum bill, dated 8/12/16, is omitted.

Exhibit P, being answer of The Wyandotte County Gas Company, by Mr. Dana, to letters from Mr. Landon, Exhibits L, M, N and O, dated 8/18/16, is omitted.

Exhibit P-1, being answer of Kansas Natural and Mr. Landon to The Wyandotte County Gas Company's letter of 8/18/16, (Exhibit P), dated 8/23/16, is omitted.

481b Exhibit P-2, being answer of The Wyandotte County Gas Company, by Mr. Dana, to letter of Kansas Natural and Mr. Landon of 8/23/16, (Exhibit P-1), dated 8/26/16, is omitted.

Exhibit Q, being original petition in State Case, filed 1/5/12, is omitted.

Exhibit Q-1, being supplemental petition making additional party defendant, dated 2/15/13, is omitted.

Exhibit Q-2, being second supplemental petition making additional party defendant, dated 3/11/13, is omitted.

Exhibit Q-3, being order extending appointment of Receivers for Kansas Natural on additional grounds of confessed insolvency, etc., dated 12/6/13, is omitted.

Exhibit Q-4, being fourth supplemental petition praying Receiver The Kansas City Pipe Line Company, dated 6/21/13, is omitted.

Exhibit Q-5, being fifth supplemental petition praying Receiver Marnet Mining Company, dated 7/2/13, is omitted.

Exhibit Q-6, being amended and (6th) supplemental petition praying Receiver The Wyandotte County Gas Company, dated 1/17/14, is omitted.

Exhibit R, being stockholders' published statement of Kansas Natural dated 8/22/16, is omitted.

Exhibit S, being order of State Court directing Landon to receive property as per order of Federal Court, dated 1/24/14, is omitted.

481c Exhibit T, being stipulation (so-called "Creditors' Agreement") dated 12/29/14, is omitted.

Exhibit U, being opinion and order of Public Utilities Commission of Kansas in State of Kansas v. Cities of Independence, et al., No. 541, dated 7/10/13, is omitted.

Exhibit V, being underwriters' agreement, dated 7/7/16, is omitted.

Exhibit W, being plans and suggestions for a reasonable supply of gas, by Henry L. Doherty & Company, dated 6/15/16, is omitted.

Exhibit X, being answer of The Wyandotte County Gas Company, dated 3/9/16, is omitted.

482 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Co., Plain-  
tiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.

483 *Supplemental Bill of Complaint.*

For this supplemental bill of complaint herein against the defend-  
ants and each of them the plaintiff, John M. Landon, as Receiver for  
Kansas Natural Gas Company alleges that since the filing of the  
decree of preliminary injunction herein, on June 3, 1916, there  
have occurred, transpired and come to the knowledge of this plaintiff  
new and subsequent facts and occurrences relating to and directly  
affecting the subject matter of this suit, for and on account of which  
this plaintiff is entitled to relief as hereinafter and in the bill of  
complaint prayed for, as follows:

I.

That on or about the 29th day of July, 1916, acting in pursuance  
to the order and decree of preliminary injunction entered in this  
cause, as aforesaid, this plaintiff filed in this cause his bond in the  
sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00) con-  
ditioned as provided by said order, which said bond was approved  
by the Honorable Ralph E. Campbell, United States District Judge.

484 That on August 14, 1916, upon the filing of said bond, the  
Honorable Morton Albaugh, Clerk of this District Court,  
issued under the seal of this court the writ of preliminary  
injunction authorized and ordered to be issued by this court in said  
order of June 3, 1916.

That after the issuance of the writ of preliminary injunction herein  
and on or about August 4, 1916, this plaintiff, in the due course of  
the administration of the estate of the Kansas Natural Gas Company  
in his hands as such Receiver, prepared schedules and directed the  
various distributing companies selling and distributing natural gas  
in the States of Kansas and Missouri for this receiver, as his agents,  
to put into force and effect on September 1, 1916, certain rates which  
upon due investigation he deemed reasonable, compensatory and  
just.

That the said rates so established and ordered by the Receiver were  
fixed and established by the Receiver in pursuance of the order of this



court entered on June 3, 1916, and that the rates are graduated according to the distance the several cities supplied by the agents of this Receiver are located from the gas fields and from Grabham station, a common basing point through which all the gas  
485 supplied by the Receiver passes, and will produce an average price of about thirty-two cents per thousand cubic feet for the domestic gas supplied by him to consumers in the said several cities in Kansas and Missouri.

That this plaintiff is entitled to an average rate of 32c per thousand cubic feet for natural gas transported and sold by him. That in the opinion delivered in this case on June 3, 1916, by this court, it was said:

"The opinion of the court can rest only on the evidence before it, and upon that evidence it is its opinion that a less rate than thirty-two cents per M cubic foot will be found insufficient to accomplish this result."

In the case of St. Joseph Gas Company, plaintiff vs. John T. Barker, et al., defendants, in the United States District Court for the Western District of Missouri, St. Joseph Division, the same three judges who sat in the case of John M. Landon, etc., vs. The Public Utilities Commission, et al., delivered the opinion of the court, and in the opinion it was said:

"The argument that the reasonable charge for the delivery of the gas to St. Joseph cannot be greater than 21 1-3 cents per thousand cubic feet, the amount that the gas Company at Atchison would  
486 presumptively pay under the 32 cent rate, is not persuasive because that rate has not been determined to be compensatory anywhere, much less in Atchison (all that this court has declared as to the 32 cent rate is that it was convinced by the evidence in the Landon case that no rate less than 32 cents would be found to be sufficient to compensate the Natural Gas Company for its gas on the basis of two-thirds of the proceeds to it and one-third to the local company), because the 32 cent rate suggested was not that particular rate to the consumers in each city which the Natural Gas Company supplies wherever that city is located, but a suggestion of an average rate; and because it is patent that the reasonable rate to the consumers and the reasonable charge for obtaining gas at the city most distant from the source of supply is unavoidably higher per thousand cubic feet than it is at cities of the same size nearer to the source of supply."

Thus the court determined that anything less than an average rate of 32c to the consumers will be non-compensatory and confiscatory.

## II.

That on or about August 10, 1916, the Kansas City Gas Company, one of the defendants herein, filed with the Public Service Commission of the State of Missouri, a defendant herein, its com-  
487 plaint against this plaintiff, as Receiver for Kansas Natural Gas Company, and the Kansas Natural Gas Company, a defendant herein, praying an order or orders of said Commission re-



quiring this plaintiff to comply with the contracts of November 17, and December 3, 1906, between the Kansas City Gas Company and the Kansas Natural Gas Company, the validity of both of which contracts was and is involved in the determination of this suit, and requiring plaintiff to make certain extensions to pipe lines controlled and operated by him in the States of Oklahoma and Kansas, and requiring plaintiff to do and perform many other acts and things, all of which are a substantial burden upon and an undue interference with the interstate commerce business in which plaintiff is engaged and engaging, and also in direct conflict with the decree of this court of June 3, 1916, in this cause, receiving exclusive jurisdiction over all matters and things in controversy in this suit for the further determination of this court. A copy of which said complaint is filed herewith, marked Exhibit "1," and made a part of this supplemental bill of complaint by reference.

488 That on said 10th day of August, 1916, the said Public Service Commission of the State of Missouri, a defendant herein, made and entered an order requiring this plaintiff and the defendants named in said complaint (Exhibit "1") to answer said complaint on or before ten days from the date of service of the order.

### III.

That on the 10th day of August, 1916, the Kansas City Gas Company, one of the defendants herein, filed a new schedule of rates for natural gas applying to Kansas City, Missouri, in which it sought to change the rates of natural gas in Kansas City, Missouri, from and after November 9th and 19th, 1916, in alleged conformity with the contracts of November 17, and December 3, 1906, between the Kansas City Gas Company and the Kansas Natural Gas Company above referred to and on the same date the said Kansas City, Missouri another of the defendants herein by its City Counselor agreed and consented to the change of rates as applied for by said Kansas City Gas Company, and approved the same. That said defendants thus endeavored to give force and effect to the contracts of November

489 17, and December 3, 1906, above referred to, notwithstanding that the validity of both contracts was and is involved in the determination of this suit. That in accordance with said application of the Kansas City Gas Company and the approval of the City of Kansas City through its City Counselor the Public Service Commission of Missouri, one of the defendants in this suit, made an order putting said rates into effect as prayed for and in conformity with said contracts as aforesaid. That said application of the Kansas City Gas Company, the approval of the same by the City of Kansas City, Missouri, through its City Counselor, and the order of the Public Service Commission of Missouri were all a substantial burden upon and an undue interference with the interstate commerce business in which plaintiff is engaged and is engaging, and also in direct conflict with the decree of this court of June 3, 1916, reserving exclusive jurisdiction of all matters and controversies in this suit for the further determination of this court. A copy of said complaint

of the Kansas City Gas Company is filed herewith marked Exhibit "2" and made a part of this supplemental bill of complaint  
490 by reference, and a copy of the order of the Public Service Commission of Missouri is hereto attached, marked Exhibit "3" and made a part hereof.

#### IV.

That on August 23, 1916, The Kansas City Gas Company commenced a suit in the Circuit Court of Jackson County, Missouri, at Kansas City, Missouri, in case No. 104443, entitled Kansas City Gas Company, plaintiff, vs. Kansas Natural Gas Company, John M. Landon, Receiver, and George F. Sharritt, Receiver, defendants, praying the specific performance of certain contracts dated November 17, and December 3, 1906, claimed by said plaintiff to be existing between Kansas Natural Gas Company and the Kansas City Gas Company. That upon being served with summons in said cause, and within the time provided by law for the removal of causes to the United States Courts, this plaintiff and the other defendants therein filed their petition for removal of said cause from the Circuit Court of Jackson County, Missouri, to the United States District Court for  
491 the Western District of Missouri, Western Division, and said cause has been removed thereto and is now pending therein.

That by said suit the said Kansas City Gas Company seeks to litigate in said cause the identical matters, facts and things set up in the answer and cross bill of the said Kansas City Gas Company theretofore filed in this suit, and seeks and prays the same kind, character and extent of relief sought and demanded in and under the said answer and cross petition. That the bringing of said suit as aforesaid is in direct conflict with the decree of this court of June 3, 1916, which reserved exclusive jurisdiction over all the matters and things in controversy in this suit for the further determination of this court. A copy of said petition so filed in the Circuit Court of Jackson County, Missouri, is filed herewith, marked Exhibit "4," and made a part of this supplemental bill of complaint by reference.

#### V.

That in accordance with the direction of this plaintiff in the promulgation and establishing of new rates after the taking effect of said preliminary injunction as aforesaid, notice was given to the

492 Weston Gas & Light Company that the rates on natural gas to consumers in Weston, Missouri, transported from Kansas and Oklahoma, on and after September 20, 1916, would be thirty-eight (38c) cents per thousand cubic feet, net, with a minimum charge of fifty (50c) cents per month. That said Weston Gas & Light Company filed the proposed schedule of rates with the Public Service Commission of Missouri. That said Public Service Commission of Missouri, one of the defendants herein, made an order suspending said proposed schedule of rates in Weston, Missouri, and attempted to postpone the taking effect of the same for one hundred

twenty (20) days after September 20, 1916. That said order of the Public Service Commission of Missouri is a substantial burden upon and an undue interference with the interstate commerce business in which this plaintiff is engaged and is engaging, and also in direct conflict with the decree of this court of June 3, 1916, reserving exclusive jurisdiction over the subject matter of this suit and the parties herein. A copy of said order is hereunto attached, marked Exhibit "5" and made a part of this supplemental bill of complaint.

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## VI.

That in accordance with the direction of this plaintiff in the promulgation and establishment of new rates after the taking effect of the preliminary injunction as aforesaid, notice was given to the Joplin Gas Company that the rates on natural gas transported from Kansas and Oklahoma to consumers in Joplin, Missouri, would, after September 1, 1916, be 30c. per thousand cubic feet, net, with a net minimum charge of 60c. per thousand cubic feet. That said Joplin Gas Company filed the proposed schedule of rates with the Public Service Commission of Missouri. That the City of Joplin, one of the defendants herein, filed a complaint with the Public Service Commission of Missouri, a copy of which complaint is attached hereto, marked Exhibit "6," and made a part hereof. That upon the filing of said complaint the said Public Service Commission of Missouri made an order suspending said proposed schedule of rates in Joplin, Missouri, and attempted to postpone the taking effect of the same for 120 days from and including September 8, 1916. That a copy of said order is hereunto attached, marked Exhibit "7,"

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and made a part hereof. That on the 19th day of September, 1916, the said Public Service Commission of Missouri notified Messrs. Spencer & Grayston, attorneys for the Joplin Gas Company that if the proposed rates, or any rates in excess of the rate then on file with the Commission, to-wit, 25c. per thousand cubic feet, were sought to be made effective such action would be in violation of the Commission's order and the Commission would take such action thereto as it deemed appropriate; a true and correct copy of the notice of the Public Service Commission of Missouri is hereunto attached, marked Exhibit "8," and made a part hereof.

That the said Joplin Gas Company was notified by E. F. Cameron, City Attorney of Joplin, Missouri, that any attempt to collect the proposed rate of 30c. per thousand cubic feet, or any rate in excess of 25c. per thousand cubic feet, would subject the officers and employees of said company to a criminal prosecution and that said officials would be arrested from one to seven thousand two hundred times and be punished by a fine of from \$100.00 to \$200.00 for each offense of overcharging each patron; that the Joplin Com-

495      pany has 7,200 patrons and it would be subject to a fine of \$144,000.00 for each month. That the threats of said Public Service Commission and said city officials have deterred said Joplin Gas Company and this plaintiff from putting into effect in Joplin,

Missouri, the said proposed rate of 30c. per thousand cubic feet. That said order of the Public Service Commission of Missouri and the acts and threats of the said officials of Joplin, Missouri, are a substantial burden upon and an undue interference with the interstate commerce business in which this plaintiff is engaged and is engaging, and also is in direct conflict with the decree of this court of June 3, 1916, reserving exclusive jurisdiction over the subject matter of this suit and the parties herein.

## VII.

That in accordance with the direction of this plaintiff in the promulgation and establishment of new rates after the taking effect of said preliminary injunction as aforesaid, notice was given to the Fort Scott and Nevada Light, Heat, Water & Power Company that the rates on natural gas transported from Kansas and Oklahoma to consumers in Nevada, Missouri, would be 35c. per thousand cubic feet, net, with a minimum charge of 50c. per month, which will cover the first thousand cubic feet. That said Fort Scott and Nevada Light, Heat, Water & Power Company filed the proposed schedule of rates with the Public Service Commission of Missouri. That said Public Service Commission of Missouri, one of the defendants herein, made an order suspending said proposed schedule of rates in Nevada, Missouri, and attempted to postpone the taking effect of the same for 120 days from and including September 22, 1916. That said order of the Public Service Commission of Missouri is a substantial burden upon and an undue interference with the interstate commerce business in which this plaintiff is engaged and is engaging, and is in direct conflict with the order of this court of June 3, 1916, reserving jurisdiction over the subject matter of this suit and the parties herein. A copy of said order of said Public Service Commission of Missouri is attached hereto, marked Exhibit "9," and made a part of this supplemental bill of complaint.

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## VIII.

That in accordance with the direction of this plaintiff in the promulgation of new rates after the taking effect of said preliminary injunction as aforesaid, notice was given to the Carl Junction Gas Company that rates on natural gas transported from Kansas and Oklahoma to consumers in Carl Junction, Missouri, would be 30c. per thousand cubic feet, net. That said Carl Junction Gas Company filed the proposed schedule of rates with the Public Service Commission of Missouri. That said Public Service Commission of Missouri, one of the defendants herein, made an order on or about the 17th day of August, 1916, suspending said proposed schedule of rates in Carl Junction, Missouri, and attempted to postpone the taking effect of the same for 120 days. That on the 1st day of September, 1916, the Public Service Commission of Missouri gave the said Carl Junction Gas Company additional notice that any attempt to increase the rates named in the schedule which was suspended would be a viola-

tion of the Commission's order and action would be taken. A copy of said notice is hereto attached, marked Exhibit "10," and  
498 made a part hereof. That on the 19th day of September, 1916, A. M. Baird, City Attorney of Carl Junction, Missouri, gave additional notice to the Carl Junction Gas Company warning said company against taking any action that would be a violation of the order of the Public Service Commission of Missouri. A copy of said notice of the said Public Service Commission of Missouri suspending the schedule of rates at Carl Junction, Missouri, is similar to Exhibit "7" hereto attached in reference to the suspending of the schedule of rates at Joplin, Missouri. That said order of the Public Service Commission of Missouri, the notice of said Commission marked Exhibit "10," and the notice of A. M. Baird, City Attorney, marked Exhibit "11," are substantial burdens upon and an interference with the interstate commerce business in which this defendant is engaged and is engaging, and are in direct conflict with the order of this court of June 3, 1916, reserving exclusive jurisdiction over the subject matter of this suit and the parties hereto.

## IX.

That in accordance with the direction of this plaintiff in the promulgation of new rates after the taking effect of said preliminary injunction as aforesaid, notice was given to the Oronogo Gas Company that the rates on natural gas transported  
499 from Kansas and Oklahoma to consumers in Missouri would be 30c. per thousand cubic feet, net. That said Oronogo Gas Company filed the proposed schedule of rates with the Public Service Commission of Missouri. That said Public Service Commission of Missouri, one of the defendants herein, made an order suspending said proposed schedule of rates in Oronogo, Missouri, and attempted to postpone the taking effect of the same for 120 days. That said order of the Public Service Commission of Missouri is a substantial burden upon and an undue interference with the interstate commerce business in which this plaintiff is engaged and is engaging and is in direct conflict with the order of this court of June 3, 1916, reserving jurisdiction over the subject matter of this suit and the parties hereto. That said order of the Public Service Commission of Missouri is similar to the order marked Exhibit "7," and made a part of this supplemental bill of complaint suspending the schedule of rates in Joplin, Missouri,

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## X.

That each, every, all and singular, of the orders, letters, communications, and acts of the said Public Service Commission of Missouri was done and performed for the express purpose, aim and desire to deter, intimidate, and prevent the said defendants, and the other defendants acting as agents for this plaintiff, through fear of incurring the unreasonable penalties prescribed by the laws of Missouri as set out in the bill of complaint, from carrying out and performing the

orders of this plaintiff rightfully and lawfully made in establishing and putting into force reasonable rates for the sale of natural gas to consumers in the cities served by each of the said defendants respectively. That each of said orders, letters, communications, and acts was and is a violation of and an interference with this plaintiff in the administration of the trust in his hands, and in the performance of his duty as such receiver.

That by requiring plaintiff and his respective agents to sell natural gas, produced in Kansas and Oklahoma and transported to Missouri, to consumers in Nevada, Missouri, at 30 cents per thousand cubic feet, net, and in Carl Junction, Oronogo, Weston, and Joplin, Missouri, at 25 cents, net, said defendants make plaintiff purchase and procure said gas in Kansas and Oklahoma and deliver it to consumers at the respective cities at a loss. That by inhibiting plaintiff from selling said gas at 38 cents in Weston, 35 cents in Nevada, 30 cents in Carl Junction, Oronogo and Joplin, the said defendants are preventing plaintiff from securing an average rate of 32 cents per thousand cubic feet on all natural gas which he purchases and procures in Kansas and Oklahoma and sells to consumers in Kansas and Missouri. It is necessary for plaintiff to obtain said rates in order to make any profit. That by all said acts aforesaid, said defendants are substantially burdening and unduly interfering with the interstate commerce business in which plaintiff is engaged, in violation of the Commerce Clause of the Constitution of the United States. That this court has already determined herein that said rates which said defendants are attempting to require plaintiff to maintain are non-compensatory, confiscatory, unreasonable, and a direct and substantial burden on interstate commerce.

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XI.

That on or about August 10, 1916, the City of Kansas City, Kansas, the City of Rosedale, Kansas, and the Wyandotte County Gas Company, defendants herein, as complainants, filed with the Public Utilities Commission of the State of Kansas, a defendant herein, their complaint against the Kansas Natural Gas Company and this plaintiff, as Receiver for Kansas Natural Gas Company, praying for an order requiring this plaintiff to comply with the contract of February 1, 1906, between the Wyandotte County Gas Company and the Kansas Natural Gas Company, the validity of which contract was and is involved in the determination of this suit, and requiring this plaintiff to make certain extensions of the pipe lines operated and controlled by this plaintiff in the State of Oklahoma, and requiring this plaintiff to do and perform many other acts and things that are also a direct and substantial burden upon and an undue interference with the interstate commerce business in which this plaintiff is engaged and engaging, and also in direct conflict with the decree of this court of June 3, 1916, reserving exclusive jurisdiction over the subject matter of this suit and the parties herein. A copy of said complaint is filed herewith, marked Exhibit "12," and made a part of this supplemental bill of complaint by reference.

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That upon the filing of said complaint (Exhibit "12") the said Public Utilities Commission of the State of Kansas, defendant herein, made and entered an order requiring the plaintiff herein to answer said complaint and assigning the same for hearing on October 19, 1916.

That on October 2, 1916, the plaintiff filed his motion to said complaint (Exhibit "12") a true and correct copy of which motion is filed herewith, marked Exhibit "13," and made a part of this supplemental bill of complaint by reference.

## XII.

That on or about the 10th day of August, 1916, the Wyandotte County Gas Company, defendant herein, as complainant, filed with the Public Utilities Commission of the State of Kansas, a proposed new schedule of rates wherein it sought to change the rate charged for natural gas in Kansas City, Kansas, from 28c. per thousand cubic feet, net, to 30c. per thousand cubic feet net, effective on and after November 19, 1916, as provided by and in conformity with the contract of February 1, 1906, between the Kansas City Pipe Line Company and the Wyandotte Gas Company, which it is claimed by said Wyandotte County Gas Company is still existing and in force against the said Kansas Natural Gas Company and the plaintiff. That a hearing was had on said application of the said Wyandotte County Gas Company at which the City of Kansas City, Kansas, a defendant herein, appeared by its City Attorney. That said hearing was had on the 21st day of September, 1916, and said City of Kansas City, Kansas, through its City Attorney, consented to the change of rates as proposed in said schedule. That the Commission has taken such application under advisement and has not yet given its decision thereon. That said defendants sought by said application to determine the validity of the contract of February 1, 1906, notwithstanding that said contract is one of the issues in this suit that has been reserved for consideration by this court.

That the action of said defendants so taken, if the same is consummated and said 30c. rate put into effect, will prevent plaintiff from securing an average rate of 32c. per thousand cubic feet, net, on all natural gas which he purchases and procures in Kansas and Oklahoma and sells to consumers in Kansas and Missouri. That said acts of the defendants as aforesaid, are also a substantial burden upon and an undue interference with the interstate commerce business in which this plaintiff is engaged and is engaging, and also in direct conflict with the decree of this court of June 3, 1916, reserving exclusive jurisdiction over the subject matter of this suit and the parties herein. A copy of said complaint is filed herein, marked Exhibit "14," and made a part of this supplemental bill of complaint by reference.

## XIII.

That after the making and publishing of the schedules as aforesaid in the several cities of Kansas, The Public Utilities Commission



of Kansas, a defendant herein, made and entered an order on the 13th day of September requiring the plaintiff to file with said Commission a schedule of the rates established by this plaintiff  
506 as aforesaid in the several cities of Kansas supplied by him with natural gas. A true and correct copy of said order is hereto attached, marked Exhibit "15," and made a part of this supplemental bill of complaint by reference. That this plaintiff, as Receiver, complied with said order and filed with the said Public Utilities Commission of Kansas a schedule of the rates established by him in the State of Kansas, a true and correct copy of which schedule is filed with said Public Utilities Commission is hereto attached, marked Exhibit "16," and made a part hereof by reference. That after the filing of said schedule and on the 21st day of September, A. D. 1916, the said Public Utilities Commission made an order that upon its own motion it would enter into a general investigation of the rates, joint rates, rules, service, regulations, and practices of this plaintiff as shown by the schedule filed by this plaintiff with said Commission in accordance with its order heretofore mentioned. That the hearing of said general investigation has been set for October 24, 1916. That a true and correct copy of said order is hereto attached, marked Exhibit 17, and made a part of this supplemental bill of com-  
507 plaint by reference.

#### XIV.

That thereafter and on the 22nd day of September, A. D. 1916, the said Public Utilities Commission, through its attorneys, filed in the Supreme Court of the State of Kansas, a petition for an alternative writ of mandamus to require this plaintiff to file a schedule for industrial and boiler gas. That an alternative writ of mandamus was issued thereon, returnable October 10, 1916. A true and correct copy of said alternative writ is hereto attached, marked Exhibit "18," and made a part hereof by reference. That this plaintiff has complied with this alternative writ as far as possible.

That on or about the 22nd day of September, A. D. 1916, the said Public Utilities Commission of the State of Kansas, through its attorneys, filed a petition for a writ of mandamus to compel this plaintiff and the Olathe Gas Company to furnish natural gas to Olathe, Kansas, under a contract dated November 30, 1908, between the Olathe Gas Company and The Kansas Natural Gas Company, whereby the Olathe Gas Company was to act as agent for  
508 The Kansas Natural Gas Company and The Kansas Natural Gas Company was to receive a percentage of the receipts for natural gas as measured at the consumers' meters. The petition also sought to have this plaintiff cease furnishing natural gas to the Olathe Gas Company at a price per thousand cubic feet determined by meter placed at the gates of the City of Olathe under an arrangement alleged to have been entered into on or about September 1, 1916. That an alternative writ was issued thereon, returnable October 10, 1916. A true and correct copy of said alternative writ is

hereto attached, marked Exhibit "19," and made a part hereof by reference.

### XV.

That since the publishing and the giving of notice of a schedule of rates to be established and charged consumers of gas in the cities of Kansas City, Kansas, and Rosedale, Kansas, by this plaintiff, the defendants, the Wyandotte County Gas Company, the City of Kansas City, Kansas, and the City of Rosedale, Kansas, have conspired together to prevent the putting into force and effect such rates.

500 And the Wyandotte County Gas Company has since said time denied that it is the agent of this Receiver for the sale and distribution of natural gas in said cities, and avers and asserts that it is a purchaser of natural gas, and refuses to put into force and effect the rates and prices ordered to be put into force and effect in Kansas City, Kansas, and Rosedale, Kansas, by the plaintiff. That such course of action and position taken by the Wyandotte County Gas Company was taken at the instance and upon the advice and in furtherance of the plan entered into between the Wyandotte County Gas Company and the said cities of Kansas City, Kansas, and Rosedale, Kansas, to prevent this plaintiff from obtaining and collecting compensatory rates for gas supplied to the inhabitants of said cities. That a true and correct copy of the letter of June 27, 1916, directed to this plaintiff by the Wyandotte County Gas Company in which it stated its refusal to put in the rate prescribed by this plaintiff, is hereto attached, marked Exhibit "20," and made a part hereof by reference. That a true and correct copy of the letter of the City of  
510 Kansas City, Kansas, addressed to this plaintiff in furtherance of said scheme and conspiracy above set forth, is hereto attached, marked Exhibit "21," and made a part hereof by reference.

That after receiving notice from the Wyandotte County Gas Company that it would not put into force and effect the rates for the selling of natural gas ordered and directed by the plaintiff, the plaintiff fixed and established a price of 18c. per thousand cubic feet to be charged the Wyandotte County Gas Company for gas supplied it for distribution and sale in Kansas City, Kansas, and Rosedale, Kansas, at the gate of the city plant, where the gas passes from the pipe lines of the plaintiff to the distributing plant of said defendant, and notified the said Wyandotte County Gas Company thereof. That since the giving of said notice by plaintiff to the said Wyandotte County Gas Company, of said price of 18c at the gate of the city, the plaintiff has at all times demanded and insisted, and will continue to demand and insist, that the said Wyandotte County Gas Company pay for the natural gas delivered to it at the gate of the City of Kansas City,

511 Kansas, and of the City of Rosedale, Kansas, at the said rate of 18c. per thousand cubic feet. That the said Wyandotte County Gas Company has refused to pay the said rate of 18c. per thousand cubic feet, as more fully appears from the letter addressed to this plaintiff, a copy of which is hereto attached, marked

Exhibit "22," and made a part hereof by reference. That the said Wyandotte County Gas Company and the said Cities of Kansas City, Kansas, and Rosedale, Kansas, have as part of the conspiracy above set forth, instituted various suits and proceedings before The Public Utilities Commission of Kansas, as hereinbefore set forth. That by inhibiting the plaintiff from selling said natural gas at a price of 18c. per thousand cubic feet at the gate of Kansas City, Kansas, and Rosedale, Kansas, the said defendants are preventing the plaintiff from securing an average rate of 32c. per thousand cubic feet on all natural gas which he purchases and procures and sells to consumers in Kansas and Missouri. That it is necessary for plaintiff to obtain said rate of 18c. in order to make any profit. That 62 1-2% of the 30c. rate on natural gas delivered to consumers in Kansas City,

512 Kansas, and Rosedale, Kansas, as measured at the meters of said consumers, is non-compensatory, confiscatory, and unreasonable, and would directly and substantially burden the interstate commerce business in which plaintiff is engaged in delivering natural gas to consumers in Kansas. That said interstate commerce business constitutes 96% of the business of this plaintiff in delivering natural gas to consumers in Kansas. That said price of 30c. as aforesaid, charged for natural gas delivered to consumers in Kansas City, Kansas, and Rosedale, Kansas, if possible to be applied in intrastate commerce, which it cannot be, is so unreasonably low as to unduly interfere with and substantially burden the interstate commerce business conducted by plaintiff in transporting and delivering natural gas to consumers in Kansas and Missouri.

That the ordinances passed by the cities of Kansas City, Kansas, and Rosedale, Kansas, have been superseded and repealed by the Public Utilities Act, and the power of the cities to contract as to rates, has been taken away. That it has been decided, in the case of State of Kansas vs. The Wyandotte County Gas Company, 88 Kan. 165 (The Wyandotte County Gas Company vs. State of Kansas, 231

513 U. S. 622), that the City of Kansas City, Kansas, being a city of the first class, never had the power to enact the ordinance on which the contract of February 1, 1906, was based. In the case of Kansas ex rel. vs. Litchfield, 97 Kans. 592, it was decided that an ordinance of a city of the second class, like Rosedale, enacted before January 1, 1911, is no longer in force and effect. Said ordinances have been violated by the respective cities since January 1, 1911, and are not now in force and effect. The contract between The Wyandotte County Gas Company and The Kansas Natural Gas Company and its predecessors in interest incorporates the said ordinances into the said contract and makes them a part thereof. As the ordinances are no longer in force, the contracts based on the ordinances, have been changed without the consent of The Kansas Natural Gas Company and are no longer in force as to it.

The contract, even if binding on the Kansas Natural Gas Company, is not binding on its Receiver, for it has never been adopted by him.

## XVI.

That the Public Utilities Commission of the State of Kansas and the defendant cities are by the acts and things which they  
514 have done as above set forth, substantially burdening and unduly interfering with the interstate commerce business in which this plaintiff is engaged, which said interstate commerce business constitutes 96% of the business this plaintiff does in the State of Kansas in transporting and delivering natural gas to consumers within the State of Kansas. That by all the acts aforesaid, said defendants last named have and do violate the decree of this court of June 3, 1916, retaining exclusive jurisdiction over the subject matter of this suit and the parties thereto.

## XVII.

That at and about the time of the giving of said notice to the Wyandotte County Gas Company, the Kansas City Gas Company upon being notified of the rates and prices fixed by this plaintiff for the sale of natural gas in Kansas City, Missouri, notified the plaintiff that it was not his agent for the distribution and sale of natural gas but that its arrangement was one for the purchase of gas and it then and there refused to put into force and effect the rates established by this plaintiff for the sale of natural gas to consumers  
515 in Kansas City, Missouri, and wrote to this plaintiff a letter similar to that written on behalf of the Wyandotte County Gas Company heretofore referred to as Exhibit "20." That on June 27, 1916, the City Counselor of Kansas City, Missouri, for and on behalf of said city, advised this plaintiff in accordance with a letter, a copy of which is hereto attached, marked Exhibit "23," and made a part hereof. That upon receiving notice from the said Kansas City Gas Company of its intention not to act longer as agent for this plaintiff and its refusal to put into force and effect the scale of prices fixed by this plaintiff, plaintiff notified the said Kansas City Gas Company that from and after September 1, 1916, he would charge said Kansas City Gas Company for gas delivered to it by him at the price of 18c. per thousand cubic feet at the gates of the plant of the Kansas City Gas Company, being the point where the gas is transferred from the pipe lines of this plaintiff to the distributing plant of the Kansas City Gas Company. That said Kansas City Gas Company refused to accept such price, but demanded that this plaintiff furnish natural gas to it and receive in pay therefor  
516 62 1-2% of the rate of 27c. for natural gas as measured by the consumers' meters until November, 1916, and that thereafter it should receive 62 1-2% of a rate of 30c. as measured by consumers' meters, as more fully appears from copies of letters of said Kansas City Gas Company to plaintiff hereto attached, marked Exhibits "24 and 25," and made a part hereof. That since the giving of said notice this plaintiff has at all times insisted and now insists upon payment from the Kansas City Gas Company for natural gas

delivered to it from and after September 1, 1916, at the rate of 18c. per thousand cubic feet as measured by meter at the gate of the said city distributing plant. That unless this plaintiff is allowed and permitted to sell natural gas delivered to consumers in Kansas City, Missouri, at a rate of 18c. per thousand feet as measured at the gates of the Kansas City Gas Company's distributing plant this plaintiff will be prevented from securing an average rate of 32c. per thousand cubic feet on all natural gas which he purchases and produces in Kansas and Oklahoma and sells to consumers in Kansas and

517 Missouri. That it is necessary for plaintiff to obtain said rate of 18c. in order to make any profit on natural gas transported by him for delivery to consumers in Kansas City, Missouri. That by all said acts as aforesaid said defendants are substantially burdening and unduly interfering with the interstate commerce business in which plaintiff is engaged in violation of the Commerce Clause of the Constitution of the United States.

#### XVIII.

That since the making of the order of Preliminary Injunction herein by this court, and acting upon the same and relying upon the enforcement thereof by this court, and of its likelihood of making such Injunction permanent upon the final trial of this cause, the stock-holders of Kansas Natural Gas Company have projected a plan of reorganization, whereby they propose to raise out of the sale of stock Four and One-half Million Dollars for the purpose of paying the present indebtedness of the company under the Creditors' Agreement, and to furnish a larger sum of money for making the necessary pipe line extensions to the distant gas fields, thereby insuring the extension of the life of the business over the full period, as found

518 by this court. That said plan of reorganization has been put in form and signed by the subscribers to the capital stock, and is to be presented to the District Court of Montgomery County, Kansas, for its approval; and when such approval is given, the said stock-holders stand ready, able and willing to furnish and advance the money necessary to pay such indebtedness and to make such extensions. That said reorganization plan is primarily predicated upon the payment of the indebtedness owing by Kansas Natural Gas Company on the basis of the Creditors' Agreement, and upon the procurement of reasonable and adequate rates for the sale of natural gas, so as to make a just return upon the moneys now invested and to be invested by them, and the protection of such rates by this court.

That a true and correct copy of the application of the Kansas Natural Gas Company for the discharge of this Receiver as filed in the District Court of Montgomery County, Kansas, is filed herewith, marked Exhibit "26," and made a part hereof by reference.

That the Attorney General of the State of Kansas has also

519 filed a motion to discharge this plaintiff as Receiver of the District Court of Montgomery County, Kansas, a copy of which motion is hereto attached, marked Exhibit "27," and made a part hereof by reference.

That these motions and applications have been set down for hearing on October 16, 1916.

### XIX.

This plaintiff further alleges that since the filing of the bill of complaint herein and since the entering of the order of preliminary injunction herein, the prices of materials useful and necessary in making, constructing and equipping pipe lines, gas well equipments and compressor stations, have advanced in most instances to double the value and price of such materials existing at the time of filing the bill of complaint, and that the price of labor in the locality where it would be necessary to use such labor in the buildings of such extensions has increased from 40% to 60%; and that the cost of making the extensions ordered to be made by this court in its order granting the preliminary injunction herein on June 3, 1916, will be from 60% to 80% greater than the cost of making such extensions would  
520 have been at the time of filing the bill of complaint herein, and at the time of the trial of this cause upon the application for preliminary injunction.

That the cost of gas delivered at the pipe lines of this plaintiff at advantageous points in the State of Oklahoma has increased since the filing of the bill of complaint herein, and since the hearing of the evidence offered upon the trial of this cause on the application for preliminary injunction, until the cost of gas at the present time is approximately seven cents (7c) per thousand cubic feet, and will continue to advance in price owing to the great competition existing between gas companies and distributing companies for the purchase of gas in the gas fields. That in order to continue and extend the life of the business to the full period of six years, found by this court, extensions must be made to much greater distances than was contemplated by the court, and established by the proofs at the time of the hearing of this cause on the application for preliminary injunction, requiring a large investment of money, which can only be  
521 procured from sources other than the revenues of the company; and the rates and prices from the sale of natural gas, if the business is to be continued for any considerable period of time, must be such as will make a return upon the additional investment, made necessary by the longer distances gas must be transported, by the increase in materials and labor for the construction of such pipe lines and the necessary compressor stations to efficiently and economically operate the same.

### XX.

That since the publication of rates established by this plaintiff for the sale and distribution of natural gas in the several cities of Kansas and Missouri, the City of Topeka, Kansas, The Public Utilities Commission of Kansas, the City of Kansas City, Kansas, and the City of Rosedale, Kansas, the Cities of Kansas City, Missouri, Oronogo, Missouri, Carl Junction, Missouri, and Joplin, Missouri, and the Public



Service Commission of Missouri, acting by and through their several members, attorneys, officers, agents and employees, and by and through public utterances, declarations and threats, have advised, counseled and encouraged the consumers of natural gas in said several cities to refuse to pay the prices and rates fixed for natural gas by the plaintiff herein; and by and through such methods have sought to render nugatory and ineffective the order and decree of this court. That said defendants by the filing of the numerous suits and applications before the Commissions and by threats given through the newspapers, in public announcements, and through addresses of their several officers and agents made before public meetings and in political campaigns, have sought to intimidate and interfere with the distributing companies, putting into force and effect the rates given and published by the plaintiff to be charged consumers for gas in said several cities.

That the rates at which plaintiff was selling gas at the time of filing the bill of complaint herein, and at all times since said date until the publishing of the schedule of rates as hereinbefore alleged, were and are confiscatory of the estate of Kansas Natural Gas Company in the hands of this plaintiff, and were and are unremunerative, non-compensatory and unreasonably low, as found by this court.

That the rates and prices for the sale of gas in the several cities supplied by this plaintiff in Kansas and Missouri, as recently fixed by plaintiff, are reasonable and will afford the plaintiff an average not exceeding  $\frac{2}{3}$  of 32 cents, net, per thousand cubic feet, leakage considered, which is now an adequate return upon the property employed in carrying on the business, and a reasonable allowance for extensions made necessary by the character of the business being carried on by plaintiff.

That unless restrained and enjoined pending the hearing of this case on the merits, and permanently enjoined upon the final hearing hereof, the defendants will continue to interfere, obstruct and prevent the plaintiff putting into force and effect such reasonable rates, and will thereby interfere with the business of plaintiff in interstate commerce now being conducted and carried on by him among the States of Kansas, Oklahoma, and Missouri, and plaintiff is and will be without an adequate remedy at law.

Wherefore, Plaintiff prays:

(a) That the Wyandotte County Gas Company be restrained and enjoined from prosecuting in any court, other than this court, or before any Commission, any suit or proceeding for the specific performance of the contract of February 1, 1906, and that this court declare said contract to be without force or effect as against the Kansas Natural Gas Company and this plaintiff.

(b) That the Public Utilities Commission of Kansas and the defendant cities located in Kansas, their officers, agents, employes, and attorneys, and each of them, be restrained and enjoined from prescribing rates, regulations, and practices, in regard to the interstate commerce business conducted by this plaintiff and the Kansas Natural Gas Company in delivering natural gas to consumers and dis-



tributing companies in the State of Kansas, and from establishing rates for the intrastate commerce business conducted by plaintiff so unreasonably low as to substantially burden and unduly interfere with the interstate commerce business conducted by this plaintiff.

(c) That the Public Utilities Commission of Kansas, its agents, employees and attorneys, and each of them, be restrained and enjoined from prosecuting in the Supreme Court of Kansas the two  
525      mandamus suits described in paragraph XIV of this supplemental bill of complaint, or any other suits or proceedings in any other court than this court, involving the subject matter of this suit, over which exclusive jurisdiction has been retained by this court, until the final hearing and disposition of this cause.

(d) That the Public Utilities Commission of Kansas be restrained and enjoined from making any orders in the proceedings pending before it, described in paragraphs XI, XII, and XIII, of this supplemental bill of complaint, which will in any manner interfere with the interstate commerce business conducted by this plaintiff or with the decree of this court of June 3, 1916, in relation to the securing of an additional gas supply.

(e) That the Kansas City Gas Company, its agents, officers, employees and attorneys, be restrained and enjoined from prosecuting in any other court than this court any suit, and especially the suit now pending in the United States District Court for the Western District of Missouri, Western Division, for the specific performance of the  
526      contracts of November 17, and December 3, 1906, and that this court declare said contracts to be without force and effect as against the Kansas Natural Gas Company and this plaintiff.

(f) That the Kansas City Gas Company, its agents, officers, employees, and attorneys, be restrained and enjoined from further proceeding with the complaint filed by it before the Public Service Commission of Missouri, described in paragraph II of this supplemental bill of complaint.

(g) That this court restrain and enjoin the Attorney-General of Missouri, the Public Service Commission of Missouri, and the Cities of Joplin, Oronogo, Carl Junction, Weston, Nevada, Deerfield, and Kansas City, in the State of Missouri, their officers, agents, employees and attorneys, and each of them, from interfering with this plaintiff putting into force and effect the rates heretofore promulgated by him, as set forth in this supplemental bill of complaint, and collecting for the gas supplied thereunder.

(h) That upon the final hearing of this cause, this court grant to this plaintiff a permanent injunction, enjoining said defendants and each of them from interfering with plaintiff putting  
527      into force and effect the rates heretofore promulgated by him, and in any manner interfering with, preventing, regulating, controlling, or burdening the interstate commerce business carried on and conducted by the plaintiff in the manner and form set out in the bill of complaint and supplemental bill of complaint filed herein, and from further prosecuting the several proceedings and suits and from pursuing the practices used and employed by them in unduly inter-

fering with plaintiff in carrying on the business of interstate commerce in which he is engaged.

(i) That pending the final determination of the issues raised herein, said defendants, and each of them, their officers, agents, employes and attorneys, be temporarily restrained from doing any of the acts or things complained of herein and for which relief is demanded.

(j) Plaintiff prays for such other and further relief in the premises as to this Honorable Court may seem equitable and just.

JOHN M. LANDON,  
By JOHN H. ATWOOD,  
ROBERT STONE,  
CHESTER I. LONG,  
*His Solicitors.*

528 STATE OF KANSAS,  
*Montgomery County, ss:*

John M. Landon, being first duly sworn, on his oath, deposes and says:

That he is the plaintiff in the above entitled cause, that he has read the foregoing supplemental bill of complaint, knows the contents thereof, and the averments made therein are true.

JOHN M. LANDON.

Subscribed and sworn to before me this 9th day of October, A. D. 1916.

[SEAL.]

WALTER S. SICKLES,  
*Notary Public.*

My commission expires Sept. 24, 1920.

529 *Sup. Bill of Complaint.*

Exhibit 1, being Complaint of Kansas City Gas Company filed with Public Service Commission of Missouri on 8/10/16, is omitted.

530 EXHIBIT "2."

Form No. 14.

P. S. C. Mo. No. 1.

Cancelling P. S. C. Mo. No. —.

No supplement of this tariff will be issued except for the purpose of cancelling the tariff.

## Kansas City Gas Company.

*New Schedule of Rates for Gas Applying to the Following Territory:  
Kansas City, Missouri.*

Issued July 29, 1916; Effective November 19, 1916.

By E. L. Brundrett, President, 910 Grand Avenue, Kansas City,  
Mo.

531

Kansas City Gas Company.

Classification of Service.

*Schedule of Rates.*

General Rate.—The Kansas City Gas Company will change the rate for natural gas for general consumption from 27 cents net, per thousand cubic feet, as set forth in its schedule of rates filed with the Commission on or about October 19, 1913, to 30 cents net, per thousand cubic feet; such change to be effective for gas sold and delivered from and after special readings of consumers' meters to be made between November 9th and 19th, 1916; said change in rates is made to entitle the Company to the continuation of the supply of natural gas by the Kansas Natural Gas Company and its Receiver, under and pursuant to certain contracts existing between the Kansas City Gas Company and the Kansas Natural Gas Company and its Receiver, dated November 17, 1906, as will more fully appear from the statement hereto attached and made a part hereof.

All other rates, charges, classifications, schedules, rules, regulations and practices, including rules and regulations for the collection of bills, as heretofore filed with the Commission on October 15, 1913, shall remain unchanged and in full force and effect.

Said 30 cent rate, upon the basis of the amount of gas heretofore furnished, is non-compensatory to the Kansas City Gas Company and is filed and will be put into effect, upon the condition that the voluntary installation of said 30 cent rate shall not be held or construed to be an admission that said rate is compensatory to this company or that the company is or will be warranted in continuing to supply natural gas under the terms of ordinance 33887 of Kansas City, Missouri, or that there is any contractual liability on the part of this company to furnish natural gas at the rates mentioned in said ordinance for the term thereof; but said new rate is filed and will be put into effect for a trial period, without waiving or working an estoppel of any of the rights, contractual or legal, of this company and for the purpose of entitling this company to acquire natural gas and to continue the binding force and effect of the aforesaid supply contract.

Issued by E. L. Brundrett, President, 910 Grand Ave., Kansas City, Mo.

Date of issue July 29, 1916.

Date effective November 19, 1916.

533 Before the Public Service Commission of the State of Missouri.

In re Change in Rates of the Kansas City Gas Company.

Comes now the Kansas City Gas Company and states, represents and shows to the Commission:

That on November 17, and December 3, 1906, The Kansas City Pipe Line Company, as first party, and Hugh J. McGowan, Charles E. Small, and Randal Morgan, Grantees, as second parties, entered into certain contracts in writing for a supply of natural gas to said Grantees for distribution and sale in Kansas City, Missouri; that thereafter said contracts were duly assigned by the first party to the Kansas Natural Gas Company and all the rights thereunder acquired and all the duties and obligations thereof assumed by said company; that thereafter said contracts were duly assigned by said Grantees to the Kansas City Gas Company, and the rights thereunder to purchase and acquire a supply of natural gas were acquired by said company and said Kansas City Gas Company is now, and long has been, receiving and obtaining its supply of natural gas for distribution and sale in Kansas City, Missouri, under and pursuant to said contracts; true and correct copies thereof being filed herewith, marked Exhibits "A" and "B" and made a part hereof.

534 That said contracts are in substantially the same form and identical in substance and recite that first party was the owner of gas lands and leases in the Mid-Continent gas fields and a pipe line for the conveying of natural gas to Kansas City and desired a market therefor; that second parties were the owners and grantees of a certain franchise ordinance for the distribution and sale of natural gas in Kansas City, Missouri, said ordinance being marked Exhibit "I" and attached to said contract; that first party agreed during the period of said franchise ordinance, until September 27, 1936, to supply and deliver natural gas to second parties, their successors and assigns, at a pressure of 20 pounds at Kansas City, Missouri, "in such amount as will at all times fully supply the demand for all purposes of consumption," subject to accidents, interruptions and failures under certain conditions, "for the consideration" of 62½% of their "gross receipts from the sale of such natural gas"; that "the parties of the second part agree to buy from the party of the first part all gas they may need to fully supply the demand for domestic consumption in said city, and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes" 62½% of such gross receipts; that "the parties of the second part \* \* \* expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those, mentioned in said ordinance which they may agree upon with such consumers; but if they shall at any time agree to sell gas to domestic consumers \* \* \* at less than the maximum rates mentioned in said ordinance \* \* \* and the party of the first part shall be unwilling to accept as its compensation therefor \* \* \*

535 62½% "of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, \* \* \*."

That the schedule of domestic rates referred to in said contracts, as set out in said franchise ordinance number 33887 of Kansas City, Missouri, is as follows:

"Section 13. The said grantees shall be entitled to charge and collect from consumers of such gas, during the period of 5 years from and after natural gas is first furnished hereunder at the rate of not to exceed 25 cents per thousand cubic feet, and during the period of the 5 years next thereafter at the rate of not to exceed 27 cents per thousand cubic feet, and thereafter, during the period of the aforesaid grant at the rate of not to exceed 30 cents per thousand cubic feet \* \* \*."

That natural gas was first furnished under said ordinance in Kansas City, Missouri, on November 19, 1906, and that said 25 cent rate obtained during said first 5 years, and until November 19, 1911, whereupon said 27 cent rate was put into effect and has obtained to the present time and the 5 years mentioned for such rate will expire on November 19, 1916; that the Kansas Natural Gas Company and its Receiver, under said supply contracts with the Kansas City Gas Company will be entitled to 62½% of the 30 cent rate for the gas furnished by them on and after November 19, 1916; and pursuant to the terms and provisions of said supply contracts they will "be under no obligation to furnish the \* \* \* gas \* \* \* sold at \* \* \* lower prices" than said 30 cent rate, from and after November 19, 1916.

536 That the Kansas Natural Gas Company and its Receiver are unwilling to accept, as their compensation for natural gas furnished by them, 62½% of the gross receipts from the sale of said gas at any less price than the supply contract rate of 30 cents net per thousand cubic feet, and are at this time demanding an even greater price than that agreed upon in said supply contract.

That said supply contract has never been modified, rescinded, disavowed or set aside and is now in full force and effect, and the Kansas City Gas Company is desirous of continuing the binding force and effect thereof and acquiring and receiving a supply of gas thereunder and of performing all of the terms, conditions and provisions thereof on its part, to do which said company is required, and will increase the price of natural gas from 27 cents net per thousand cubic feet to 30 cents net per thousand cubic feet, from and after the meter readings of November 9th to 19th, 1916, unless such rate is suspended by the Commission, whereupon said Kansas Natural Gas Company, and its Receiver, will be under no obligation, under said contract, to continue the supply of gas to the Kansas City Gas Company for distribution and sale in Kansas City, Missouri.

That said 30 cent rate, upon the basis of the amount of gas heretofore furnished, is non-compensatory to the Kansas City Gas Company, but said company has filed the foregoing 30 cent schedule and will put the same into effect; upon the condition, however, that

the voluntary installation of said 30 cent rate shall not be held or construed to be an admission that said rate is compensatory or that said company is or will be warranted in continuing to supply natural gas under the terms of ordinance 33887 of said city or

537 that there is any contractual liability on the part of said company to furnish natural gas at the rates mentioned in said ordinance for the term thereof; but said new rate is filed and will be put into effect for a trial period, without waiving or working an estoppel of any of the rights, contractual or legal, of said company, and for the purpose of entitling said company to acquire natural gas and to continue the binding force and effect of the aforesaid supply contract.

Wherefore, the premises considered, the Kansas City Gas Company moves the Commission to allow said new schedule of rates to become effective upon the dates therein set forth, and to order the time and manner of the publication thereof.

KANSAS CITY GAS COMPANY,  
By E. L. BRUNDRETT.

STATE OF MISSOURI,  
*County of Jackson, ss:*

E. L. Brundrett, being first duly sworn, deposes and says that he is the President of the Kansas City Gas Company; that he has read and knows the contents of the foregoing application, and that the statements and averments of fact therein made and contained are true, and further affiant saith not.

E. L. BRUNDRETT.

Subscribed in my presence and sworn to before me this 29th day of July, 1916.

[SEAL.]

ALFRED M. SEDDON,  
*Notary Public Within and for Jackson County, Missouri.*

My commission expires May 10th, 1920.

538 Service of a copy of the foregoing application and schedule of changes in rates is hereby acknowledged this 2nd day of August, 1916, and the same is approved and consented to.

THE CITY OF KANSAS CITY, MISSOURI,  
By J. H. HARZFELD,  
*City Counselor.*

#### EXHIBITS "A" AND "B."

Exhibits "A" and "B" are omitted from this printed copy, but are attached to the original, and may also be found as Exhibits "B" and "C" in the printed copies of the Complaint filed Before the Public Service Commission of the State of Missouri, entitled "The Kansas City Gas Company, Complainant, v. The Kansas Natural Gas Company and John M. Landon, Receiver, Defendants."

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## EXHIBIT "3."

STATE OF MISSOURI,

*Public Service Commission:*

Case No. 1050.

At a Session of the Public Service Commission Held at Its Office in  
Jefferson City on the 10th Day of August, 1916.

Present: William Busby, Chairman; John Kennish, Howard B.  
Shaw, Edwin J. Bean, Eugene McQuillan, Commissioners.

In the Matter of the Application of the Kansas City Gas Company  
for New Natural Gas Rate at Kansas City, Missouri, Effective No-  
vember 19, 1916.

*Order.*

Now, on this 10th day of August, 1916, comes on for hearing, the  
application of the Kansas City Gas Company for an order allowing  
its new schedule of rates, filed with the Commission, to become effec-  
tive, and ordering the time and manner of publication thereof, and  
the Commission on examination and consideration of the new sched-  
ule of rates filed on August 10, 1916, and the verified application at-  
tached thereto, together with the exhibits referred to therein, and the  
approval and consent of the city of Kansas City, Missouri, subscribed  
thereto by its City Counsellor.

It is, therefore, ordered by the Commission that said new schedule  
of rates changing the rate from 27c net per thousand cubic feet to  
30c net per thousand cubic feet be ordered filed as of the date of this  
order, said new schedule of rates shall become effective for gas sold  
and delivered from and after special readings of consumers' meters  
to be made between November 9 and 19, 1916, and the Company is  
hereby ordered to publish said new or changed schedule of rates in

The Kansas City Journal, Kansas City Star and the Kansas  
City Post for thirty (30) days as provided by law.

It is further ordered that the Secretary of the Commission  
serve a copy of this order upon the City of Kansas City, Missouri,  
and upon the Kansas City Gas Company.

By THE COMMISSION.

[SEAL.] T. M. BRADBURY, *Secretary.*

Busby, Chairman, and Kennish, Shaw and McQuillan, C. C., con-  
cur. Bean, C., dissenting.

STATE OF MISSOURI,

*Office of the Public Service Commission, ss:*

I have compared the preceding copy with the original on file in  
this office, and I do hereby certify the same to be a correct transcript  
therefrom and of the whole thereof.



Witness my hand and seal of the Public Service Commission, at Jefferson City, this 10th day of August, 1916.

[SEAL.]

T. M. BRADBURY, *Secretary.*

Following is a copy of the new or changed schedule of rates referred to in the foregoing order of the Commission:

**Kansas City Gas Company.**

**Classification of Service.**

*Schedule of Rates.*

General Rate.—The Kansas City Gas Company will change the rate for natural gas for general consumption from 27 cents net per thousand cubic feet, as set forth in its schedule of rates filed with the Commission on or about October 19, 1913, to 30 cents net per thousand cubic feet; such change to be effective for gas sold and delivered from and after special readings of consumers' meters to be made between November 9th and 19th, 1916; said change in rates is made to entitle the Company to the continuation of the supply of natural gas by the Kansas Natural Gas Company and its receiver, 541 under and pursuant to certain contracts existing between the Kansas City Gas Company and the Kansas Natural Gas Company and its receiver, dated November 17, 1906, as will more fully appear from the statement hereto attached and made a part hereof.

All other rates, charges, classifications, schedules, rules, regulations and practices, including rules and regulations for the collection of bills, as heretofore filed with the Commission on October 15, 1913, shall remain unchanged and in full force and effect.

Said 30 cent rate, upon the basis of the amount of gas heretofore furnished, is non-compensatory to the Kansas City Gas Company and is filed and will be put into effect, upon the condition that the voluntary installation of said 30 cent rate shall not be held or construed to be an admission that said rate is compensatory to this company or that the company is or will be warranted in continuing to supply natural gas under the terms of ordinance 33887 of Kansas City, Missouri, or that there is any contractual liability on the part of this company to furnish natural gas at the rate mentioned in said ordinance for the term thereof; but said new rate is filed and will be put into effect for a trial period, without waiving or working an estoppel of any of the rights, contractual or legal, of this company and for the purpose of entitling this company to acquire natural gas and to continue the binding force and effect of the aforesaid supply contract.

Issued by E. L. Brundrett, President, 910 Grand avenue, Kansas City, Mo.

KANSAS CITY GAS COMPANY,  
By E. L. BRUNDRETT, *President.*

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## EXHIBIT "4."

In the Circuit Court of Jackson County, Missouri, at Kansas City,  
September Term, 1916.

No. 104,443.

KANSAS CITY GAS COMPANY, Plaintiff,

v.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON, Receiver, and  
GEORGE F. SHARRITT, Receiver, Defendants.

*Petition.*

Plaintiff states that it is and at all times hereinafter mentioned was a corporation duly organized under and by virtue of the laws of the State of Missouri, and in pursuance of the Ordinance of 542 1/4 Kansas City, Missouri, hereinafter mentioned, and located and doing business at Kansas City in said State.

That defendant, Kansas Natural Gas Company is and was at all such times a corporation duly organized for a pecuniary profit under and by virtue of the laws of the State of Delaware, and duly licensed and authorized to do business in the State of Missouri, and has a public office and place of business in the State of Missouri and agents and employes in charge thereof.

That the defendants, John M. London and George F. Sharritt are Receivers of said Kansas Natural Gas Company, duly appointed by the United States District Court in and for the District of Kansas, and also so appointed Receivers by the United States District Court in and for the Western Division of the Western District of Missouri.

That the causes in which they were appointed Receivers were brought in the United States District Court in Kansas and are entitled John L. McKinney et al., against Kansas Natural Gas Company et al., No. 1351, which was and is a creditor's bill filed October 8th, 1912, and Fidelity and Trust Company vs. Kansas Natural Gas Company et al., No. 1-N, Equity, a proceeding to foreclose a mortgage upon all the property of said Kansas Natural Gas Company, commenced on the 19th day of October, 1912, in said United States District Court of Kansas.

That said defendant Landon is also receiver for said Kansas Natural Gas Company, appointed by the District Court of Montgomery County, Kansas, in a certain cause therein instituted hereinafter mentioned.

Plaintiff states that on September 27, 1906, the Council of 542 1/2 Kansas City, Missouri, passed and the Mayor of said City approved an ordinance No. 33,887, granting a natural gas franchise to Hugh J. McGowan, Charles E. Small and Randal Morgan, their successors and assigns, which among other things provided as follows:

"Section 1. Subject to the provisions of the present city charter, and to the same provisions so far as they may be embodied in any future charter of the city, permission, right, privilege and authority are hereby granted unto Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, for the full period of thirty (30) years from and after the approval and taking effect of this ordinance, within the present or any future corporate boundaries, of the city of Kansas City, to lay and maintain gas pipes, regulators and appliances below the surface of the streets, avenues, boulevards, alleys and public grounds of said city and on the bridges and viaducts owned by said city (provided such bridges and viaducts are of sufficient strength to carry such pipes), for the purpose of carrying and distributing natural gas and selling and supplying the same for private and public use, all upon the conditions provided for in this Ordinance."

"Section 13. The said Grantees shall be entitled to charge and collect from consumers of such gas, during the period of five years from and after natural gas is first furnished hereunder at the rate of not to exceed twenty-five cents per thousand cubic feet, and during the period of five years next thereafter at the rate of not to exceed twenty-seven cents per thousand cubic feet, and thereafter during the period of aforesaid grant at the rate of not exceeding thirty cents per thousand cubic feet, and may also make special contracts with consumers at less than the general rate then in force, based upon the amount of gas used and in the conditions of the contract, which special rates shall be the same to all consumers using the same amount of gas under the same contract conditions, and schedules of such special rates and the contract conditions shall be filed with the city clerk, and each and every change therein shall also be filed with the city clerk, and be open to public inspection. The grantees agree that they will at all times make special contracts at as low rates as those

at which natural gas is sold at the time to any consumers of the same class using the same amount of gas under the same contract conditions who are located approximately as distant from the fields from which they are at the time supplied as Kansas City, Missouri, is from the fields from which it is at that time supplied and who are supplied by the grantees, or any one from whom the grantees may obtain their supply, or any one whose supply is obtained from those from whom the grantees obtain their supply; provided that this agreement to make such special contracts at such rates shall not be construed to compel the grantees to make such special contracts at as low rates as those in effect at the time in any locality where the grantees, or those from whom the grantees obtain their supply or any one supplied by those from whom the grantees obtain their supply, may be in bona fide competition with any other supplier of natural gas in such locality; but if the demand from special rate consumers threatens the general supply, the grantees may shut off the supply from any special rate consumer, which shall include all other than domestic consumers, in whole or in part, and if the grantees fail or refuse to do so, the city council may by ordinance require the grantees so to do; provided always that the said grantees shall

have the right to charge ten (10) per cent additional to all consumers who are in arrears for a longer period than ten (10) days; and provided further, that the grantees may charge and collect from each person who has a meter installed a minimum monthly bill of fifty cents; provided, however, that if the bill for natural gas consumed in any month shall at the rate then in force exceed the sum of fifty cents, such consumer shall not be charged any minimum bill for that month.

"Under the permission and authority hereby granted, the grantees shall furnish natural gas for illuminating, heating and mechanical purposes, which shall at all times be of the same character and quality as when it comes from the earth; and it shall not be mixed with air or otherwise adulterated."

"Section 17. If the said grantees shall do or cause to be done any act or thing by this ordinance prohibited, or shall fail, refuse or neglect to do any act by this ordinance required, they shall forfeit all rights and privileges granted by this ordinance, and this franchise and all rights thereunder granted shall ipso facto cease, terminate and become null and void, provided such failure to comply with the conditions of this ordinance shall continue unrectified for sixty  
544 (60) days after written notice thereof from the Board of Public Works of said city, or the Common Council of said city.

"Section 18. The said grantees shall, within ten (10) days after this ordinance becomes a law, file in the office of the City Clerk of said city a written acceptance of the terms, obligations and conditions of this ordinance set forth, in such form as shall be approved by the City Counselor, and unless such written acceptance shall be so filed, this ordinance shall become null and void.

"Section 19. As long as natural gas is furnished and sold to the inhabitants of said City of Kansas City under this franchise, said grantees shall, in consideration of this grant, furnish free to the City of Kansas City natural gas for light in the City Hall, City Prison and all city buildings; provided that all such lights shall be kept extinguished when not needed for illuminating purposes; the city to furnish its own burners, mantels, fixtures and appurtenances, and maintain and keep the same in repair.

"Section 20. In order that the city and its inhabitants may receive the benefits of natural gas more speedily and with less disturbance of the streets and inconvenience to the public than would otherwise be possible, the grantees are hereby authorized to acquire the ownership or use or control, by purchase, lease, agreement or otherwise, of the pipes and property of the Kansas City Missouri Gas Company, the consent of the city being hereby given to said company, its successors and assigns, to make such transfer, lease or disposition of its pipes and property to the grantees, and during the time the pipes and property of said company shall be in the possession or under the control of the grantees, said company, its successors and assigns, shall be relieved of any obligation to supply manufactured gas (provided,

however, that no consumer of manufactured gas shall be deprived thereof by anything done under this section until such consumer can obtain natural gas from grantees), but the acquirement by the grantees of such ownership or use or control of the pipes and property of the Kansas City Missouri Gas Company, shall be subject to the right of the city to purchase the same under the special provisions of the several ordinances under which said company is now operating, and said right of purchase under said special provisions, shall apply not only to the pipes and property of the Kansas City Missouri Gas

Company, as acquired by said grantees, but also to all other  
545 pipes and property, owned by the grantees in Kansas City, Missouri, and used in connection with said plant, the value of such other pipes and property to be determined at the same time, in the same manner and in the same proceedings. And grantees covenant that their contract for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (corporations), that under the terms thereof, after two years from the time the natural gas is first furnished to Kansas City thereunder, the division of the gross income received for said gas between the distributing company and the supply company shall be in the proportion of thirty-seven and one-half cents out of each dollar to the former and sixty-two and one-half cents to the latter; and covenant for themselves, their successors and assigns, that none of the terms of that contract agreement shall be changed without consent of Kansas City expressed by ordinance; and grantees agree for themselves, their successors and assigns, that if Kansas City shall acquire said plant and property they will on demand transfer free of cost to Kansas City all their rights under said contract; and grantees further agree to procure from said two corporations and file with the city clerk within ninety days from the time this ordinance becomes a law, a written agreement in form to be approved by the City Counselor, agreeing that they (said two corporations) will, if Kansas City shall acquire said plant as aforesaid, upon demand, furnish and continue to furnish during the remaining period of this franchise gas to Kansas City on the same terms as they have agreed to furnish it to the grantees, their successors and assigns. If said proposed within agreement to be made by said two corporations is not filed with the City Clerk within the time specified this ordinance shall be null and void. Provided, however, that Kansas City agrees not to exercise the right to purchase the pipes and property of the Kansas City Missouri Gas Company, and of the grantees, under said special provisions, for the period of ten years from the time of the acceptance of this ordinance by grantees, unless grantees shall before the expiration of said period of ten years have ceased to furnish natural gas as required by this ordinance, in which event the right to make such purchase under such special provisions shall be no longer postponed; in consideration whereof the grantees agree during all the time they may be supplying natural gas to bid annually,

- (1) to fit the street lamp posts at present set and in place with incandescent equipment to furnish natural gas to the same,

546 and to maintain, repair, clean, light and extinguish the same upon the all night schedule, for the price of not to exceed nine dollars (\$9.00) per lamp per annum; and,

(2) to set, on the line of their mains, such additional street lamp posts as the Council may by ordinance demand, to connect the same, to furnish the same with incandescent equipment, to maintain, repair, clean, light and extinguish and to furnish the natural gas to the same, on the all night schedule, for the price of not to exceed twelve dollars (\$12.00) per lamp per annum; or at the option of the city, in lieu of such bidding, to furnish the natural gas free and without cost to the above and to additional posts that may be set by the city, at the rate of one hundred (100) lamps for each eight thousand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory, having the largest circulation, including the names of business firms; and if the city elects to take natural gas free under this option, and to itself furnish or to contract with others for the incandescent equipment and for maintaining, repairing, cleaning, lighting and extinguishing, the city shall have the right to use for the purpose the posts at that time owned and set by the grantees, which the grantees agree shall not be less than the number which have been set and are now owned by the Kansas City Missouri Gas Company, and the city agrees that the lights shall be kept extinguished between sunrise and sunset.

"Section 21. All prohibitions, amendments, forfeitures and obligations and all other provisions of this ordinance shall be binding upon the grantees, the survivors or survivor of them, and their or his assigns, whether expressly so stated herein or not; and all grants and privileges secured by this ordinance to said grantees shall be held to inure to the benefit of the survivors or survivor of them and his or their legal and bona fide successors and assigns. Nothing in this ordinance shall be construed as granting to said grantees any exclusive franchise, rights or privileges; but nothing herein shall be construed to neutralize or impair the provisions of this ordinance respecting the prohibition against merger and consolidation.

"Section 22. The said grantees shall not, except as in this ordinance provided, without the consent of the city, evidenced  
547 by ordinance, sell, lease or transfer their plant, property, rights or privileges, herein authorized, to any person, company, trust or corporation, now or hereafter engaged, or for the purpose of engaging in the manufacture or sale of gas in said city, under any other ordinance or franchise, or otherwise; and shall not without such consent at any time enter into any combination, with any person or persons, company or companies, authorized by ordinance to sell gas in said city, or with any person or persons, company or companies proposing by application for a franchise to sell gas to Kansas City or its inhabitants, concerning the rate or price to be charged for gas, to be used by the city or private consumers; and no officer, employee or manager of the gas plant and works, to

be constructed and acquired under and in pursuance of this ordinance, shall, at the same time, be in charge of, or be the officer, employee or manager of any other gas works authorized by ordinance to manufacture or sell gas in said city, except the Kansas City Missouri Gas Company, its successors and assigns provided, however, that said grantees may convey all their rights and privileges herein granted to a corporation, its successors and assigns, to be organized by them, under the laws of the State of Missouri, for the purpose of acquiring, building, constructing and operating the gas plant authorized under this ordinance; but this shall not authorize any grantee to assign the franchise granted to it to any other company to which a franchise has been granted; and provided, further, that notice of said conveyance, and of any conveyance by said proposed assignee corporation, its successors or assigns, shall be filed with the City Clerk of Kansas City, Missouri, within ten (10) days after the execution thereof; and provided, further, that the grantees or their assigns ('assigns' having the meaning above set forth) shall have the full, complete and unqualified right to assign and transfer and convey this franchise, and their property, by way of mortgage, deed of trust or other form of security in the nature of a mortgage or deed of trust, for the purpose of securing bona fide indebtedness, and for the purpose of acquiring property and of raising funds to provide, build, construct, equip, and operate said plant, and to conduct the business thereunder." \* \* \*

548 That said McGowan, Small and Morgan duly accepted said ordinance and complied with all the terms and conditions thereof, and supplied said Kansas City and its inhabitants with natural gas under the terms and provisions of said franchise and ordinance until the 10th day of August, 1911, when said McGowan, Small and Morgan, for a valuable consideration, conveyed and assigned their said franchise and all their rights and privileges thereunder and their system of mains, pipes and appliances and all the property owned or leased by them for the distribution of natural gas in said Kansas City, including their contracts for a supply of natural gas hereinafter mentioned to the plaintiff, all as authorized by the terms and provisions of said franchise.

That notice of said conveyance and assignment was duly filed with the City Clerk of said Kansas City, as required by said franchise; that ever since then the plaintiff has been and still is, as the assignee and grantee of said McGowan, Small and Morgan, engaged in supplying said city and its inhabitants with natural gas under said franchise.

That in order to comply with the terms of said franchise and to furnish said city and its inhabitants with natural gas as contemplated thereby, said McGowan, Small and Morgan entered into contracts with The Kansas City Pipe Line Company, a corporation, which was then the owner of a large number of natural gas wells in Southern Kansas, and pipe lines leading from such gas wells to Kansas City, Missouri.



That one of said contracts was dated November 17, 1906, and is in words and figures as follows, to-wit:

"This Agreement, made this 17th day of November, 1906, between the Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, party of the first 549 part, and Hugh J. McGowan, of Indianapolis, Indiana, Charles E. Small, of Kansas City, Missouri, and Randal Morgan, of Philadelphia, Pennsylvania parties of the second part.

"Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the State of Kansas to a point at or near the city limits of Kansas City, Missouri, and is desirous of entering into a contract with the parties of the second part for the transportation and supply of natural gas to them:

"And whereas, the parties of the second part are the owners of an ordinance of the City of Kansas City, Missouri, granting the right to lay, acquire and maintain pipes in Kansas City, Missouri, for the purpose of supplying natural gas to said city and its inhabitants, copy of which ordinance is attached hereto marked 'Exhibit No. 1,' and desire to secure a supply of natural gas for the said city and its inhabitants:

"Now, therefore, in consideration of the mutuality hereof it is hereby agreed between the parties hereto as follows:

"1. The party of the first part hereby agrees that it will during the period of such ordinance, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties of the second part, or of their property, supply and deliver through its said pipe line or lines, to said parties of the second part or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned. However, as the production of gas from the wells and the conveying it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the 550 first part shall not be liable for any loss, damage, or injury that may result either directly or indirectly from such shortages or interruptions but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quality of merchantable gas for all consumers.

"2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural

gas for manufacturing purposes in said city at lower rates than those specified in said ordinance.

In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part agree that any contract they make to furnish gas to manufacturers shall contain provisions by which the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of their gross receipts from the sale of such natural gas in said City of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent of such gross receipts. The parties of the second part make no agreement with the party of the first part respecting the rates at which they shall sell natural gas to any consumers in Kansas City, Missouri, but expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those mentioned in said ordinance which  
551 they may agree upon with such consumers; but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, and the parties to the second part shall be at liberty to obtain the same from such other sources as they may find available.

"3. A statement shall be rendered by said parties of the second part to the party of the first part on or before the fifteenth day of each month, showing the amount of receipts during the previous month and the amount of outstanding and uncollected bills.

Payments hereunder shall be made by the parties of the second part to the party of the first part upon the fifteenth day of each month for the party of the first part's percentage of all collections made dur-

ing the previous month. In order to enable the party of the first part to verify the correctness of payments made by the parties of the second part, the party of the first part shall have the right, through its duly appointed representatives, at all times during ordinary business hours, to have such access to such of the books of the parties of the second part as may be necessary to enable it to verify the gas sales of the parties of the second part and the amounts and dates of collection for the same.

"4. The parties of the second part hereby agree to have at least fifty (50) miles of their mains prepared and ready to receive and distribute natural gas not later than twelve (12) months after the passage, approval and acceptance of said ordinance, and the balance of their mains laid as rapidly thereafter as their system can be adapted for the purposes, and by advertising, solicitation and all other ordinary methods in vogue with enterprising gas companies to encourage and increase their business. Provided that if the work of making said fifty miles of mains so prepared and ready or laying the balance thereof shall be prevented, hindered or delayed by injunction or legal process of any kind against the parties of the second part, or with whom they may contract with the performance of

such work, or by labor strike or any cause beyond the control of the parties of the second part or such other persons, the time consumed by such prevention, hindrance or delay shall not be considered any part of the time provided for herein for the completion of such work, and the time provided for herein for such completion shall be correspondingly extended for a like period or periods.

"5. It is further covenanted and agreed between the parties hereto that the parties of the second part will not supply manufacturers at a greater pressure than four (4) ounces at the meter; provided, that if the pressure of gas at the meter is greater than four (4) ounces per square inch, the volume of gas shall be corrected to four (4) ounces pressure and charged to the consumer at the corrected volume.

"6. It is further covenanted and agreed by and between the parties hereto that all gas sold shall be supplied through meters of approved design, that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by the parties of the second part that each meter shall register as nearly accurately as possible the amount of gas passed through it; that the parties of the second part will at all times permit the officers or authorized agents of the party of the first part to inspect their mains, pipes, regulators, meters and appliances for the purpose of verifying their monthly statements as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that said parties of the second part will forward to the party of the first part a monthly record of the number of contracts made and cancelled, and the number of meters set, connected and disconnected, together with the total number of consumers at the end of each month, and will make and keep at their office a copy of such contracts, together with a full and complete record of the same, and of all meters used; and it shall be

the duty of the parties of the second part to keep and maintain their distributing system in good order and condition.

"7. It is further covenanted and agreed that the parties of the second part shall not be liable to the party of the first part for any portion of their receipts from the City of Kansas City, Missouri, for street lamps, so far as the present twenty-eight hundred (2,800) street lamps are concerned, and as to any additional number it is

553 hereby agreed that ten thousand (10,000) cubic feet per lamp per annum, at fifteen (15) cents per thousand cubic feet,

shall be the agreed upon proportion of the receipts of said parties of the second part from that source on which the percentage of the party of the first part for gas shall be reckoned. The party of the first part agrees to furnish natural gas to the parties of the second part free of charge for use in the present twenty-eight hundred (2,800) street lamp posts, and to additional posts that may be set by the city at the rate of twenty-five hundred (2,500) lamps for each two hundred thousand (200,000) inhabitants, should the City of Kansas City, Missouri, elect to take natural gas free and itself furnish and contract with others for the incandescent equipment and for maintaining, repairing, cleaning, lighting and extinguishing. And the party of the first part further agrees to furnish natural gas to the parties of the second part free of charge for lighting the City Hall, City Prison, and all city buildings in said city.

"8. It is agreed between the parties hereto that if at any time during the period of said ordinance while the parties of the second part are buying from the party of the first part all the natural gas they are distributing and selling in the said city, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said city or any of its inhabitants with such gas, otherwise than under this agreement, then, and in any such case, the provision contained in Section No. 2 hereof, in the following words, to-wit: 'But if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the second part as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, shall at once become inoperative and cease to have any effect, but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the parties of the second part natural gas to fully supply the demand for all purposes of consumption in said city for sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the

554 second part from the sale of natural gas in said city at any prices for which the said parties of the second part may choose to sell the same.

"9. This agreement shall be binding upon the successors and assigns of the parties hereto.

"10. It is understood and agreed that the parties of the second part may assign and convey this agreement and all their rights, titles and interests hereto, herein and hereunder to a corporation, its successors and assigns, organized under the laws of the State of Missouri, and competent to take such assignment, and the party of the first part agrees that upon such assignment and acceptance thereof by such corporation, and written notice thereof to the party of the first part, accompanied by copies of the assignment and acceptance, the parties of the second part shall ipso facto be released from all obligations to the party of the first part hereunder; and the party of the first part further agrees to execute and deliver to the parties of the second part all such evidences of their release as they shall reasonably require."

In witness whereof, the parties hereto have duly executed these presents the day and year first above written.

[SEAL.] THE KANSAS CITY PIPE LINE COMPANY,  
By PAUL THOMPSON, *President*.

Signed, sealed and delivered by the Pipe Line Company in the presence of D. N. Ogden, W. F. Douthirt.

Attest: C. M. LATOURETTE, *Secretary*.

Signed, sealed and delivered by Hugh J. McGowan, in the presence of Anna L. Bowman, W. F. Douthirt.

[SEAL.] HUGH J. MCGOWAN.

Signed, sealed and delivered by Charles E. Small, in the presence of Caleb S. Monroe, W. F. Douthirt.

[SEAL.] CHARLES E. SMALL.

Signed, sealed and delivered by Randal Morgan, in the presence of George S. Philler, W. F. Douthirt.

[SEAL.] RANDAL MORGAN.

(EXHIBIT NO. 1 TO AGREEMENT, NOVEMBER 17, 1906.)

Ordinance No. 33887.

An Ordinance authorizing Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and  
555 their or his assigns, to lay, acquire and maintain pipes in Kansas City, for the purpose of supplying natural gas to said city and its inhabitants.

That afterwards on December 3, 1906, another contract between said The Kansas City Pipe Line Company and said McGowan, Small and Morgan, was entered into in words and figures as follows, to-wit:

"This Agreement made this 3rd day of December, 1906, between The Kansas City Pipe Line Company, a corporation organized under

the laws of the State of New Jersey, party of the first part, and Hugh J. McGowan, of Indianapolis, Indiana, Charles E. Small, of Kansas City, Missouri, and Randal Morgan, of Philadelphia, Pennsylvania, parties of the second part.

"Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the State of Kansas to a point at or near the city limits of Kansas City, Missouri, and is desirous of entering into a contract with the parties of the second part for the transportation and supply of natural gas to them;

"And Whereas, the parties of the second part are the owners of an ordinance of the City of Kansas City, Missouri, granting the right to lay, acquire and maintain pipes in Kansas City, Missouri, for the purpose of supplying natural gas to said city and its inhabitants, copy of which ordinance is attached hereto marked "Exhibit No. 1," and desire to secure a supply of natural gas for the said city and its inhabitants;

"Now, Therefore, in consideration of the mutuality hereof it is hereby agreed between the parties hereto as follows:

"1. The party of the first part hereby agrees that it will during the period of such ordinance, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties of the second part, or of their property, supply and deliver through its said pipe line or lines, to said parties of the second part, or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty

(20) pounds at the point of delivery above mentioned, natural  
556 gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

"2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city at lower rates than those specified in said ordinance, and that they shall and will make such special contracts in accordance with their agreement to that effect contained in Section 13 of said ordinance, copy of which is hereto attached.



"In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part agree that any contract they make to furnish gas to manufacturers shall contain provisions by which the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

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"So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from the said party of the first part for all purposes during the first two years a sum equal to sixty per cent of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent of such gross receipts. The parties of the second part make no agreement with the party of the first part respecting the rates at which they shall sell natural gas to any consumers in Kansas City, Missouri, but expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those mentioned in said ordinance which they may agree upon with such consumers; but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent as the case may be of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, and the parties of the second part shall be at liberty to obtain the same from such other sources as they may find available.

"3. A statement shall be rendered by said parties of the second part to the party of the first part on or before the fifteenth day of each month, showing the amount of receipts during the previous month, and the amount of outstanding and uncollected bills.

"Payments hereunder shall be made by the parties of the second part to the party of the first part upon the fifteenth day of each month for the party of the first part's percentage of all collections made during the previous month. In order to enable the party of



the first part to verify the correctness of payments made by the parties of the second part, the party of the first part shall have the right, through its duly appointed representatives, at all times 558 during ordinary business hours, to have such access to such of the books of the parties of the second part as may be necessary to enable it to verify the gas sales of the parties of the second part and the amounts and dates of collection for the same.

"4. The parties of the second part hereby agree that they will

"(1) on or before January 1, 1907, be ready to furnish and be furnishing natural gas on not less than seventy-five miles of mains to all consumers thereon who desire the same, and who have complied with their reasonable rules and regulations; and (2) on or before March 1, 1907, be ready to furnish and be furnishing natural gas on not less than fifty additional miles of mains to all consumers thereon who may desire the same and have complied with said reasonable rules and regulations; and (3) on or before August 1, 1907, be ready to furnish and be furnishing natural gas to all present consumers on the lines of the Kansas City Missouri Gas Company who may desire the same and who have complied with said reasonable rules and regulations; provided that the parties of the second part shall not be required to furnish patrons from circulating mains; and by advertising, solicitation and all other ordinary methods in vogue with enterprising gas companies to encourage and increase their business. Provided that if the commencement of work or the laying of pipes by the parties of the second part necessary for the furnishing of gas to consumers as herein agreed, or the laying of pipes inside or outside the city or the delivering of natural gas at or within the corporate limits of the city by the parties of the second part or by any persons with whom they may contract for their supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the parties of the second part or such other persons, or by inclement days or by labor strikes or by any cause beyond the control of the parties of the second part or such other persons, or if the acquisition of the ownership, use or control of the pipes and property of the Kansas City Missouri Gas Company provided for in said ordinance hereto attached shall be prevented, hindered or delayed by injunction or other legal proceedings, the time consumed by such prevention, hindrance or delay shall not be considered any part of the times provided for herein for supplying natural gas in the city, as required hereby, and the times provided for herein for furnishing gas to consumers shall be correspondingly 559 extended for a like period or periods.

"5. It is further covenanted and agreed between the parties hereto that the parties of the second part will not supply manufacturers at a greater pressure than four (4) ounces at the meter; provided, that if the pressure of gas at the meter is greater than four (4) ounces per square inch, the volume of gas shall be corrected to four (4) ounces pressure, and charged to the consumer at the corrected volume.

"6. It is further covenanted and agreed by and between the parties hereto that all gas sold shall be supplied through meters of approved

design, that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by the parties of the second part that each meter shall register as nearly accurately as possible the amount of gas passed through it; that the parties of the second part will at all times permit the officers or authorized agents of the party of the first part to inspect their mains, pipes, regulators, meters and appliances for the purpose of verifying their monthly statements as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that said parties of the second part will forward to the party of the first part a monthly record of the number of contracts made and cancelled and the number of meters set, connected and disconnected, together with the total number of consumers at the end of each month, and will make and keep at their office a copy of such contracts, together with a full and complete record of the same, and of all meters used; and it shall be the duty of the parties of the second part to keep and maintain their distribution system in good order and condition.

"7. It is further covenanted and agreed that the parties of the second part shall not be liable to the party of the first part for any portion of their receipts from the city of Kansas City, Missouri, for street lamps, so far as the street lamp posts, or an equivalent number, set and in place on September 27, 1906 (the date of the passage and approval of said ordinance) are concerned, and as to any additional number it is hereby agreed that ten thousand (10,000) cubic feet per lamp per annum, at fifteen (15) cents per thousand cubic feet, shall be the agreed upon proportion of the receipts of said parties of the second part from that source on which the percentage of the party of the first part for gas shall be reckoned. The party of the first part agrees to furnish natural gas to the parties of the second part free of charge for use in the said street lamp posts, or an equivalent number, set and in place on said September 27, 1906, and to additional posts that may be set by the city at the rate of one hundred (100) lamps for each eight thousand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory having the largest circulation including the names of business firms, should the city of Kansas City, Missouri, elect to take natural gas free and itself furnish or contract with others for the incandescent equipment, and for maintaining, repairing, cleaning, lighting and extinguishing. And the party of the first part further agrees to furnish natural gas to the parties of the second part free of charge for lighting the City Hall, City Prison and all city buildings in said city.

"8. It is agreed between the parties hereto that if at any time during the period of said ordinance while the parties of the second part are buying from the party of the first part all the natural gas they are distributing and selling in the said city, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said city or any of its inhabitants with such gas, otherwise than under this agreement,

then, and in any such case, the provision contained in Section No. 2 hereof, in the following words, to-wit: 'but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or except in compliance with their agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices,' shall at once become inoperative and cease to have any effect, but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the parties of the second part natural gas to fully supply the demand for all purposes of consumption in said city for sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the second part from the sale of natural gas in said city at any prices for which

561 the said parties of the second part may choose to sell the same.

"9. The parties of the second part shall have the right, authority and power to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise convey this agreement and all their rights, titles and interests hereto, herein and hereunder; and they agree that they will, on or before December 31, 1907, assign and convey this agreement and all of their rights, titles and interests hereto, herein and hereunder to a corporation organized under the laws of the State of Missouri and competent to take such assignment, and that such corporation shall thereupon accept such assignment and the party of the first part agrees that upon such assignment and acceptance, and written notice thereof to the party of the first part, accompanied by a copy of the assignment and by a copy of the acceptance, the parties of the second part shall ipso facto be released from all obligations to the party of the first part hereunder; and the party of the first part further agrees to execute and deliver to the parties of the second part all such evidences of their release as they may reasonably require. The said corporation organized under the laws of the State of Missouri, and its successors and assigns, shall also have the right, authority and power, to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise convey this agreement, and all its or their rights, titles and interests hereto, herein and hereunder.

"10. This agreement shall be binding upon the successors and assigns of the parties hereto.

"11. This agreement shall, as between the parties hereto, and their respective heirs, executors, administrators, successors and assigns, take the place of and stand instead of that certain other agreement, between the parties hereto, executed and delivered November 17, 1906, but if the city of Kansas City shall acquire the gas plant,

pipes and property of the Grantees named in said ordinance No. 33887 then this agreement shall at once terminate and become void and thereupon the said other agreement shall again come into force and effect as if this agreement had never been made.

In witness whereof the parties hereto have duly executed these presents the day and year first above written.

THE KANSAS CITY PIPE LINE COMPANY,

By PAUL THOMPSON, *President*.

[CORPORATE SEAL.]

Signed, sealed and delivered by Kansas City Pipe Line  
562 Company in presence of D. N. Ogden and W. F. Douthirt.

Attest:

C. M. LATOURETTE, *Secretary*.

Signed, sealed and delivered by Hugh J. McGowan in presence  
of Anna L. Bowman.

[SEAL.]

HUGH J. MCGOWAN.

Signed, sealed and delivered by Charles E. Small in presence of  
Caleb S. Monroe.

[SEAL.]

CHARLES E. SMALL.

Signed, sealed and delivered by Randal Morgan in presence of  
George S. Philler and W. F. Douthirt.

[SEAL.]

RANDAL MORGAN.

That attached to said agreement was a copy of said Ordinance No.  
33887.

That on November 19th, 1906, two days after the said agree-  
ment of November 17th, 1906, the said The Kansas City Pipe Line  
Company leased to The Kaw Gas Company, a corporation, all of its  
gas wells, pipe lines and property, by an instrument of writing duly  
executed by both parties thereto; that in and by said lease, and as a  
part of the consideration therefor, said The Kaw Gas Company  
assumed and covenanted, among other things, to perform all of the  
obligations of the said The Kansas City Pipe Line Company to said  
McGowan, Small and Morgan, their successors and assigns, created  
by and embodied in said agreement of November 17, 1906, between  
said Pipe Line Company and said McGowan, Small and Morgan.

That said The Kaw Gas Company was a corporation organized  
and owned and at all times absolutely controlled by The Kansas  
Natural Gas Company, as a subsidiary company, to act as agent and  
trustee for said Kansas Natural Gas Company in carrying on its  
business, and that all contracts, agreements and leases made  
563 and all property acquired by said The Kaw Gas Company  
were for the use and benefit of said Kansas Natural Gas

Company, and in equity said Kansas Natural Gas Company was at all times bound by all such contracts, agreements and leases and owned all the property of said The Kaw Gas Company.

That on December 5th, 1906, said The Kaw Gas Company executed and delivered to said McGowan, Small and Morgan, its agreement and undertaking in writing in words and figures as follows:

"Under date of November 19, 1906, The Kansas City Pipe Line Company, one of the parties to the foregoing agreement, and The Kaw Gas Company, a corporation of the State of West Virginia, entered into a certain agreement or lease, whereby said The Kansas City Pipe Line Company granted, devised and leased to said The Kaw Gas Company its gas lands, gas wells, gas leases, leaseholds, pipe lines, buildings, structures, easements, rights of way, equipment, machinery, tools, appliances and other property as therein mentioned and described, and said The Kaw Gas Company assumed and covenanted, inter alia, to perform all the obligations assumed by said The Kansas City Pipe Line Company in an agreement, dated November 17, 1906, between said The Kansas City Pipe Line Company, and Hugh J. McGowan, Charles E. Small and Randal Morgan, being the agreement referred to in said lease as Exhibit B, and thereto attached, and also referred to in Section 11 of the foregoing agreement. In consideration of the sum of one dollar to it in hand paid by the parties to the foregoing agreement, the receipt whereof is hereby acknowledged, and of other good and valuable considerations it thereunto moving, said The Kaw Gas Company does hereby consent and agree that, as between the parties thereto, and their respective heirs, executors, administrators, successors and assigns, the foregoing agreement shall, as provided in said Section 11 thereof, take the place of and stand instead of the said agreement dated November 17, 1906, (to-wit: the agreement referred to in said lease as Exhibit B and thereto attached) and that as between it, said The Kaw Gas Company and said The Kansas City Pipe Line Company, the foregoing agreement shall be considered and  
564 treated as if it had originally been referred to in said lease instead of said Exhibit B and thereto attached, and that all its, said The Kaw Gas Company's covenants and agreements contained in said lease shall apply to the foregoing agreement accordingly; Provided, however, that if the City of Kansas City shall acquire the gas plant, pipes and property of the grantees named in said Ordinance No. 33887 referred to in the foregoing agreement, and the foregoing agreement shall, as provided in said Section 11 thereof, terminate and become null and void, then the said agreement dated November 17, 1906, (to-wit: Exhibit B referred to in said lease and thereto attached), and the covenants and agreements of said The Kaw Gas Company respecting the same contained in said lease, shall again come into force and effect as if the foregoing agreement and this consent and agreement had never been made and given.

"In Witness Whereof said The Kaw Gas Company has duly executed these presents this 5th day of December, 1906.

[CORPORATE SEAL.]

THE KAW GAS COMPANY,  
By FRANK V. EATON, *President*.

Attest:

W. J. HIGGINS, *Secretary*.

Signed, sealed and delivered in presence of

EUGENE MACKEY AND

W. F. DOUTHIRT.

(Acknowledgments omitted.)

That a duly verified copy of the above document is herewith filed marked Exhibit "A."

Plaintiff states that Kansas City, Missouri, never did exercise its option to purchase and never did acquire the gas plant, pipes and property mentioned in said Ordinance No. 33887, but that the same are and have been owned by this plaintiff as hereinbefore stated.

That on January 1, 1908, the said The Kansas City Pipe Line Company, as lessor, leased for ninety-nine (99) years, to the said Kansas Natural Gas Company, as lessee, by an instrument of writing of that date, executed by both parties thereto, all of its property, including the natural gas wells and pipe lines, and assigned all of its rights in said contracts with said McGowan, Small and Morgan to said Kansas Natural Gas Company.

That by the terms of said lease and as a part of the consideration therefor, the said Kansas Natural Gas Company assumed and agreed to perform all of the obligations of The Kaw Gas Company and the said The Kansas City Pipe Line Company, under the foregoing agreements of November 17, 1906, and December 3, 1906, made by the said The Kansas City Pipe Line Company with said McGowan, Small and Morgan, and thereafter assumed by said The Kaw Gas Company as hereinbefore stated. That the fifth clause or paragraph of said lease dated January 1, 1908, between said The Kansas City Pipe Line Company and said Kansas Natural Gas Company was as follows:

"Fifth. The Lessee hereby assumes and covenants to perform all the obligations assumed by the Lessor under the terms of an agreement, dated February 1, 1906, between the Lessor and the Wyandotte Gas Company, for the supply of natural gas to Kansas City, Kansas, and Wyandotte County, in said State, copy of which is attached hereto, and marked Exhibit "A," and those assumed by the Lessor under the terms of a certain other agreement, dated November 17, 1906, between the Lessor and Hugh J. McGowan, Charles E. Small, and Randal Morgan, for the supply of natural gas to Kansas City, Missouri, copy of which said last named agreement is hereto attached and marked Exhibit B, and those assumed by the Lessor under the terms of a certain other agreement, dated December 3,

1906, between the Lessor and said Hugh J. McGowan, Charles E. Small and Randal Morgan, copy of which is hereto attached marked Exhibit C, as amended by an agreement dated December 11, 1907, between the same parties, copy of which is hereto attached marked Exhibit D.

566 "The Lessee hereby assumes and covenants to perform all the obligations assumed by the Lessor under the terms of all other contracts now in force and binding upon the Lessor, and the Lessee further covenants to assume and pay all the outstanding indebtedness of the Lessor, whether the same be absolute or contingent, as the same shall from time to time fall due or be established, and to assume and pay all the liabilities of the Lessor now existing for injury or damage to persons or property, as the same shall from time to time hereafter be established, and to defend, at its own expense, all actions now pending or hereafter brought against the Lessor on account of claims for said liabilities.

"The Lessee agrees that if the gas wells hereby demised situated in the territory of the Lessor do not furnish a sufficient volume of gas, or if the pipe line of the Lessor shall not have a delivery capacity sufficient to supply the demands for gas in the cities of Kansas City, Kansas, and Kansas City, Missouri, it, the Lessee, will supplement said gas supply from its own gas wells up to an amount equal to fifty (50) per cent of the gas, which by the use of due diligence in connecting existing wells and drilling new ones, it may be able to produce from the territory now or hereafter controlled by it; and will construct at its own cost and expense, or, so far as any of the bonds of the Lessor in this lease referred to may be available for the purpose, at the cost and expense of the Lessor, the additional pipe lines necessary for the delivery of gas to supply such demands, whether from the Lessor's or the Lessee's territory; Provided, however, that if the expectation of continuance of the supply of gas shall not be sufficient to warrant the laying of an additional pipe line at any time, the Lessee shall not be required to do so, whatever the demand for gas in said cities; Provided, further, that it is the intent of the parties that the provisions of this clause shall not be so construed as to in effect require the Lessee to lay a line for manufacturing purposes mainly or only."

That the Seventh Clause of said lease, last aforesaid, was as follows:

"Seventh. The Lessee covenants that during the continuance of this lease it will in good faith and to the best of its ability operate at its own risk and expense the Lessor's works and plants and furnish all apparatus and equipment in substitution for, and in addition to, that hereby demised, which may be necessary or proper  
567 to such operation, and will carry on, preserve and extend the business heretofore carried on by the Lessor in such manner as at all times to meet the demands of the public service and to promote the interest of and preserve the franchises vested in the Lessor."

That the Ninth Clause of said lease, last aforesaid, was as follows:

"Ninth. The Lessee hereby accepts the plant, estate and property hereby demised as the same actually are at the date hereof, and covenants that it will extend, renew, repair and replace the same so as to



maintain and keep the demised premises in good order, repair and condition; that it will, from time to time, out of the uncertified bonds of the Lessor referred to in Section 10 hereof, or at its own expense, if all of the said bonds shall have been used for the purposes therein mentioned, make all extensions, additions, alterations, improvements, renewals and betterments which may be necessary or proper with reference to the premises and property hereby demised, and for the use and operation thereof, and will do and perform all other things necessary to make and maintain said works and plants as a first-class pipe line company; and that all lands, structures, improvements, betterments and renewals added to or made upon the demised premises and all rights, privileges and franchises acquired by the Lessee in connection with the demised premises and paid for out of the sale of the said bonds shall become the property of the Lessor and be treated as part of the demised premises and be subject to all the terms, conditions and provisions of this indenture the same as if they had been vested in the Lessor at the date of this instrument, but provided that all extensions, lands, structures, improvements, betterments, renewals, rights, privileges and franchises paid for by the said Lessee not out of the proceeds of said bonds shall belong to and remain its sole and separate property."

That the Nineteenth Clause of said lease last aforesaid, was as follows:

568     "Nineteenth. This indenture is a substitute for and shall take the place of an indenture dated November 19, 1906, between the Lessor and The Kaw Gas Company, of which Company the Lessee is the successor, having heretofore acquired all the properties of The Kaw Gas Company and assumed all the obligations of The Kaw Gas Company under said indenture dated November 19, 1906, and under the agreement of The Kaw Gas Company, dated December 5, 1906, which is attached to and refers to the agreement dated December 3, 1906, between the Lessor and Hugh J. McGowan, Charles E. Small and Randal Morgan, which last mentioned agreement is referred to in Article V of this indenture and a copy thereof hereto attached marked Exhibit C."

That prior to the first day of January, 1908, the Kansas Natural Gas Company had taken possession of and had become the legal owner of all of the stock and all of the property and had assumed and agreed to perform all of the obligations of the said The Kaw Gas Company.

That from and after said first day of January, 1908, and up to August 10, 1911, when said McGowan, Small and Morgan transferred and conveyed their said franchise and their gas plant and property to the plaintiff, as aforesaid, said Kansas Natural Gas Company supplied said McGowan, Small and Morgan with natural gas under the terms and at the price fixed in said agreements of November 17, 1906, and December 3, 1906, and in pursuance of the terms of said lease made to it on said January 1, 1908, by said The Kansas City Pipe Line Company.

That after said August 10, 1911, said Kansas Natural Gas Company until sometime in the month of October, 1912, when receivers were appointed for it in the Federal Court, in the foreclosure proceed-

ings hereinbefore mentioned, under and in pursuance of said supply contracts of November 17th and December 3d, 1906, and its  
569 lease of January 1, 1908, supplied this plaintiff, as assignee of McGowan, Small and Morgan with natural gas for distribution to said Kansas City and its inhabitants. That since the appointment of said receivers, the Receivers for said Kansas Natural Gas Company have supplied under said supply contracts and in pursuance of said lease, the plaintiff with natural gas at the price and under the terms therein set forth.

That the plaintiff has always performed all of the terms and conditions of said supply contracts to be kept and performed by it.

That the said McGowan, Small and Morgan had during the time they supplied said city and its inhabitants with natural gas wholly complied with all the terms and provisions of said supply contracts and that said supply contracts and the provisions of said lease of January 1, 1908, are in full force and effect and binding upon the said Kansas Natural Gas Company, as well as upon its Receivers, the defendants, John M. Landon and George F. Sharritt.

Plaintiff states that defendant, Kansas Natural Gas Company, has made arrangements and is about to increase its capital stock from Six Million Dollars to Fifteen Million Dollars, or an increase of Nine Million Dollars; that the whole of such increase has been underwritten at fifty cents on the dollar by men of large means, some of whom are stockholders of said Kansas Natural Gas Company, and among whom are R. A. Long, G. T. Braden, M. L. Benedun, E. T. Whitcomb, W. W. Splaine, L. C. McKinney and V. A. Hays, from which said Kansas Natural Gas Company will derive a large sum of money, to-wit, about Four Million Five Hundred Thousand Dollars,

with which to increase its already large plant and mileage of  
570 pipe lines for transporting natural gas from Kansas and Oklahoma, and to increase its supply and holdings of natural gas and gas wells and gas lands in the gas fields of Kansas and Oklahoma.

That said Kansas Natural Gas Company has already bought fifty miles of additional pipe; twenty-five miles of ten inch and twenty-five miles of twelve inch pipe for the purpose of extending and supplementing its existing lines in said gas fields; that deliveries of said pipe were to commence August 21, 1916.

Plaintiff states that notwithstanding the fact that plaintiff has always complied with said supply contracts and they are in full force and effect, as aforesaid, the said John M. Landon, who is the Receiver actually in charge of and operating said property, on the 12th day of August, 1916, served upon and delivered the following notice in writing to the plaintiff, to-wit:

"The Kansas City Gas Company, Kansas City, Mo.

GENTLEMEN: You are hereby notified by the undersigned as the duly appointed, qualified and acting Receiver of the properties, assets and business of the Kansas Natural Gas Company, that the preservation of the estate of said Kansas Natural Gas Company, and of said business, properties and assets and the conservation of the same, which devolves as a duty upon said Receiver, no longer makes it

possible for said Receiver to sell to the Kansas City Gas Company, natural gas at the price and under the terms and conditions at which and under which the same has heretofore been delivered to said Kansas City Gas Company, by said Receiver, and that on and after September 1st, 1916, any gas received by said Kansas City Gas Company, from said Receiver, must be paid for at the rate of eighteen cents per thousand cubic feet measured on an eight ounce basis at the meters nearest to the lines of said Kansas City Gas Company, quantities to be determined by said meters and when meters' accuracy is questioned, same to be tested and adjustments made in the customary manner. All gas supplied to be paid for on the fifteenth day of the month following delivery.

"The said Receiver asks the Kansas City Gas Company to promptly notify him whether or not it is the purpose of said company on and after September 1st, to receive natural gas from said Receiver at the place and pay for same at the price aforesaid, to-wit: eighteen cents per thousand cubic feet, and under conditions aforesaid.

Respectfully,  
(Signed)

JOHN M. LANDON,  
*Receiver of the Kansas Natural Gas Co."*

That said Receiver Landon in giving said notice and thereby attempting to raise said rate to the plaintiff, and to set aside said supply contracts, is acting at the suggestion of the Kansas Natural Gas Company and its stockholders and officers, and for the benefit of said Company, its stockholders and officers.

That said Landon publicly so declared and announced in communications by him printed in the public press of said Kansas City, that he is not acting as such Receiver in the interest or for the benefit of the bondholders of said Kansas Natural Gas Company in said foreclosure proceeding in the United States District Court hereinbefore mentioned, in which he was appointed Receiver.

Plaintiff says that for more than six months last past perfectly responsible parties have offered and are now ready and willing to buy the property of said Kansas Natural Gas Company at foreclosure sale in said proceedings pending in the United States District Court, at a price sufficient to pay off the amount due on its bonds and coupons, for which all of its property is mortgaged and all costs of such foreclosure, but that certain of said bondholders conniving with said Kansas Natural Gas Company and its stockholders, and said Receiver, Landon, have refused and still refuse to either provide for paying off said bonds and coupons and dismissing said receivership, or to permit or allow said mortgage to be foreclosed and said property sold at foreclosure sale, all for the purpose of aiding and abetting said Kansas Natural Gas Company and its stockholders, through such receivership and the action of said Landon, as Receiver therein, to repudiate said supply contracts with the plaintiff, and all other like supply contracts which it has with numerous other gas companies, supplying other cities and towns in Kansas and Missouri, and thus cheat and defraud the plaintiff and other gas companies and the cities and towns served by and dependent upon

them, out of their rights to receive natural gas at the price and under the terms provided in said supply contracts and thereby illegally and fraudulently raise the price of gas to them.

That the property of said Kansas Natural Gas Company has now been in the hands of Receivers appointed by the United States District Court as aforesaid, in said cause of McKinney et al. against Kansas Natural Gas Company et al., ever since the 9th day of October, 1912, and in the hands of the Receiver appointed by the District Court of Montgomery County, Kansas, in a cause in said Court entitled State of Kansas against Kansas Natural Gas Company et al., which was a proceeding ostensibly brought under and to enforce the anti-trust law of said State of Kansas, which prohibited all combinations and contracts in restraint of trade and commerce and competition, ever since the 15th day of February, 1913.

Plaintiff says that it is advised by counsel and therefore alleges that the said anti-trust act of the State of Kansas, so far as it  
573 related to public utilities corporations such as is and was the Kansas Natural Gas Company, was repealed by the Public Utilities Statute of the State of Kansas before said proceedings were instituted and that said District Court of Montgomery County, Kansas, never had any jurisdiction of said cause in which said Receivers, including said Landon, were appointed by said Court for said Kansas Natural Gas Company.

That in any event the purpose for which receivers were authorized to be appointed for corporations under said anti-trust act, to-wit, to cause them to cease violating said act and to abandon all contracts and combinations in restraint of commerce, trade and competition, has long since been accomplished and said receivership in said District Court of Montgomery County, Kansas, in said cause, has and for some time past has been continued for the sole benefit of the said Kansas Natural Gas Company and its stockholders, and said receiver, Landon, by connivance and conspiracy between them so that said receiver might set aside and annul the said supply contracts with the plaintiff and other gas companies, supplying other cities and towns in Kansas and Missouri with natural gas, and thus cheat and defraud the plaintiff and other gas companies and the cities and towns dependent upon and served by them out of their rights in such supply contracts and thereby illegally and fraudulently raise the price of natural gas to them.

Plaintiff further says that if said defendant Landon, as such receiver, appointed in said cause in said Montgomery County, Kansas, District Court, has any authority, which plaintiff denies, as aforesaid, he has no power under the laws of the State of Kansas, as such receiver, to violate or refuse to perform any of the valid contracts of said Kansas Natural Gas Company, but is by the laws of  
574 the said State of Kansas, required to perform and carry out all such contracts, the same in all respects as the said Kansas Natural Gas Company would be in case it were in possession of and operating its said property.

That said Landon, as receiver in said foreclosure proceedings in the Federal Court, under the laws of the United States, and especially

of Section 65 of the Judicial Code of the United States, is expressly required to comply with all valid contracts of said Kansas Natural Gas Company, and in the circumstances hereinbefore stated, to comply with said contracts made as aforesaid for supplying plaintiff with natural gas in the same manner as the said Kansas Natural Gas Company would be bound to do if in possession of and operating its said property.

But plaintiff says that if, under the laws of Kansas, in the said proceedings in Montgomery County, Kansas, brought by the State of Kansas against said Kansas Natural Gas Company, as aforesaid, for violating the anti-trust laws of said state, said receiver or said Kansas Natural Gas Company should or could be authorized by the laws of said state to repudiate the valid contracts of said Kansas Natural Gas Company with citizens and corporations of the State of Missouri, such as the contracts aforesaid for supplying plaintiff with natural gas, neither such laws nor any action of said Landon, as receiver thereunder, would be enforced or respected in this state, because they would be contrary to the constitution and laws and the public policy of this state, and also violate the Constitution of the United States prohibiting any state from passing laws violating the obligations of contracts, and the Fourteenth Amendment to

575 the Constitution of the United States against depriving citizens of the United States of their property without due process of law, and the amendments to the Constitution of the United States prohibiting the taking of private property for public use without just compensation. That said anti-trust act of Kansas is a penal statute and has no extra-territorial effect.

That as required by said franchise the said The Kaw Gas Company and The Kansas City Pipe Line Company entered into a written agreement within the time specified in said ordinance No. 33887, which was approved by the City Counselor of said city, agreeing that they, the said two corporations, would, if said Kansas City should acquire said plant as provided in said franchise, upon demand furnish and continue to furnish during the remaining period of said franchise, natural gas on the same terms as they agreed to furnish it to the grantees in said franchise, their successors and assigns.

That by the terms of said Section 20 of said franchise hereinbefore set forth, the grantees in said franchise, their successors and assigns agreed that none of the terms of said supply contracts should be changed without the consent of said city, and by Section 17, that any violation of any of the terms of said franchise should work a forfeiture of all the rights of the grantees or their assigns thereunder. So that plaintiff says if it changed or abandoned said supply contracts without the consent of said city, as requested by the said notice served upon the plaintiff August 12, 1916, by said defendant Landon, receiver, it would work a forfeiture of its franchise and all rights thereunder, to its great and irreparable loss and injury.

That said city has never consented to any such change. That furthermore the price requested in said notice of August 12, 576 1916, to-wit, eighteen cents per thousand cubic feet, measured at the place and in the manner as stated in said notice, would

be in excess of the rate plaintiff is obligated to pay under said supply contracts, and would require plaintiff to pay for all gas delivered to it at and according to the measurements of the meter mentioned in said notice, instead of sixty-two and one-half per cent of plaintiffs' gross receipts from all gas sold by it, according to the measurements of the meters of plaintiff supplied its consumers as provided in said supply contracts and would also require plaintiff to pay for large quantities of gas which under its franchise it is to furnish free to said Kansas City, and under said supply contracts is to have free from said Kansas Natural Gas Company and its receivers, and which it and they have always heretofore furnished free, all to the great and irreparable loss and damage of the plaintiff and the public supplied with natural gas by it.

Plaintiff further states that in and by the terms of said supply contracts and the terms of said lease of January 1, 1908, between The Kansas City Pipe Line Company and the Kansas Natural Gas Company, the defendant Kansas Natural Gas Company, bound itself to supply and deliver to the plaintiff natural gas at a pressure of twenty (20) pounds at the point of delivery in Kansas City, Mo., in such amount as would at all times fully supply the demand for all purposes of consumption for sixty-two and one-half per cent (62½%), (after the first two years from the date natural gas was first supplied in said city, to-wit, November 19, 1906), of the gross receipts collected by the plaintiff from the sale of natural gas at the rates specified in said Section 13 of said Ordinance No. 33887, heretofore set forth:

577 That by said lease of January 1, 1908, said Kansas Natural Gas Company further agreed that if the territory it leased from said Pipe Line Company, or if the pipe line it leased from said Pipe Line Company should not have a delivery capacity sufficient to supply the demands for gas in Kansas City, Kansas, and Kansas City, Missouri, it, the said Kansas Natural Gas Company, would supplement said gas supply from its own gas wells up to an amount equal to fifty per cent of the gas which by the use of due diligence in connecting then existing wells and drilling new ones it might be able to produce from the territory then or thereafter controlled by it, and would construct at its own cost and expense, or so far as any of the bonds of the said Pipe Line Company should be available for such purpose, at the cost and expense of said Pipe Line Company, the additional pipe lines necessary to supply such demand whether from the said lessor's or lessee's territory; provided, however, that if the expectation for the continuance of the supply of gas should not be sufficient to warrant the laying of a pipe line, the lessee, the Kansas Natural Gas Company, should not be required to do so.

Plaintiff states that within the last year numerous new and larger fields of natural gas have been discovered and developed in Kansas and Oklahoma, within reasonable distances of the existing pipe lines and property of the defendant Kansas Natural Gas Company, and that the expectations for the continuance of such supply of gas is sufficient to warrant the extension of said defendant's existing lines thereto, and if necessary to supplement the pipe lines mentioned in



said lease running to Kansas City, so as to fully supply Kansas City, Kansas, and this plaintiff, or Kansas City, Missouri, with a full supply of gas as required by said supply contracts and the terms  
578 and provisions of said lease of January 1, 1908, made by the Kansas City Pipe Line Company to said Kansas Natural Gas Company.

That in fact said Kansas Natural Gas Company has made arrangements to increase its capital stock and has actually purchased pipe as aforesaid for the purpose of getting gas from such new gas fields.

And plaintiff further says that from the times said receivers were first appointed until the said notice of August 12, 1916, was served upon the plaintiff, a period of nearly four years, said receivers have supplied this plaintiff with natural gas under said supply contracts and at the price therein provided and that they long since have adopted said supply contracts as well as the provisions of said lease of January 1, 1908, hereinbefore set forth, and become bound thereby.

That in pursuance of said supply contracts, said receivers have always demanded and received from the plaintiff the sums of money provided to be paid thereby for natural gas as therein provided, and required the plaintiff to perform all the terms and conditions thereof; that during such period the plaintiff, as the sixty-two and one-half per cent of the gross receipts of the gas sold by the plaintiff, which said receivers were under such supply contracts entitled to receive, paid the said receivers the sum of four million, two hundred, eighty and 50/100 dollars; that all of said sum, less certain expenses and costs of said receiverships, has been paid over to and received by the said bondholders of said Kansas Natural Gas Company, which, together with the moneys received by said receivers from other gas distributing companies, also paid over to said bondholders, has not  
579 only paid up all the interest on said bonds, but has reduced the amount of the principal thereof more than the sum of two million, eight hundred thousand dollars.

That when said receivers were first appointed, said Kansas Natural Gas Company was insolvent and unable to pay its debts and its property worth far less than the amount of its bonds secured by mortgage thereon, and that its bonds were therefore worth less than par.

That the payments received from the plaintiff for natural gas under said supply contracts and from others, as aforesaid, by said receivers of said Kansas Natural Gas Company, have so reduced the said bonded debt as to make said defendant Company solvent and its property worth more than its bonded debt and its bonds worth their par value.

That thereby the said Kansas Natural Gas Company and its stockholders and said bondholders have been greatly benefited and their property increased in value.

That by reason of all of which plaintiff says that defendants Sharritt and Landon, as receivers for said bondholders in said cause in said Federal Court, and said Landon as receiver in said cause in the State Court in Montgomery County, Kansas, are and ought to be in equity held, bound by and estopped from repudiating said supply



contracts and the provisions of said lease of January 1, 1908, hereinbefore set forth.

Plaintiff says that it has filed with the Public Service Commission of Missouri as its schedule of rates and charges for natural gas to said city and its inhabitants the rates and charges specified in its said franchise and in said supply contracts, and that said commission has approved and allowed the same, including the said rate of thirty cents per thousand cubic feet to be charged after November 9th, 1916, or ten years from the time gas was first furnished under said franchise to said city and its inhabitants.

580 Plaintiff says that while said Landon and said Sharritt were appointed receivers by said Federal Court, as hereinbefore stated, they are not now in the management and control of any of the property or business of said Kansas Natural Gas Company under such appointment, but that said Federal Court by its order has turned over to said Landon all of said property and business in the State of Kansas to be managed, controlled and operated by him as receiver thereof appointed by said District Court of Montgomery County, Kansas, in said cause therein pending of, State of Kansas v. Kansas Natural Gas Company. That said Federal Court also so turned over to said Landon all the property and business of said Kansas Natural Gas Company in Missouri and Oklahoma, to be operated, controlled and managed by him, as such receiver in said cause in said Montgomery County, Kansas, but not under or by authority of any law, state or national, but by virtue of the agreement and consent of all the parties to said litigation, which were, said Kansas Natural Gas Company and its bond holders and others, but that plaintiff was not a party thereto. That, in its opinion in said cause in said Federal Court with reference to turning over to said Landon the said business and property outside of the State of Kansas, the Court said:

"The jurisdiction of the state court is confined to Kansas and the authority of its receivers as such, is no longer than the arm of the court. But their authority may be enlarged by agreement of the parties in interest, when agreeable to the court that appointed them and not contrary to the laws of the state where the property is located nor inconsistent with a prior jurisdiction. In such case they depend on convention rather than the force of judicial process." (217 Fed. 194.)

Plaintiff further says that a portion of the pipe lines and property of the said Kansas Natural Gas Company are in Missouri  
581 and a portion in Oklahoma, but that the most thereof are in Kansas, but that more than one-half of its gas is sold in Missouri, and that nearly all of its gas is procured from Oklahoma.

That said Landon is in control of the property and business of said Kansas Natural Gas Company outside of the State of Kansas not as or by virtue of his authority as receiver of any court, but is in control and operation of said business and property in Missouri and Oklahoma by agreement of parties aforesaid, as the agent and representative of said Kansas Natural Gas Company and its stockholders,

That defendants were never authorized by any order, either by the said Federal Court or said District Court of Montgomery County, Kansas, to raise or in any manner change the price of gas to the plaintiff as set forth in said supply contracts. That none of the defendants have ever applied to or obtained the consent or approval of the Public Utilities Commission of this State to raise or in any manner change the price of said natural gas to the plaintiff or to said city and its inhabitants set forth in said supply contracts and in said Ordinance No. 33887 so agreed to by said The Kansas City Pipe Line Company and The Kaw Gas Company, and assumed and agreed to by said Kansas Natural Gas Company as hereinbefore stated. That defendants are the only source which plaintiff has or can have from which to obtain a supply of natural gas with which to supply said city and its inhabitants, because the defendants own and control the only pipe line running from the gas fields which are all located in Southern Kansas and Oklahoma to said Kansas City.

That said defendants Kansas Natural Gas Company and said Landon have threatened to stop the supply of gas to the  
582 plaintiff and thus cut off the people of Kansas City from the use of natural gas, unless the plaintiff yields to their illegal demand for an increased price therefor contained in said notice of August 12th, 1916, all to the great and irreparable injury to the plaintiff and the City of Kansas City and its inhabitants.

Wherefore, plaintiff prays judgment against the defendants for a decree of specific performance of said supply contracts of November 17th, 1906, and December 3rd, 1906, and of the provisions of said lease of January 1st, 1908, hereinabove set forth; that defendants be required to supply natural gas to the plaintiff at a pressure of twenty pounds at the city limits of Kansas City, Missouri, in such amount as shall at all times be sufficient to supply the demand of the plaintiff for distribution to Kansas City and its inhabitants for all purposes mentioned in plaintiff's said franchise, or if defendants cannot obtain enough natural gas for that purpose by due diligence and the use of all their resources, that defendants supply plaintiff with such amount of natural gas as will, together with the amount supplied Kansas City, Kansas, equal fifty per cent of all their supply of natural gas at the percentage of the gross receipts which plaintiff shall receive therefor at the rate specified in said franchise and supply contracts; that, if necessary to so supply the plaintiff, that defendants be required to extend their pipe lines and increase their gas supply in the gas fields of Kansas and Oklahoma, and that defendants do and perform all other things agreed or assumed to be done or  
583 performed by them in the premises and in the plaintiff's petition stated, and for all other and further relief to which the plaintiff may in equity and good conscience be entitled.

GAGE, LADD & SMALL AND  
J. W. DANA,

*Attorneys for Plaintiff.*

## EXHIBIT "A."

"Under date of November 19, 1906, The Kansas City Pipe Line Company, one of the parties to the foregoing agreement, and The Kaw Gas Company, a corporation of the State of West Virginia, entered into a certain agreement or lease, whereby said The Kansas City Pipe Line Company granted, devised and leased to said The Kaw Gas Company its gas lands, gas wells, gas leases, leaseholds, pipe lines, buildings, structures, easements, rights of way, equipment, machinery, tools, appliances and other property as therein mentioned and described, and said The Kaw Gas Company assumed and covenanted, inter alia, to perform all the obligations assumed by said The Kansas City Pipe Line Company in an agreement, dated November 17, 1906, between said The Kansas City Pipe Line Company and Hugh J. McGowan, Charles E. Small and Randal Morgan, being the agreement referred to in said lease as Exhibit B, and thereto attached, and also referred to in Section 11 of the foregoing agreement. In consideration of the sum of one dollar to it in hand paid by the parties to the foregoing agreement, the receipt whereof is hereby acknowledged, and of other good and valuable considerations it thereunto moving, said The Kaw Gas Company does hereby consent and agree that, as between the parties hereto, and their respective heirs, executors, administrators, successors and assigns, the foregoing agreement shall, as provided in said Section 11 thereof, take the place of and stand instead of the said agreement dated November 17, 1906, (to-wit: the agreement referred to in said lease as Exhibit B and thereto attached) and that as between it, said The Kaw Gas Company and said The Kansas City Pipe Line Company, the foregoing agreement shall be considered and treated as if it had originally been referred to in said lease instead of said Exhibit B and thereto attached, and that all its, said The Kaw Gas Company's covenants and

584 agreements contained in said lease shall apply to the foregoing agreement accordingly; Provided, however, that if the City of Kansas City shall acquire the gas plant, pipes and property of the grantees named in said Ordinance No. 33887, referred to in the foregoing agreement, and the foregoing agreement shall, as provided in said Section 11 thereof, terminate and become null and void, then the said agreement dated November 17, 1906, (to-wit: Exhibit B referred to in said lease and thereto attached), and the covenants and agreements of said The Kaw Gas Company respecting the same contained in said lease, shall again come into force and effect as if the foregoing agreement and this consent and agreement had never been made and given.

In witness whereof said The Kaw Gas Company has duly executed these presents this 5th day of December, 1906.

[CORPORATE SEAL.]

THE KAW GAS COMPANY,  
By FRANK V. EATON, *President*.

Attest:

W. J. HIGGINS, *Secretary*.

Signed, sealed and delivered in presence of

EUGENE MACKEY AND  
W. F. DOUTHIRT.

STATE OF MISSOURI,

*County of Jackson, ss:*

This affiant being duly sworn on his oath, says that he is the Secretary of the Kansas City Gas Company and that the above and foregoing paper marked Exhibit "A," is a true copy of the original instrument.

J. M. SCOTT.

Subscribed and sworn to before me this twenty-third day of August, 1916. My commission expires September 17th, 1918.

[SEAL.]

CALEB S. MONROE,  
*Notary Public, Jackson County, Missouri.*

585

EXHIBIT "5."

STATE OF MISSOURI,

*Public Service Commission:*

At a Session of the Public Service Commission Held at Its Office in Jefferson City on the 18th Day of September, 1916.

Case No. 1083.

Present: William G. Busby, Chairman; John Kennish, Howard B. Shaw, Edwin J. Bean, Eugene McQuillan, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Weston Gas & Light Company.

*Order.*

It appearing that the Weston Gas & Light Company has heretofore on the 15th day of September, 1916, filed with the Commission a proposed schedule of rates entitled its P. S. C. Mo. No. 2, First Revised Sheet No. 1, cancelling its P. S. C. No. 2, Original Sheet No. 1, effective September 20, 1916, containing certain new rates and charges applicable to the gas service afforded at Weston, said new rates and charges constituting an increase of 13 cents per thousand

cubic feet in the net charges for illuminating gas, and abolishing any special rate for power gas.

It further appearing that the rights and interests of the public appear to be injuriously affected by said proposed increase of rates; and it being the opinion of the Commission that the effective date of said proposed schedule of new rates and charges contained in said Weston Gas & Light Company's P. S. C. Mo. No. 2, First Revised Sheet No. 1, should be postponed pending a general investigation heretofore entered upon by the Commission in the matter of natural gas service and rates, in order that the Commission may determine the reasonableness and lawfulness of said proposed rates and charges. Now, upon due consideration, it is

586 Ordered, 1. That the Commission, upon its own initiative without formal pleading, under and by virtue of the authority conferred upon the Commission by section 70 of the Public Service Commission Law, enter upon a hearing concerning the propriety and lawfulness of the proposed new rates and charges contained in said Weston Gas & Light Company's P. S. C. Mo. No. 2, First Revised Sheet No. 1, on file with the Commission.

Ordered, 2. That the operation of the proposed new rates and charges contained in said schedule be suspended, and that the use of said rates and charges be deferred for the period of one hundred and twenty (120) days from and including September 20, 1916, unless otherwise ordered by the Commission.

Ordered, 3. That this order shall take effect on this date, and the Secretary of the Commission shall forthwith serve on said Weston Gas & Light Company a certified copy of this order, and that a copy of this order be filed with said schedule in the office of the Commission.

By THE COMMISSION.

[SEAL.] T. M. BRADBURY, *Secretary*.

587

EXHIBIT "6."

Before the Public Service Commission of the State of Missouri.

No. 1065.

THE CITY OF JOPLIN, a Municipal Corporation, Complainant,

vs.

THE JOPLIN GAS COMPANY, a Corporation, Defendant.

*Complaint.*

The Complaint of the City of Joplin respectfully shows: (1) that the City of Joplin is a municipal corporation, organized and existing under and by virtue of the laws of the State of Missouri, as a City of the Second Class; that its postoffice address is Joplin, Jasper

County, Missouri; (2) that the defendant, the Joplin Gas Company, is a corporation whose postoffice address is Joplin, Jasper County, Missouri, and is engaged in the sale of natural gas in the City of Joplin, Missouri, for lighting, heating and manufacturing purposes; (3) that on the 8th day of August, 1916, the defendant filed before the Public Service Commission of the State of Missouri, a revised sheet, wherein it proposes to change the price of natural gas to consumers in the City of Joplin, Missouri; that since the year 1905, the said Joplin Gas Company has sold gas to consumers for domestic purposes in the City of Joplin, for thirty (30) cents per thousand cubic feet, with a discount of five cents (5c) per thousand cubic feet, if said bill was paid on or before the 5th day of the month; that a minimum rate was charged by said Joplin Gas Company to the consumers of Joplin, Missouri, of fifty cents; that in a new schedule which it filed and which it asks to go into effect, it changes the price so that the minimum price will be sixty-six cents per two thousand cubic feet per month, with a discount of six cents if said bill is paid on or before the tenth of the month, and thirty-  
588 three cents (33c) per thousand cubic feet for all gas used in excess of two thousand feet, with a discount of three cents per thousand cubic feet, if said bill is paid on or before the tenth of the month.

That on the 17th day of August, 1916, the Public Service Commission of the State of Missouri, at a session held at Jefferson City, Missouri, suspended said proposed new rate and made the date effective for said rate to go into effect, one hundred and twenty (120) days after the 8th day of September, 1916, and that during said time, the old rate should be in effect; that on the 30th day of 1916, the Joplin Gas Company sent out notices to all its consumers in Joplin, Missouri, proposing to put into effect the new rate at once, in violation of said order made by the Public Service Commission of the State of Missouri, made on the 17th day of August, 1916, as aforesaid.

The said City of Joplin, by ordinance passed on the 14th day of August, 1916, directed that the City of Joplin file an objection to said new rate going into effect, and this complaint is filed by authority of said ordinance, which is ordinance No. 6171, entitled, "An ordinance authorizing a complaint to be filed before the Public Service Commission of Missouri, objecting to the price of gas proposed to be charged by the Joplin Gas Company to consumers of gas in Joplin, Missouri," passed by the City Council on the 14th day of August, 1916.

Complainant further states that said increase in price is not necessary for the reason that the price as already charged, affords an adequate income to the Joplin Gas Company, for the amount it has invested in property which is used and useful for the public service in distributing and selling natural gas in the City of Joplin, Missouri, and before any increase in the price is made, complainant asks that an investigation of the affairs of the Joplin Gas

589 Company be made by the Public Service Commission of the State of Missouri, and that an inventory and appraisal of its affairs be made by the Public Service Commission in order that the consumers of natural gas in the City of Joplin be not required to pay an unreasonable amount for natural gas.

Complainant further states that on the 19th day of January, 1905, a contract was made between T. N. Barnsdale of Pittsburgh, Pennsylvania, party of the First part, and the Natural Gas, Electric Light & Power Company of New Jersey, party of the Second part; that the Kansas Natural Gas Company is the successor of the first party in this contract, and the Joplin Gas Company of Joplin, Missouri, is the successor of the party of the Second part; that said contract provides that the said party of the First part shall sell to the said party of the Second part, natural gas to be used by the citizens of the City of Joplin, for a term of twenty (20) years, and that said Joplin Gas Company is to fix the price which it shall receive from the consumers of gas in Joplin, Missouri, provided only, that the price shall not be more than thirty cents (30c) per thousand cubic feet, with a discount of five cents (5c) per thousand cubic feet, if said bills are paid on or before the tenth of the month, for gas consumed during the preceding month, and that the said contract is binding and in full force and effect, and that said Joplin Gas Company does not have to raise the price of gas by virtue of the terms of said contract in order to sell gas to the consumers of gas in the City of Joplin, Missouri, at the old price, the price that has been charged since the year 1905. That said contract further provides that the said Joplin Gas Company shall buy said gas from the party of the First part and in no way does it act as the agent of said T. N. Barnsdale or his successor, but that the title to all natural gas is vested in the Joplin Gas Company as soon as it reaches the mains of the Joplin Gas Company; that a copy of said contract is hereto  
590 attached and made a part of this complaint and designated as "Exhibit A."

Complainant further states that it will be unjust and unfair to charge the citizens of the City of Joplin more than 25c. per thousand cubic feet for the reason that natural gas is furnished in abundance to the Cities of Webb City and Cartersville, Missouri, which towns are less than ten miles from Joplin, at twenty-five cents (25c.) per thousand cubic feet, and that the City of Carthage, less than twenty miles from the City of Joplin and further from the gas fields, is furnished with gas at twenty-five cents (25c.) per thousand cubic feet; that the Company that furnishes this gas to the city limits of said Cities of Webb City, Cartersville and Carthage, is the Quapaw Gas Company and said Quapaw Gas Company's lines transport their gas from the gas fields at a further distance than does the Kansas Natural Gas Company, the company which sells its gas to the Joplin Gas Company; that the Quapaw Gas Company has main lines that touch the city limits of the City of Joplin, Missouri.

Complainant further states that the said Joplin Gas Company is not bound by the contract attached hereto and designated as "Ex-



hibit A," to buy its gas from the Kansas Natural Gas Company, and if the said Joplin Gas Company refuses to raise the price of gas made by the receiver of the Kansas Natural Gas Company, for the reason that said contract expressly states that the Joplin Gas Company shall fix the price to be charged for gas in the City of Joplin, Missouri, the said Joplin Gas Company would be at liberty to contract with other gas companies for its supply.

Wherefore, by reason of the premises, said complainant prays that an investigation be made into the affairs of the Joplin Gas Company and that an inventory and appraisal of its affairs be made as sued in this complaint; that the Public Service Commission enjoin the Joplin Gas Company from putting into effect the new  
591 rate and from disobeying the order of the Natural Gas Company, made on the 17th day of August, 1916, which it is now threatened to put into effect, and that an investigation of the affairs of the Joplin Gas Company be made that the evidence shall warrant that the old rate of twenty-five cents (25c.) per thousand cubic feet and a minimum rate of fifty cents (50c.) per month be established and maintained, and that said Joplin Gas Company be enjoined from putting into effect any other rate, different from twenty-five cents per thousand cubic feet and a minimum rate of fifty cents per month, and for such other orders and judgments as to this Commission may seem mete and just in the premises.

Dated at Joplin, Missouri, this 2d day of September, 1916.

THE CITY OF JOPLIN,  
By HUGH McINDOE, *Mayor*.

E. F. CAMERON,  
*City Attorney, Attorney for Complainant.*

STATE OF MISSOURI,  
*County of Jasper, ss:*

Hugh McIndoe, being first duly sworn, deposes and says that he is the Mayor of the City of Joplin, Jasper County, Missouri, and the complainant in the action entitled as above; that he is authorized to make this complaint; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to matters that are therein stated on information or belief, and to as those matters, he believes them to be true.

HUGH McINDOE.

Subscribed and sworn to before me this 2d day of September, 1916.  
My Commission expires March 13, 1917.

[SEAL.]

A. G. COFER,  
*Notary Public.*

(Copy of Notice from Joplin Gas Company to Consumers.)

592 After 5 days, return to Joplin Gas Company, Box 324,  
Joplin, Mo.

Joplin, Mo., Aug. 31, 1916.

*Notice to Consumers — Joplin Gas Company.*

You are hereby notified in accordance with Federal Court Order that beginning with the regular meter reading of August, 1916, the price of gas for domestic and gas engine consumers in Joplin will be as follows:

Minimum charge per month, 66c., which will cover cost of first two thousand cu. ft. or fraction thereof, on which a discount of six cents will be allowed if paid on or before the 10th of the month following that in which service is rendered.

All gas used in excess of 2,000 cu. ft. per month will be charged at the rate of 33c. per thousand cu. ft.

A discount of three (3) cents per thousand feet will be allowed on all gas in excess of the two thousand (2,000) cubic feet covered by minimum bill, to all consumers paying their bills on or before the tenth day of the month following that in which the gas is consumed.

Very truly yours,

JOPLIN GAS COMPANY.

593

EXHIBIT "7."

STATE OF MISSOURI:

Public Service Commission.

Case No. 1055.

At a Session of the Public Service Commission Held at *at* Its Office in  
Jefferson City on the 17th Day of August, 1916.

Present: William G. Busby, Chairman; John Kennish, Howard B. Shaw, Edwin J. Bean, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Joplin  
Gas Company at Joplin, Missouri.

*Order.*

It appearing that the Joplin Gas Company has heretofore, on August 8, 1916, filed with the Commission a proposed new schedule of rates, entitled its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, First Revised Sheet No. 1, effective at the August, 1916, meter readings, instituting a general increase in its charges for gas service furnished by said company to the public at Joplin, Missouri, and vicinity; it further appearing to the Commis-

sion that the public may be unjustly affected by the proposed increased charges in its rates for gas service, and it being the opinion of the Commission that the effective date of said proposed schedule of rates and charges contained in said Joplin Gas Company's P. S. C. Mo. No. 1, Second Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, First Revised Sheet No. 1, should be postponed pending an investigation of the existing and proposed rates for gas service furnished the public at Joplin, Missouri, and vicinity, by the said Joplin Gas Company, in order that the Commission may determine the reasonableness and lawfulness of the said proposed rates and charges. Now, upon due consideration, it is

594      Ordered: 1. That the Commission, upon its own initiative without formal pleading, under and by virtue of the authority conferred upon it by section 70 of the Public Service Commission law, enter upon an investigation concerning the propriety and lawfulness of the proposed new rates and charges contained in said Joplin Gas Company's P. S. C. Mo. No. 1, Second Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, First Revised Sheet No. 1, on file with the Commission.

Ordered: 2. That the operation of the proposed new rates and charges contained in said schedule be suspended, and that the use of said rates and charges be deferred for the period of one hundred twenty (120) days from and including September 8, 1916, unless otherwise ordered by the Commission.

Ordered: 3. That this order shall take effect on this date, and that the Secretary of the Commission shall forthwith serve on said Joplin Gas Company a certified copy of this order, and that a copy of this order be filed with said schedule in the office of the Commission.

By THE COMMISSION.

[SEAL.]      T. M. BRADBURY, *Secretary*.

595

EXHIBIT "8."

STATE OF MISSOURI:

Public Service Commission.

Jefferson City.

Case No. 1065.

September 19th, 1916.

Messrs. Spencer & Grayston, Attys. for Joplin Gas Co., Joplin, Missouri.

GENTLEMEN: Writing you further on the subject of your letter of the 14th inst.,

The notice sent you, from this office, that a complaint had been filed against you, accompanied by an order to satisfy or answer within ten days, is the usual form of procedure in the matter of complaints,

that the party complained against may have an opportunity to answer. If the defendant does not desire to answer, formally, in advance of the hearing, they need not do so, but, instead, may make such answer at the hearing as they deem proper.

Replying to that paragraph of your letter in relation to an alleged violation of the suspension order of the Commission, I am instructed to say that the proposed rates are, by that order, of the Commission, suspended pending further investigation, and if the proposed rates or any rates in excess of the rate now on file with the Commission and in effect, are sought to be made effective, such an action will be in violation of the Commission's order, and the Commission will take such action with respect thereto as it deems appropriate.

For the Commission:

(Signed)

T. M. BRADBURY, *Secretary*.

596

EXHIBIT "9."

STATE OF MISSOURI,

*Public Service Commission:*

Case No. 1075.

At a Session of the Public Service Commission Held at Its Office in  
Jefferson City on the 13th Day of September, 1916.

Present: William G. Busby, Chairman; John Kennish, Howard  
B. Shaw, Edwin J. Bean, Eugene McQuillan, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Fort  
Scott and Nevada Light, Heat, Water & Power Company at Ne-  
vada, Missouri.

*Order.*

It appearing that the Fort Scott and Nevada Light, Heat, Water & Power Company has heretofore, on August 17, 1916, filed with the Commission a proposed new schedule of rates, entitled its P. S. C. Mo. No. 3, cancelling P. S. C. Mo. No. 2, effective September 22, 1916, containing certain new rates and charges applicable to the gas service afforded by said company to the public at Nevada, Missouri, said new rates and charges constituting an increase of five cents (5c) per one thousand (1000) cubic feet in the net charges for gas for lighting and heating, and gas engine service, and establishing a minimum of fifty cents (50c) per month, which will cover the first one thousand (1000) cubic feet.

It further appearing that the rights and interest of the public appear to be injuriously affected by said proposed increase of rates; and it being the opinion of the Commission that the effective date of said proposed schedule of new rates and charges contained in said The Fort Scott and Nevada Light, Heat, Water & Power Company's P. S. C. Mo. No. 3, should be postponed pending a general investi-

597      gation heretofore entered upon by the Commission in the matter of natural gas service and rates, in order that the Commission may determine the reasonableness and lawfulness of said proposed rates and charges. Now, upon due consideration, it is

Ordered: 1. That the Commission, upon its own initiative without formal pleading, under and by virtue of the authority conferred upon the Commission by section 70 of the Public Service Commission law, enter upon a hearing concerning the propriety and lawfulness of the proposed new rates and charges contained in said The Fort Scott and Nevada Light, Heat, Water & Power Company's P. S. C. Mo. No. 3, on file with the Commission.

Ordered: 2. That the operation of the proposed new rates and charges contained in said schedule be suspended, and that the use of said rates and charges be deferred for the period of one hundred and twenty (120) days from and including September 22, 1916, unless otherwise ordered by the Commission.

Ordered: 3. That this order take effect on this date, and that the Secretary of the Commission shall forthwith serve on said The Fort Scott and Nevada Light, Heat, Water & Power Company, a certified copy of this order, and that a copy of this order be filed with said schedule in the office of the Commission.

By THE COMMISSION.

[SEAL.]      T. M. BRADBURY, *Secretary*.

598

EXHIBIT "10."

STATE OF MISSOURI,

*Public Service Commission:*

Case No. 1057.

Jefferson City, Mo., Sept. 1st, 1916.

Carl Junction Gas Co., Carl Junction, Mo.

GENTLEMEN: This Commission is advised that your Company has issued notices to your customers that after the August, 1916, meter reading, they would be charged for gas consumed, at the increased rates named in your schedule of rates, which was suspended by order of this Commission, on date of August 17th, for 120 days from September 11th, the effective date of the schedule fixed.

Such an action on your part would be a violation of the Commission's order of suspension above referred to.

You are therefore requested to advise the Commission, at once, your attitude in this matter.

For the Commission:

(Signed)

T. M. BRADBURY, *Secretary*.

599

## EXHIBIT "11."

Baird &amp; Gass, Lawyers.

Carterville, Missouri,

September 19th, 1916.

Carl Junction Gas Company, Joplin, Missouri.

GENTLEMEN: I would be pleased to receive information concerning your intention and purpose in sending to your consumers in said city notices that you intended to demand an increased rate for September, which said demand, I take it, is in violation of the order of the Public Service Commission of Missouri suspending your proposed new schedule of rates which order was made on or about the 17th day of August, 1916.

My opinion the city I represent does not care to take any arbitrary action in this matter as long as the order of the Public Service Commission of Missouri is complied with and an investigation of the matter at issue may be had, therefore I deem some explanation is due the city relative to your apparent violation of the order of the Commission.

Hoping to hear from you soon in this regard and that the matter can be adjusted along equitable lines, I am

Yours respectfully,

(Signed)

A. M. BAIRD,

*City Attorney.*

600

Exhibit 12, being Complaint of City of Kansas City, Kansas, Rosedale, Kansas, and The Wyandotte County Gas Company filed with Public Utilities Commission of Kansas on 8/12/16, is omitted.

Exhibit 13, being Motion of John M. Landon to above Complaint, dated 10/2/16, is omitted.

601

## EXHIBIT "14."

Before the Public Utilities Commission of the State of Kansas.

In re Change in Rates of The Wyandotte County Gas Company.

*Application for 30-cent Rate.*

July 29, 1916.

602

Before the Public Utilities Commission of the State of Kansas.

In re Change in Rates of The Wyandotte County Gas Company.

*Application.*

Comes now The Wyandotte County Gas Company and states, represents and shows to the Commission:

That on February 1st, 1906, The Kansas City Pipe Line Company, as first party, and The Wyandotte Gas Company, as second party, entered into a certain contract in writing for a supply of gas to said The Wyandotte Gas Company; that thereafter said contract was duly assigned by the first party to the Kansas Natural Gas Company, and all the rights thereunder acquired and all the duties and obligations thereof assumed by said company; that thereafter said contract was duly assigned by second party to The Wyandotte County Gas Company, and the rights thereunder to purchase and acquire a supply of gas were acquired by said company, and said The Wyandotte County Gas Company is now and long has been receiving and obtaining its supply of natural gas for distribution and sale in Kansas City, Kansas, and Rosedale, Kansas, under and pursuant to said contract, a true and correct copy thereof being filed herewith, marked Exhibit "A," and made a part hereof.

That said contract recited that first party was the owner of gas lands and leases in the Mid-Continent gas field and a pipeline for the conveying of natural gas to Kansas City, and desired a market therefor; that second party was the owner of a franchise-ordinance for the distribution and sale of natural gas in Kansas City, Kansas, said ordinance being marked Exhibit "I," and attached to said contract; that first party agreed, during the period of said franchise until December 14th, 1924, to supply and deliver natural gas to second party at a pressure of 20 pounds at Kansas City, Kansas, "in such amount as will at all times fully supply the demand for all purposes of consumption," subject to accidents, interruptions and failures under certain conditions, "for the consideration" of  $22\frac{1}{2}$  per cent "of its gross receipts from the sale of such natural gas"; that "the party of the second part agrees to buy from the party of the first part all gas it may need to fully supply the demand for domestic consumption in said city of Kansas City, Kansas, or elsewhere in Wyandotte County, and to pay to party of the first part for the natural gas which it shall receive from said party of the first part for all purposes"  $62\frac{1}{2}$  per cent of such gross receipts; that "the party of the second part \* \* \* expressly reserves to itself the right to charge its consumers for natural gas any rates, not exceeding those mentioned in said ordinance, which it may agree upon with said consumers; but if it shall, at any time, agree to sell gas to domestic consumers \* \* \* at less than the maximum rates mentioned in said ordinance, \* \* \* and the party of the first part shall be unwilling to accept as its compensation therefor" said percentage of the gross receipts, "the party of the first part shall be under no obligations to furnish the gas so sold at such lower prices \* \* \*."

That the schedule of domestic rates referred to in said contract, as set out in said franchise-ordinance, commenced at 25 cents per thousand cubic feet and increased from time to time to 35 cents per thousand cubic feet, but said schedule was limited by a reference to a certain ordinance and schedule of rates in Kansas City, Missouri, and provided that the grantee of the franchise in Kansas City, Kansas, shall charge no greater rates for said natural gas than those fixed by said ordinance of Kansas City, Missouri; that by reason



thereof the schedule of rates referred to in said supply-contract became and was limited to the schedule of rates in force from time to time in Kansas City, Missouri; that under the provisions of said Kansas City, Missouri, ordinance the rate of 30 cents per thousand cubic feet will take effect and become operative on the 19th day of November, 1916, and The Wyandotte County Gas Company will, under the terms and provisions of said supply-contract, be entitled to a continuation of the supply of gas by the Kansas Natural Gas Company and its receiver if said 30-cent net rate is at that time put into force and effect, and the said Kansas Natural Gas Company and its Receiver, under the terms of said supply-contract, will "be under no obligations to furnish the gas sold at any lower price" than said 30-cent rate.

That the Kansas Natural Gas Company and its Receiver are "unwilling to accept as their compensation" for said gas 62½ per cent of the gross receipts from the sale of said gas at any less price than the contract rate of 30 cents per thousand cubic feet, and are at this time demanding even a greater price than that agreed upon in said contract.

That said supply-contract has never been modified, rescinded, cancelled, disavowed or set aside, and is now in full force and effect, and The Wyandotte County Gas Company is desirous of continuing the binding force and effect of said contract and acquiring and receiving its supply of gas thereunder and of performing all of the terms, conditions and provisions thereof on its part, to do which said company is required to, and will, upon the order and approval of the Commission, increase the price of natural gas from 28 cents net to 30 cents net, on and after November 19th, 1916.

That by reason of the premises The Wyandotte County Gas Company has filed with the Commission the schedule showing the changed rate to be made and put in force by said company, not as admitting or recognizing the binding force and effect upon the company, contractual or otherwise, of any rates mentioned in the ordinances of Kansas City, Kansas, Rosedale, Kansas, or Kansas City, Missouri, but for the purpose of entitling said The Wyandotte County Gas Company to continue the purchase and acquiring of natural gas from the Kansas Natural Gas Company and its Receiver, pursuant to said supply-contract; a true and correct copy of said schedule of changed rates being hereto attached, marked Exhibit "B," and made a part hereof.

Wherefore, the premises considered, The Wyandotte County Gas Company moves the Commission to issue an order approving the changes in the schedule of rates of the company from 28 cents per thousand cubic feet net to 30 cents per thousand cubic feet net, as per schedule on file and hereto attached, effective for all gas sold and delivered on and after November 19, 1916; all other rates, charges, classifications, schedules, rules, regulations and practices, including rules and regulations for the collection of bills, to remain unchanged and in full force and effect.

THE WYANDOTTE COUNTY GAS  
COMPANY,

By J. W. DANA, *Counsel*.

STATE OF KANSAS,  
*County of Wyandotte, ss:*

E. L. Brundrett, being first duly sworn, deposes and says that he is the president of The Wyandotte County Gas Company, and that he has read and knows the contents of the foregoing application, and that the statements, allegations and averments therein made and contained are true.

Further affiant saith not.

E. L. BRUNDRETT.

Subscribed in my presence and sworn to before me, this 29th day of July, 1916,

[SEAL.]

MAMIE SOLLARS,

*Notary Public Within and for Wyandotte County, Kansas.*

My commission expires May 5th, 1920.

Service of a copy of the foregoing application and schedule of changes in rates is hereby acknowledged this 31st day of July, 1916.

THE CITY OF KANSAS CITY,  
KANSAS.

By H. J. SMITH,

*City Counsellor.*

607

EXHIBIT "A."

Exhibit "A," being supply-contract dated February 1, 1906, is omitted from this printed copy but is attached to original on file, and may also be found as Exhibit "C" in the printed copies of Complaint filed Before the Public Utilities Commission of the State of Kansas, entitled The City of Kansas City, Kansas, The City of Rosedale, Kansas, and The Wyandotte County Gas Company, complainants, v. The Kansas Natural Gas Company and John M. Landon, Receiver, defendants.

608

EXHIBIT "B."

Notice to the Public Utilities Commission of the State of Kansas.

Schedule Showing Changes in Rates Desired to be Made and Put in Force by The Wyandotte County Gas Company.

*Schedule.*

The Wyandotte County Gas Company desires to, and will with the consent of the Commission, change the rate for natural gas for general consumption from 28 cents net per thousand cubic feet, as fixed by the Commission by its order of December 10th, 1915, to 30 cents net per thousand cubic feet, such change to be effective for all gas sold and delivered after special readings of consumers' meters to be

made between November 9th and 19th, 1916; said change in rates is made to entitle the Company to the continuation of the supply of natural gas by the Kansas Natural Gas Company and its Receiver, under and pursuant to a certain contract existing between The Wyandotte County Gas Company and Kansas Natural Gas Company and its Receiver, dated February 1, 1906, as will more fully appear from the application for the approval of this change in rates filed herewith.

All other rates, charges, classifications, schedules, rules, regulations and practices, including rules and regulations for the collection of bills, as heretofore filed with the Commission, shall remain unchanged and in full force and effect.

Said 30-cent rate, upon the basis of the amount of gas heretofore furnished, is non-compensatory to The Wyandotte County Gas Company, but said Company will put the same into effect, if ordered by the Commission; upon the condition, however, that the voluntary installation of said 30-cent rate shall not be held or construed to be an admission that said rate is compensatory, that said Company is or will be warranted in continuing to supply natural gas under the terms of existing ordinances of said city, or that there is any contractual liability on the part of said Company to furnish natural gas at the rates mentioned in existing ordinances for the term thereof; but said new rate is filed and will be put into effect for a trial period without waiving or working an estoppel of any of the rights, contractual or legal, of the Company, and for the purpose of entitling said Company to acquire natural gas and to continue the binding force and effect of the aforesaid supply contract.

Dated this 29th day of July, 1916.

THE WYANDOTTE COUNTY GAS  
COMPANY.

By E. L. BRUNDRETT, *President*.

Attest:

[SEAL.] M. J. BARRY, *Secretary*.

610 Exhibit 15, being Order of Public Utilities Commission of Kansas directing John M. Landon to file schedule, dated 9/13/16, is omitted.

611 EXHIBIT "16."

Schedule showing changes in Joint Rates for Natural Gas supplied by John M. Landon, as Receiver for The Kansas Natural Gas Company, established pursuant to the Decree of the United States District Court for the District of Kansas, First Division, entered in Equity Cause No. 136-N, entitled John M. Landon, as Receiver for the Kansas Natural Gas Company, Plaintiff, vs. The Public Utilities Commission of the State of Kansas et al., Defendants, on June 3, 1916.

To the Public Utilities Commission of the State of Kansas and the consumers and distributors of natural gas in the State of Kansas:

I have been served with an order made by your body, directing me to file certain schedules of charges for natural gas in certain cities

in the State of Kansas; and also to file with your body contracts between the Kansas Natural Gas Company, or myself as receiver, and any distributing companies or cities.

I do not admit the jurisdiction of your Commission to supervise rates charged by me for natural gas or to command the filing of such schedules. On the contrary I deny the authority and power of your Commission over any of my acts or proceedings for the reasons, among others, that the business in which I am engaged is interstate commerce, and not subject to the authority of your commission and because of the prior exclusive jurisdiction of the United States District Court for the District of Kansas.

However, for your information and from a desire to comply with the wishes of your honorable body as far as I consistently can, I state to you that all contracts between the Kansas Natural Gas Company, about which you have inquired, are now on file with your commission. Certain tentative conversations have been had between me and the various distributing companies but none of them have eventuated into a contract, except as below noted.

612 Prompted by the same motives as stated above I file with your body the following schedule of rates:

Take notice that acting under the authority of the District Court of the United States for the District of Kansas, in decree entered June 3, 1916, in Equity Cause No. 136-N, pending in the District Court of the United States for the District of Kansas, First Division, wherein John M. Landon, as Receiver for the Kansas Natural Gas Company was complainant, and the Public Utilities Commission of the State of Kansas et al., were defendants, I have fixed and established the following schedule of rates and joint rates for the sale of natural gas in the several cities and communities in the State of Kansas, supplied by me as Receiver for the Kansas Natural Gas Company by and through the several distributing companies hereinafter named as my agents, effective on and after the August, 1916, meter readings at or near the close of the month of August, 1916. The undersigned Receiver of the Kansas Natural Gas Company as aforesaid, and the several distributing companies as agent- for the receiver, shall and will change the rates for natural gas now in effect and will charge and collect from domestic and gas engine consumers of natural gas at the several places hereinafter named, the following rates and joint rates, to-wit:

City.	Company.	Present joint rate.	Changed joint rate.
Independence .....	Kansas Natural Gas Co....	23	20
Elk City .....	Elk City Oil & Gas Co.....	25	25
Coffeyville .....	Coffeyville Gas & Fuel Co..	23	20
Liberty .....	Liberty Gas Co.....	23	25
Altamont .....	American Gas Co.....	28	30
Oswego .....	American Gas Co.....	28	30
Columbus .....	American Gas Co.....	28	30
Scammon .....	American Gas Co.....	28	32

City.	Company.	Present joint rate.	Changed joint rate.
Weir City	Weir Gas Co.	28	32
Galena and Empire	American Gas Co.	28	32
Cherokee	American Gas Co.	28	32
Pittsburg	Home Light, Heat & Power Co., Kansas Gas & Elec- tric Co., lessee.	28	32
613			
Parsons	Parsons Gas Co.	28	30
Thayer	Thayer Gas Co.	28	30
Colony	Union Gas & Traction Co.	28	32
Welda	Union Gas & Traction Co.	28	32
Richmond	Union Gas & Traction Co.	28	32
Princeton	Union Gas & Traction Co.	28	32
Ottawa	Ottawa Gas & Electric Co.	28	32
Baldwin	Union Gas & Traction Co.	28	33
Lawrence	Citizens Light, Heat & Power Co.	28	35
Topeka	Consumers Light, Heat & Power Co.	28	*
Fort Scott	Fort Scott Gas & Electric Co.	30	35
Moran	Fort Scott & Nevada Light, Water & Power Co.	30	35
Bronson	Fort Scott & Nevada Light, Water & Power Co.	30	35
Tonganoxie	Tonganoxie Gas & Electric Co.	28	35
Leavenworth	Leavenworth Light, Heat & Power Co.	28	36
Atchison	Atchison Railway, Light, Heat & Power Co.	28	37
Wellsville	Union Gas & Traction Co.	28	33
Le Loup	Union Gas & Traction Co.	28	33
Edgerton	Union Gas & Traction Co.	28	33
Gardner	Union Gas & Traction Co.	28	33
Lenexa	Union Gas & Traction Co.	28	34
Merriam and Shawnee	Union Gas & Traction Co.	28	34
Kansas City	Wyandotte County Gas Co.	28	**
Olathe	Olathe Gas Co.	28	***

\*The first 3,000 cubic feet at fifty cents per thousand. All over 3,000 cu. ft. thirty-five cents.

\*\*Rate of thirty-five cents per thousand cu. ft. was named, which the distributing company refused to put in effect. Whereupon the Receiver notified the distributing company that gas would be furnished at the gate of the city at eighteen cents per thousand cu. ft. on and after September 1, 1916.

\*\*\*The contract with the Olathe Gas Company has been cancelled and the distributing company has agreed to pay eighteen cents for

all gas delivered to it at the gates of the city and to make its own arrangement with the consumers.

NOTE.—All of the above rates are net to the consumer and subject to a penalty of three cents per thousand cu. ft. if not paid within ten days from time of presentation of bill.

The minimum bill of fifty cents per thousand cu. ft. applies to all of the above rates, the same as under former schedule filed.

Industrial and boiler gas will be furnished only at such times as such uses will not interfere with domestic service and only at  
614 such rates as may be specially agreed upon by the consumer and the receiver or the receiver's agent specially authorized.

JOHN M. LANDON,

*Receiver for the Kansas Natural Gas Company.*

September 21, 1916.

The Public Utilities Commission, State House, Topeka, Kansas.

GENTLEMEN: In connection with the schedule filed yesterday by John M. Landon, as Receiver for the Kansas Natural Gas Company, it should be noted that the reason for the rate of twenty cents at Independence and Coffeyville is as follows:

Pursuant to your order of December 10, 1915, a rate of twenty-three cents at Independence and Coffeyville was ordered in by the receiver. This was an increase, as you will remember from twenty to twenty-three cents. Shortly thereafter injunction suits were brought by citizens of Independence and Coffeyville, restraining the receiver from increasing the rate from twenty to twenty-three cents. A temporary injunction was granted and the cases are still pending. We are informed that they will in all probability be disposed of at the coming term of the District Court of Montgomery County. With the temporary injunction allowed it was impossible for the Receiver to enforce the twenty-three cent rate and twenty cents is what he is now collecting.

Kindly attach this letter to the schedule filed as a notation thereon.

Yours very truly,

JOHN M. LANDON.

R. S.-E. L.

615

## EXHIBIT "17."

At the Regular Session of the Public Utilities Commission for the State of Kansas, Held at its Office, in Topeka, Kansas, This 21st Day of September, A. D. 1916,

Joseph L. Bristow, John M. Kinkel, C. F. Foley, Commissioners.

## Docket No. 1571.

In the matter of the investigation of the rates, joint rates, rules, service regulation and practices, either now existing or sought to be established by the Kansas Natural Gas Company or John M. Landon, Receiver thereof, in supplying gas to their customers within the State of Kansas,

*Order.*

Whereas, Complaint has been made to the Commission that the following rates:

City.	Company.	Present joint rate.	Changed joint rate.
Independence	Kansas Natural Gas Co....	23	20
Elk City	Elk City Oil & Gas Co....	25	25
Coffeyville	Coffeyville Gas & Fuel Co..	23	20
Liberty	Liberty Gas Co.....	23	25
Altamont	American Gas Co.....	28	30
Oswego	American Gas Co.....	28	30
Columbus	American Gas Co.....	28	30
Seammon	American Gas Co.....	28	32
Weir City	Weir Gas Co. ....	28	32
Galena and Empire	American Gas Co.....	28	32
Cherokee	American Gas Co.....	28	32
Pittsburg	Home Light, Heat & Power Co., Kansas Gas & Electric Co., lessee.....	28	32
Parsons	Parsons Gas Co.....	28	30
Thayer	Thayer Gas Co.....	28	30
Colony	Union Gas & Traction Co..	28	32
Welda	Union Gas & Traction Co..	28	32
Richmond	Union Gas & Traction Co..	28	32
Princeton	Union Gas & Traction Co..	28	32
Ottawa	Ottawa Gas & Electric Co..	28	32
Baldwin	Union Gas & Traction Co..	28	33

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Lawrence	Citizens Light, Heat & Power Co. ....	28	35
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City.	Company.	Present joint rate.	Changed joint rate.
Topeka .....	Consumers Light, Heat & Power Co. ....	28	*
Fort Scott .....	Fort Scott Gas & Electric Co.	30	35
Moran .....	Fort Scott & Nevada Light, Water & Power Co. ....	30	35
Bronson .....	Fort Scott & Nevada Light, Water & Power Co. ....	30	35
Tonganoxie .....	Tonganoxie Gas & Electric Co. ....	28	35
Leavenworth .....	Leavenworth Light, Heat & Power Co. ....	28	36
Atchison .....	Atchison Railway, Light, Heat & Power Co. ....	28	37
Wellsville .....	Union Gas & Traction Co.	28	33
Le Loup .....	Union Gas & Traction Co.	28	33
Edgerton .....	Union Gas & Traction Co.	28	33
Gardner .....	Union Gas & Traction Co.	28	33
Lenexa .....	Union Gas & Traction Co.	28	34
Merriam and Shawnee...	Union Gas & Traction Co.	28	34
Kansas City .....	Wyandotte County Gas Co.	28	**
Olathe .....	Olathe Gas Co. ....	28	***

\*The first 3,000 cubic feet at fifty cents per thousand. All over 3,000 cu. ft. thirty-five cents.

\*\*Rate of thirty-five cents per thousand cu. ft. was named, which the distributing company refused to put in effect. Whereupon the Receiver notified the distributing company that gas would be furnished at the gate of the city at eighteen cents per thousand cu. ft. on and after September 1, 1916.

\*\*\*The contract with the Olathe Gas Company has been cancelled and the distributing company has agreed to pay eighteen cents for all gas delivered to it at the gates of the city and to make its own arrangement with the consumers.

NOTE.—All of the above rates are net to the consumer and subject to a penalty of three cents per thousand cu. ft. if not paid within ten days from time of presentation of bill.

The minimum bill of fifty cents per thousand cu. ft. applies to all of the above rates, the same as under former schedule filed.

Industrial and boiler gas will be furnished only at such times as such uses will not interfere with domestic service and only at such rates as may be specially agreed upon by the consumer and the receiver or the receiver's agent specially authorized.

Which have been filed by John M. Landon, Receiver of the Kansas Natural Gas Company with the Commission, are unreasonable, and that some of the rules, regulations and practices of the Kansas  
617 Natural Gas Company and of John M. Landon, its Receiver, are unlawful and unreasonable, and it appearing that a full investigation should be had by the Commission of said rates, joint rates, service, rules, regulations and practices, for the purpose of making such orders as may be necessary for fixing and substituting therefor such rates, joint rates, rules, service and regulations as shall be just and reasonable, and for the purpose of determining to what extent, if any, such practices violate the laws of the State of Kansas.

It is therefore ordered, That the Public Utilities Commission for the State of Kansas, without formal pleadings, upon its own motion, enter upon a general investigation of said rates, joint rates, rules, service, regulations and practices, and if after full hearing and investigation the Commission shall find that any of such rates, joint rates, rules, service, or regulations are unjust, unreasonable, unjustly discriminatory, or unduly preferential, that it fix and order substituted therefor such rates, joint rates, rules, service, regulations and practices as shall be just and reasonable, and if the Commission shall find that any of such practices violate the laws of the State, that appropriate action shall be taken.

It is further ordered, That such investigation shall be had by the Commission at its office in Topeka, Kansas, on October 24, 1916, at ten o'clock a. m. of that day, and that notice of the time and place when and where the investigation hereby ordered shall be had be served upon the Kansas Natural Gas Company and John M. Landon, its Receiver, and upon the following distributing companies:

Kansas Natural Gas Co.  
Elk City Oil & Gas Co.  
Coffeyville Gas & Fuel Co.  
Liberty Gas. Co.  
American Gas Co.  
Weir Gas Co.

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Home Light, Heat & Power Co., Kansas Gas & Electric Co., lessee.  
Parsons Gas Co.  
Thayer Gas Co.  
Union Gas & Traction Co.  
Ottawa Gas & Electric Co.  
Citizens Light, Heat & Power Co.  
Consumers Light, Heat & Power Co.  
Fort Scott Gas & Electric Co.  
Fort Scott & Nevada Light, Water & Power Co.  
Tonganoxie Gas & Electric Co.  
Leavenworth Light, Heat & Power Co.  
Atehison Railway, Light, Heat & Power Co.

Wyandotte County Gas Co.  
Olathe Gas Co.

at least thirty days before said hearing.

By Order of the Commission.

JOSEPH L. BRISTOW,  
JOHN M. KINKEL,  
C. F. FOLEY,  
*Commissioners.*

CARL W. MOORE, *Secretary,*

By M. M. GRAY.

619 Exhibit 18, being Petition of Public Utilities Commission for Alternative Writ of Mandamus in State ex rel. v. Kansas Natural and John M. Landon, dated 9/22/16, is omitted.

Exhibit 19, being Petition of Public Utilities Commission for Writ of Mandamus in State ex rel. v. Landon, Receiver, Olathe Gas Co. and City of Olathe, dated 9/22/16, is omitted.

Exhibit 20, being Letter by The Wyandotte County Gas Company by Mr. Dana, in answer to circular received from John M. Landon, dated 6/27/16, is omitted.

Exhibit 21, being Letter by City of Kansas City, Kansas, by H. J. Smith, in answer to circular received from John M. Landon, dated 6/27/16, is omitted.

620 Exhibit 22, being letter of The Wyandotte County Gas Company by Mr. Dana, in answer to letter from Mr. Landon of 8/23/16, dated 8/26/16, is omitted.

621 EXHIBIT "23."

Law Department.

Kansas City, Missouri.

J. A. Harzfeld, City Counselor.

June 27, 1916.

Mr. T. S. Salathiel, Attorney at Law, Independence, Kansas.

DEAR SIR: I desire to acknowledge the receipt by mail of the printed notice that on Thursday, June 29, 1916, John M. Landon, as receiver for the Kansas Natural Gas Company, will present to the District Court of Montgomery County his special report as receiver and ask for special instructions to guide him in the establishment at a rate for natural gas to be charged by the Kansas City Gas Company and by him as receiver to consumers of natural gas in the city of Kansas City, Missouri, and requesting Kansas City to present evidence for the purpose of showing what rate should be charged and collected from consumers in Kansas City, Missouri.

I desire to state:

1. That Kansas City, Missouri, denies that either the receiver of the Kansas Natural Gas Company has any right or authority to sell, deliver, or distribute any gas in Kansas City, Missouri, or make any charge therefor either through the Kansas City Gas Company, or otherwise.

2. We desire to state that the Kansas Natural Gas Company has no contract, franchise, or other right to do business in Kansas City, Missouri.

3. That Kansas City, Missouri, has a valid and existing contract with the Kansas City Gas Company whereby said Kansas City Gas Company is under obligation to Kansas City, Missouri, to procure and furnish gas, and to sell the same to the inhabitants of Kansas City at certain rates fixed in a franchise ordinance granted 622 the said Kansas City Gas Company, and that no other company has any such right.

4. That the Kansas City Gas Company is not a distributing company but is a local supply company and under obligations to furnish an adequate supply of gas to the inhabitants of Kansas City, Missouri, and to obtain the same without reference to any other companies.

5. That in the equity suit in the United States District Court for the District of Kansas, in the opinion handed down at St. Paul, the United States Court there declared that so far as Kansas City, Missouri, was concerned the franchise ordinance granting a franchise to the Kansas City Gas Company to supply Kansas City with gas at rates in said franchise fixed was considered by the court, and after consideration it refused to grant to the receiver any relief as against Kansas City, Missouri, or to determine at that hearing whether or not said contracts were valid contracts, or whether or not any court had a right to set them aside.

6. In that opinion the United States Court further reserved jurisdiction over the subject matter of the application for the injunction, and the parties, and reserved the right to modify its orders and decrees, and reserved the right to add to, take from, modify or supplement the injunction decree.

For the foregoing reasons and many others, it would seem to us neither advisable nor proper to present evidence to the District Court of Montgomery County, Kansas, in relation to any matter of issue that appears in the bill of equity filed in the District Court of the United States for the District of Kansas.

Very truly yours,

J. A. HARZFELD,

*City Counselor.*

JAH-CR.

623 Exhibit 24, being letter of Kansas City Gas Company by Mr. Dana, in answer to letters from Mr. Landon of 8/4/16 and 8/12/16, dated 8/18/16, is omitted.

Exhibit 25, being letter of Kansas City Gas Company by Mr. Dana, in answer to letter from Mr. Landon of 8/22/16, dated 8/26/16, is omitted.

Exhibit 26, being Application of Kansas Natural Gas Company for discharge of Receiver, filed in the District Court of Montgomery County, Kansas, dated 9/20/16, is omitted.

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## EXHIBIT "27."

In the District Court of Montgomery County, Kansas.

STATE OF KANSAS, Plaintiff,

VS.

INDEPENDENCE GAS COMPANY et al., Defendants.

*Motion of Plaintiff to Dismiss.*

Comes now said plaintiff, by S. M. Brewster, its duly elected, qualified and acting Attorney General, and shows to the court that all violations of the anti-trust laws of the State of Kansas by the defendant herein have been corrected, and that the objects of the above entitled action have been accomplished, and that the continuation of the receivership is detrimental to the public interests and to the public service for the giving of which said defendants were incorporated:

Wherefore, Plaintiff dismisses this its suit, and moves the court to dismiss this suit as to all of the defendants herein, and to discharge the receivers heretofore appointed herein, and each of them, and to order the costs of this action paid out of the estate now in the hands of said receivers.

And said plaintiff, while dismissing and moving the court to dismiss this suit and to discharge said receivers in any event, further shows to the court that by the terms of the stipulation entered into herein on the 17th day of December, 1914, which stipulation is a part of the record of this cause in this court, it is provided in paragraph three that the creditors and lien-holders against the property in the hands of the receivers consent to the deferring of their rights to foreclose and assert their several claims against said property, upon condition that their investments and claims be returned with interest within the six year properly secure the return of the balance, and that, while said stipulation provides for the continuation of said receivership for a period of six years from the date thereof, it is provided in paragraph ten thereof that the court may discharge said receivership and conclude said cause at an earlier date.

625 And plaintiff further shows to the court that at the time of the entering into of said stipulation the indebtedness which was a lien upon the property now in the hands of said receivers exceeded the sum of \$5,780,000, and that said indebtedness has now been reduced to the sum of less than \$3,300,000, and that sufficient of said indebtedness has been paid to secure the return of the balance thereof, in that the property now in the hands of said receivers is ample security for all of said indebtedness now unpaid, and that

there is now no sufficient reason for the retention of said receivers, and the court should, in accordance with said stipulation, discharge said receivers and conclude said cause.

Wherefore, Plaintiff further moves that the dismissal of said cause and the discharge of said receivers be made without prejudice to the rights of the parties under said stipulation, and in accordance with and pursuant of the terms thereof.

S. M. BREWSTER,

*Attorney General, Attorney for Plaintiff.*

No. 13476. Filed this 23rd day of Aug. A. D. 1916. W. R. Hobbs, Clerk. By Wm. Mibeek, Deputy.

Filed in the District Court on Oct. 11, 1916. Morton Albaugh, Clerk.

626 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANTON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Reply to Petition to Dissolve Injunction, Supplemental Answer, Counter Claim, and Cross Bill of the Wyandotte County Gas Company.*

Comes now the plaintiff and for his reply alleges and says:

1.

That he denies that Ordinance 6051 of Kansas City, Kansas, is still in force and effect as set out in paragraph 2 of said supplemental answer.

2.

That he denies that Ordinance No. 295 of Rosedale, Kansas, is still in force and effect, and that said rates are contractual, as alleged in paragraph 3 of said supplemental answer.

3.

That he denies that said Wyandotte County Gas Company is, and for some time past has been, receiving its supply of natural gas for distribution and sale in said cities under and pursuant to said con-

tract marked Exhibit C attached to said supplemental answer, as set out in paragraph 4 of said supplemental answer. Plaintiff denies that the Kansas Natural Gas Company by assuming the obligations of said supply contract agreed to furnish said Wyandotte County Gas Company natural gas for the term of said ordinance, or to use all due diligence to acquire and deliver the same in such amount as to at all times fully supply the demands and wants of said Wyandotte County Gas Company in continuing to supply natural gas under the terms of said ordinance, Ordinance No. 6051, and at the price therein named, as alleged in paragraph 6 of said supplemental answer.

## 3

That he denies that the Kansas Natural Gas Company undertook and agreed to furnish said Wyandotte County Gas Company natural gas for the term of said Ordinance No. 6051, or to use all due diligence to acquire and deliver the same in such amount as would at all times supply the demand, or to furnish said Wyandotte County Gas Company and the Kansas City Gas Company fifty per cent. of the gas which said Kansas Natural Gas Company might be able to produce or control from time to time or agreed to furnish said natural gas during the life of said ordinance on the basis set out in said paragraph 11 of the said supplemental answer.

## 4.

That he denies that said contract of February 1, 1906, has never been modified, rescinded, cancelled or disavowed, or that the same is now in full force and effect and binding upon the Kansas Natural Gas Company or its receivers.

## 5.

That he denies that said twenty-eight cent rate mentioned in paragraph 13 of said supplemental answer is in excess of the rate which said Kansas Natural Gas Company or its receiver, has agreed that the Wyandotte County Gas Company should charge and collect from customers in Kansas City, Kansas, and Rose-dale, Kansas.

## 6.

That he denies that the effect of the decree of injunction issued in this case on June 3, 1916, is to leave in full force and effect the supply contract and the rates therein fixed and agreed upon, as alleged in paragraph 17.

## 7.

That he denies there has been no complaint filed in this court for the cancellation, abrogation or disavowal of said contract, as set out



in paragraph 26 of said supplemental answer, and alleges that the bill of complaint filed in this cause does pray for the cancellation of said supply contract.

8.

Plaintiff further says that unless he receives eighteen cents at the gates of the distributing plant of the defendant he will not be able to secure compensatory returns or an average of two-thirds of thirty-two cents per thousand cubic feet as stated in the supplemental bill of complaint filed herein and made a part of this reply.

9.

He denies that he is compelled to file schedules with The Public Utilities Commission of the State of Kansas for charges on gas transported by him in interstate commerce, but alleges the fact to be that he has filed with said commission the schedule as shown by the supplemental bill of complaint filed herein.

629

10.

That he denies that it is necessary to obtain permission from the Public Utilities Commission of the State of Kansas to change the schedule of rates charged by the said Wyandotte County Gas Company in the cities of Kansas City, Kansas, and Rosedale, Kansas, as alleged in paragraph 37 of said supplemental answer.

11.

That he denies that the rates fixed by this plaintiff and which he sought the Wyandotte County Gas Company to put into force and effect in the territory served by it, would be inadequate and fail to give the said Wyandotte County Gas Company an adequate return for the services rendered by it in the distribution of natural gas. And denies that the price fixed by him for said cities would so impair the earnings and income of this plaintiff as to make it impossible for him to operate the pipe line system and furnish natural gas.

12.

That he denies that the increase in price charged for natural gas delivered to consumers, as set out in the supplemental bill of complaint filed herein, would cause a great reduction in the income and earnings of the Kansas Natural Gas Company or this plaintiff.

13.

That he alleges in answer to the allegations of paragraph 42 of said supplemental answer, that the trustee of the first mortgage bonds of the Kansas Natural Gas Company has filed in this proceeding an an-

swer praying for the same relief as asked by this plaintiff, and that this plaintiff in his original bill of complaint filed herein asked for the cancellation of the supply contract in question.

630

14.

That he denies that the judgment of the state court of February 15, 1913, has been fully performed, as alleged in paragraph 60 of said complaint.

15.

That he denies that the receivers Landon and Litchfield or the State of Kansas signed said creditors' agreement for the sole purpose set out in paragraph 62 of said supplemental answer, but alleges that the purpose for which said agreement was signed by said parties is fully set out in said agreement itself and in the bill of complaint filed herein.

16.

That he denies that the conduct of this plaintiff in operating the business of the Kansas Natural Gas Company is in violation of the judgment of the District Court of Montgomery County, Kansas, or in violation of law.

17.

That this plaintiff denies each and every other allegation in said supplemental answer contained, except as herein admitted or as set forth in said original bill of complaint.

Plaintiff asks that this reply be considered as also a reply to the original counter claim as filed by the said Wyandotte County Gas Company in its answer heretofore filed in this case. The plaintiff further alleges that said defendant has breached said contract by refusing and failing to collect the maximum rates and the rates prescribed in said ordinance.

The plaintiff further alleges that said defendant has breached said contract by refusing and failing to collect the maximum rates,  
631 and the rates prescribed in said ordinance.

JOHN H. ATWOOD,  
ROBERT STONE,  
CHESTER I. LONG.

Filed in the District Court on October 11, 1916. Morton Albaugh,  
Clerk.

632 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of Defendants John T. Barker, Attorney-General of the State of Missouri; William G. Busby, Counsel of the Public Service Commission of the State of Missouri; The Public Service Commission of the State of Missouri, and John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw, and Eugene McQuillin, Members of the Public Service Commission of the State of Missouri, to Plaintiff's Supplemental Bill of Complaint.*

These answering defendants, above named, again and at all times hereafter, saving and reserving to themselves all manner of benefits and advantages and exceptions which have been had or taken, or which may be had or taken, to the many errors, uncertainties,  
633 imperfections and inefficiencies in the plaintiff's bill of complaint, and in the supplemental bill of complaint herein filed, and for answer to said supplemental bill of complaint, or unto so much thereof as these defendants are advised is material or necessary for them to make answer unto, answering, say:

They deny that since the filing of the decree of preliminary injunction against a portion of their codefendants herein on June 3, 1916, there have occurred, transpired and come to the knowledge of the plaintiff new and subsequent facts and occurrences relating to and directly affecting the subject matter of this suit, for and on account of which the plaintiff is entitled to any relief as in his supplemental bill of complaint prayed for, and deny the right of plaintiff at this time to file said supplemental bill of complaint.

#### I.

These answering defendants, above named, further answering said supplemental bill of complaint, admit that on or about the 29th day of July, 1916, plaintiff filed in this cause his bond in the sum of \$750,000.00, under the order of this court, and that said bond has been approved by the Honorable Ralph E. Campbell, United States District Judge.

These defendants further answering say that no writ of preliminary injunction was authorized or issued out of the office of the clerk of this district court against these defendants, and that they are not advised as to the writ of preliminary injunction, if any, nor the

nature of the same, issued out of this District Court against their co-defendants herein.

Further answering, these defendants are without knowledge of the facts of plaintiff's allegation that plaintiff on or about August 14, 1916, in the due course of the administration of the estate of the Kansas Natural Gas Company in his hands as such Receiver, prepared schedules and directed various distributing companies selling and distributing natural gas in the states of Kansas and Missouri for said Receiver, to put into force and effect on September 1, 1916, any rates which, upon investigation, he deemed reasonable, compensatory and just, and these defendants are without knowledge of the said rates so alleged to be established and ordered by the said Receiver, and without knowledge that such rates, if any, are graduated according to the distance the several cities supplied by the Receiver are located from the gas fields, and ask that strict proof be required to be made of said allegations.

These defendants are without knowledge as to whether the rates so alleged to be established by the Receiver, plaintiff herein, will produce to said Receiver an average price of about thirty-two cents per thousand cubic feet for domestic gas supplied by him to consumers in the several cities in Kansas and Missouri, and deny that this plaintiff is entitled to an average rate of thirty-two cents per thousand cubic feet for natural gas transported and sold by him to distributing companies in the cities of Missouri.

Further answering, these defendants deny that this court in and by its opinion delivered in this case on June 3, 1916, or that the United States District Court for the Western District of Missouri, St. Joseph Division, in the case of St. Joseph Gas Company, plaintiff, v. John T. Barker et al., defendants, found and determined that a rate of thirty-two cents per thousand cubic feet was the reasonable and average rate to consumers of natural gas in cities of the State of Missouri.

These defendants further answering deny that the companies distributing natural gas in Missouri cities furnished by the plaintiff are the agents of plaintiff, but these defendants aver that on the contrary said companies are local companies and purchase from plaintiff the natural gas procured from him, and distributed and sold by said local companies.

## II.

These answering defendants further answering say that they admit that on or about August 10, 1916, the Kansas City Gas Company, one of the defendants herein, filed with the Public Service Commission of the State of Missouri, its complaint against the plaintiff as receiver for Kansas Natural Gas Company, and against said Kansas Natural Gas Company, in which complaint said Kansas City Gas Company asked the Public Service Commission of Missouri to make investigation concerning the amount of gas which plaintiff would be able to supply during the winter of 1916-17, and subsequent years, and praying that the Public Service Commission of Missouri would require

said plaintiff and said Kansas Natural Gas Company to comply with the contracts of November 17 and December 3, 1906, made by the said Kansas Natural Gas Company and said Kansas City Gas Company, a copy of which said complaint is filed herewith and marked "Exhibit 1."

These answering defendants further say that on said 10th day of August, 1916, said complaint was received by the Secretary of the Public Service Commission of Missouri, and on said day notice of the filing of said complaint was given to the plaintiff herein, as Receiver of the Kansas Natural Gas Company, at Independence, Kansas, to Kansas Natural Gas Company, Charles D. Bell, Agent, Joplin, Missouri, and to F. J. Cole, Agent, J. M. Landon, Receiver, the Kansas Natural Gas Company, 4414 Terrace avenue, Kansas City, Missouri. A copy of said notice and order is hereto attached and made a part hereof, and marked "Exhibit 2."

These answering defendants further answering deny that any order has been made by the Public Service Commission of Missouri setting down for hearing the aforesaid complaint of Kansas City Gas Company, or the matters and things therein set forth. That it is provided in section 107 of the Public Service Commission Act of the State of Missouri that upon the filing of a complaint against a gas or other public service corporation, the Commission shall cause a copy thereof to be served upon the corporation or person complained of, and it is further provided by said section 107 that the Commission shall fix the time when and the place where a hearing will be had upon the complaint, and shall serve notice thereof not less than ten days before the time set for such hearing, unless the Commission shall find that public necessity requires that such hearing shall be held at an earlier date.

These answering defendants further say that the Public Service Commission of Missouri has not set down the complaint for hearing, nor ordered the same to be set down for a hearing, nor undertaken to inquire into, nor to hear and determine the matters and things set forth in said complaint of the Kansas City Gas Company, and has made no order directed to nor against the plaintiff herein as Receiver of the Kansas Natural Gas Company, other than the formal notice of said complaint given to plaintiff and to said Kansas Natural Gas Company by the Secretary of the Public Service Commission of Missouri, as provided by section 107 of the Public Service Commission Act.

And these defendants further answering, deny that they have undertaken or are about to undertake to require plaintiff to make extensions to pipe lines controlled and operated by him in the States of Oklahoma and Kansas, or elsewhere, or required plaintiff to do and perform any other acts and things which are a substantial burden upon and an undue interference with the business in which plaintiff is engaged, or in conflict with the decree of this court of June 3, 1916.

These answering defendants further deny that this court by its decree of June 3, 1916, made any orders directed against these answering defendants.

## III.

These defendants further answering, admit that on the 10th day of August, 1916, the Kansas City Gas Company, one of the defendants herein, filed a new schedule of rates for natural gas with the Public Service Commission of Missouri, applying to Kansas City, Missouri, such new schedule to become effective on or after November 19, 1916, in conformity with the terms of the contracts of November 17 and December 3, 1906, between the Kansas City Gas Company and the Kansas Natural Gas Company, and that on said 10th day of August, 1916, said Kansas City, Missouri, through its City Counselor, agreed and consented to said change of rates, and approved the same.

These answering defendants say that this court, in its decision of June 3, 1916, rendered the following statement and opinion concerning the contracts between the various cities and distributing companies, defendants in this cause: "It has been and is not necessary for this court as at present constituted to determine the validity of the city ordinances, the contracts between the cities and distributing companies, the contracts between the distributing companies and the natural gas company, and the duties and obligations of the receiver under them, in order to adjudicate the issues, it was constituted to decide, and for that reason no opinion is expressed or adjudication made concerning it.

These answering defendants say that this court having as above stated withheld any opinion as to said contracts, and as to the contract between the Kansas City Gas Company and the Kansas Natural Gas Company, and the ordinance of Kansas City, Missouri, the defendants, the Public Service Commission of Missouri, permitted said new schedule of rates, purporting to be in accordance with the contract existing between the Kansas City Gas Company and the Kansas Natural Gas Company with the consent of said Kansas City, to be filed as of the date of August 10, 1916, and made and entered its order in that behalf, as is set forth by Exhibit 3, attached to and made a part of plaintiff's supplemental bill of complaint.

## IV.

These answering defendants say that they are without any knowledge of the matters and things pleaded in paragraph 4 of said bill of complaint, and ask that plaintiff be held to strict proof of the same.

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## V.

These answering defendants further answering, say that they are without knowledge of the notice, if any, given by plaintiff to the Weston Gas and Light Company, concerning the rates of natural gas to consumers in Weston, Missouri, transported from Kansas and Oklahoma, as to the rates to be charged thereon on and after Sep-

tember 20, 1916. These defendants admit that on the 15th day of September, 1916, said Weston Gas and Light Company filed with the Public Service Commission of Missouri, to be effective September 20, 1916, a schedule containing certain new rates and charges applicable to the natural gas service afforded at Weston, said new rates and charges constituting an increase of thirteen cents per thousand cubic feet in the net charges for illuminating gas. That on the 20th day of September, 1916, said Public Service Commission of Missouri, under the provisions of section 70 of the Public Service Commission Act of Missouri, suspended said proposed new schedule of rates for a period of 120 days, pending and for the purpose of an investigation into the service and rates, and the reasonableness of such change. That said action was and is in accordance with the authority of the Public Service Commission of Missouri under the provisions of said section 70 of the Public Service Commission Act of the State of Missouri. That this court in its said opinion in this cause rendered June 3, 1916, referring to a like action of the Public Service Commission of Missouri, said:

"Under the law of that state the commission may, upon the filing of a proposed schedule of rates, suspend its operation pending a hearing. It does not appear that a hearing as to these last-mentioned rates has ever been had, so that it cannot be said what 640 will be the action of the commission as to such rate, and it further appears that the applications for the allowance of such schedules have been since withdrawn."

These answering defendants deny that said Weston Gas and Light Company is the agent of the plaintiff Receiver, or of the Kansas Natural Gas Company, but allege that said Weston Gas and Light Company purchases the natural gas received by it from plaintiff, and these defendants deny that said order of the Public Service Commission of Missouri is an interference with the business with which plaintiff receiver is engaged with said Weston Gas and Light Company, and deny that the sale and distribution of natural gas by the Weston Gas and Light Company to consumers is done as the agent of the plaintiff, and deny that the same is interstate commerce, and deny that plaintiff in and by the sale and distribution of natural gas to the consumers of the Weston Gas and Light Company, is engaged in interstate commerce.

## VI.

These answering defendants, further answering, say that they are without knowledge of the direction, if any, given by plaintiff to the Joplin Gas Company, and of the notice given by plaintiff to the Joplin Gas Company, concerning the rates on natural gas transported from Kansas and Oklahoma to consumers in Joplin, Missouri.

Further answering, these defendants say that said Joplin Gas Company did, on or about the 8th day of August, 1916, file with the Public Service Commission of Missouri a new schedule of rates for natural gas, raising the rate to thirty cents per thousand cubic



641 feet, net, with a net minimum charge of sixty cents per thousand cubic feet. That the city of Joplin, one of the defendants herein, did file with the Public Service Commission of Missouri its complaint against said new schedule of rates, which complaint is as set forth in plaintiff's Exhibit 6, attached to his supplemental bill of complaint.

That afterward, on the 8th day of September, 1916, defendants, the Public Service Commission of Missouri, under and pursuant to the provisions of section 70 of the Public Service Commission Act of Missouri, by order made, suspended said schedule of rates for 120 days pending investigation of the existing and said proposed rates for gas service furnished to consumers at Joplin by the said Joplin Gas Company, in order that the Commission might determine the reasonableness and lawfulness of said proposed changes, which said order is as shown by Exhibit 7, annexed to plaintiff's supplemental bill of complaint.

That a hearing upon said complaint of the city of Joplin has not been had, and no final order, or order of any kind, has been made thereon by defendants, the Public Service Commission, other than the one last above mentioned, suspending said rates for 120 days.

Further answering, the defendants deny that Joplin Gas Company is the agent of the plaintiff Receiver, or of the Kansas Natural Gas Company, but allege that whatever of natural gas said Joplin Gas Company receives from plaintiff Receiver, or from the Kansas Natural Gas Company, is purchased by said Joplin Gas Company, and deny that plaintiff or said Kansas Natural Gas Company furnishes directly to the consumers of natural gas in the city of Joplin the natural gas distributed to them by said Joplin Gas Company, and

642 deny that plaintiff or said Kansas Natural Gas Company, through the furnishing of natural gas by said Joplin Gas Company to consumers in the city of Joplin, is engaged in interstate business.

Further answering, defendants say that the Secretary of the Public Service Commission of Missouri did on the 19th day of September, 1916, write to Messrs. Spencer and Grayston, as Attorneys for the Joplin Gas Company, the letter mentioned in plaintiff's supplemental bill of complaint and attached thereto as Exhibit 8. That said letter was written solely in connection with and pursuant to said order of suspension pending an investigation and hearing of the reasonableness and lawfulness of the change in rates proposed by said Joplin Gas Company.

Further answering, these defendants say they are without knowledge of any alleged notice purported to have been given by E. F. Cameron, as City Attorney of Joplin, Missouri, and that any attempt by the Joplin Gas Company to collect a proposed rate of thirty cents per thousand cubic feet for gas would subject the officers and employees of said Joplin Gas Company to criminal prosecution, or to any penalties on account of the same.

These answering defendants further say that they are without knowledge of the number of patrons said Joplin Gas Company has,

and are without knowledge of any threats made by any one against said Joplin Gas Company other than the notice aforesaid given by the Secretary of the Public Service Commission to the Joplin Gas Company, requiring an observance of said order of suspension during the time thereof, or pending the investigation by said Public Service Commission of the reasonableness and lawfulness of the action of said Joplin Gas Company.

643 These defendants say that said Joplin Gas Company is a local corporation organized and doing business under the laws of the State of Missouri, and these defendants deny that the acts of the Public Service Commission of Missouri are a burden upon or an interference with the interstate commerce business in which plaintiff is alleged to be engaged, and deny that the act of the Public Service Commission suspending said proposed new rates pending an investigation by it of the action of the Joplin Gas Company, a local Missouri corporation, is a substantial burden upon or an undue interference with interstate commerce, or is in conflict with the decree of this court of June 3, 1916.

## VII.

These answering defendants, further answering, say that they are without knowledge of the particular acts of plaintiff in the promulgation and establishment of new rates for natural gas after the taking effect of said preliminary injunction, and are without knowledge of the notice, if any, given by plaintiff to the Fort Scott and Nevada Light, Heat, Water and Power Company, concerning the rates on natural gas to be charged to consumers in Nevada.

Defendants further answering, say that said Fort Scott and Nevada Light, Heat, Water and Power Company, on the 17th day of August, 1916, filed a proposed new schedule of rates with the Public Service Commission of Missouri, under which there would be a charge of thirty-five cents per thousand cubic feet net with a minimum charge of fifty cents per month, to consumers of natural gas in the city of Nevada. That said Public Service Commission, under and by authority of and pursuant to the provisions of section 70  
644 of the Public Service Commission Act of Missouri, on the 18th day of September, 1916, made an order suspending said proposed schedule of rates for 120 days, pending a hearing and investigation of the reasonableness and lawfulness of said proposed change and of the said act of the Fort Scott and Nevada Light, Heat, Water and Power Company, in the premises. That said order is as set forth in the exhibit numbered 9, attached to plaintiff's supplemental bill of complaint.

Further answering, these defendants deny that the sale of natural gas in the city of Nevada to consumers is made by said Fort Scott and Nevada Light, Heat, Water and Power Company as the agent of the plaintiff Receiver, or of the Kansas Natural Gas Company, but that said Fort Scott and Nevada Light, Heat, Water and Power Company is an independent local corporation and purchases natural

gas furnished by it to consumers in the city of Nevada from plaintiff or from said Kansas Natural Gas Company, and that the furnishing of natural gas to consumers in the city of Nevada is not a business of interstate commerce transacted by the plaintiff or by said Kansas Natural Gas Company, but is a business transacted by the said Fort Scott and Nevada Light, Heat, Water and Power Company and its consumers in the city of Nevada, and deny that said order of the Public Service Commission of Missouri is a burden upon and an interference with the interstate commerce business, if any, of plaintiff, or of said Kansas Natural Gas Company, and deny that the order of said Public Service Commission is in conflict with the order of this court of June 3, 1916, and aver that said order is an order of temporary suspension made pending a hearing and determination of the reasonableness and lawfulness of the acts

645 of said Fort Scott and Nevada Light, Heat, Water and Power Company, and that defendants, the Public Service Commission of Missouri, have made no order in the premises other than said order of suspension for 120 days, and defendants aver that the making of said order is within the rights of the defendants as constituting the Public Service Commission of Missouri, as defined by this court in its opinion of June 3, 1916.

### VIII.

These answering defendants, further answering, say that they are without knowledge of what direction may have been given by the plaintiff in the promulgation of new rates, or what notice was given by plaintiff to the Carl Junction Gas Company concerning rates on natural gas transported from Kansas and Oklahoma to consumers in Carl Junction, Missouri.

Further answering, these defendants say that said Carl Junction Gas Company, on the 17th day of August, 1916, did file a proposed schedule of new rates for natural gas with the Public Service Commission of Missouri, and that said Public Service Commission of Missouri, under and in accordance with the provisions of section 70 of the Public Service Commission Act of Missouri, on or about said 17th day of August, 1916, made an order suspending for a period of 120 days, said proposed schedule of rates in Carl Junction, Missouri, pending a hearing and investigation as to the reasonableness and lawfulness of said proposed new rates and charges. A copy of said order is herewith filed and marked "Exhibit 3," plaintiff having not filed with his supplemental bill of complaint a copy of said order.

646 The defendants further admit that on or about the first day of September, 1916, the Secretary of the Public Service Commission of Missouri gave to said Carl Junction Gas Company the notice mentioned in the supplemental bill of complaint, and shown as Exhibit 10, annexed to said supplemental bill of complaint.

Defendants further answering, say they have no knowledge of any notice given or any action taken by A. M. Baird, City Attorney

of Carl Junction, Missouri, warning said company against taking any action that would be in violation of the order of the Public Service Commission of Missouri.

Defendants further answering, say that the aforesaid order of suspension made by Public Service Commission of Missouri, and that the aforesaid notice given by the Secretary to said Carl Junction Gas Company were each and both of them made and given in pursuance of the provisions of section 70 of the Public Service Commission Act of Missouri, pending an investigation of the reasonableness and lawfulness of the action of said Carl Junction Gas Company.

These answering defendants further say that said Carl Junction Gas Company is not the agent of the plaintiff Receiver, nor of the Kansas Natural Gas Company, and does not distribute natural gas to consumers in said city of Carl Junction, Missouri, as the agent of plaintiff, or of the Kansas Natural Gas Company, but purchases outright from plaintiff or from said Kansas Natural Gas Company, the gas furnished and distributed by it to consumers, and that the sale and distribution of natural gas to consumers in Carl Junction, Missouri, is not interstate commerce business done by plaintiff or said

647 Kansas Natural Gas Company, but is the local business of said Carl Junction Gas Company. And these defendants deny that the said order of the Public Service Commission of Missouri and the notice above referred to, given by its Secretary, and the alleged notice given by A. M. Baird, City Attorney, are substantial burdens upon and an interference with the interstate commerce business of plaintiff, or that the same are in conflict with the order of this court of June 3, 1916.

## IX.

These answering defendants further answering, say they are without knowledge of the direction and promulgation, if any, by plaintiff of new rates for gas to the Oronogo Gas Company, or that natural gas transported from Kansas and Oklahoma to consumers in Missouri would be thirty cents per thousand cubic feet net.

These defendants admit that said Oronogo Gas Company filed a schedule of new rates for natural gas with the Public Service Commission of Missouri on or about August 11, 1916. That the defendants, the Public Service Commission of Missouri, on or about the 17th day of August, 1916, in order that said Commission might determine the reasonableness and lawfulness of the said proposed rates and charges under and by authority of section 70 of the Public Service Commission Act of Missouri, made its order suspending for a period of 120 days, said proposed new schedule of rates and charges pending a hearing and determination as to the reasonableness and lawfulness of said proposed rates and charges.

These answering defendants deny that said Oronogo Gas Company is the agent for the sale and distribution of natural gas of this plaintiff or of the Kansas Natural Gas Company, but aver that said  
648 Oronogo Gas Company is the local and independent company, and as such purchases all natural gas sold and distributed by

it to consumers, and that the sale and distribution by said Oronogo Gas Company of natural gas so purchased by it from this plaintiff, or from the Kansas Natural Gas Company, is not an interstate commerce business.

These answering defendants deny that said order of the Public Service Commission of Missouri is a substantial burden upon or an undue interference with any interstate commerce business in which this plaintiff is engaged, and deny that said order is in conflict with the order of this court of June 3, 1916, but aver that said order being a temporary order of suspension, under the provisions of said section 70 of the Public Service Commission Act, is not within the inhibition of the order and judgment of this court of June 3, 1916.

#### X.

These answering defendants further answering, deny each and all the matters, things and allegations set forth and contained in paragraph 10 of plaintiff's supplemental bill of complaint.

#### XI.

These answering defendants further answering, say they are without knowledge as to the matters and things alleged and set forth in paragraph 11 of said plaintiff's supplemental bill of complaint.

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#### XII.

These answering defendants, further answering, say that they are without knowledge of the matters and things alleged and set forth in paragraph 12 of plaintiff's supplemental bill of complaint.

#### XIII.

These answering defendants, further answering, say that they are without knowledge of the matters and things alleged and set forth in paragraph 13 of plaintiff's supplemental bill of complaint.

#### XIV.

These answering defendants, further answering, say that they are without knowledge of the matters and things alleged and set forth in paragraph 14 of plaintiff's supplemental bill of complaint.

#### XV.

These answering defendants, further answering, say that they are without knowledge of the matters and things alleged and set forth in paragraph 15 of plaintiff's supplemental bill of complaint.

## XVI.

These answering defendants, further answering, say that they are without knowledge of the matters and things alleged and set forth in paragraph 16 of plaintiff's supplemental bill of complaint.

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## XVII.

These answering defendants, further answering, say that they are without knowledge of the matters and things alleged and set forth in paragraph 17 of plaintiff's supplemental bill of complaint, and defendants ask plaintiff be required to make strict proof of each and all of said allegations.

## XVIII.

These answering defendants, further answering, say that they are without knowledge of the matters and things alleged and set forth in paragraph 18 of plaintiff's supplemental bill of complaint.

## XIX.

These answering defendants, further answering say that they are without knowledge of the matters and things alleged and set forth in paragraph 19 of plaintiff's supplemental bill of complaint.

## XX.

These answering defendants, further answering, say that they deny that since the alleged publication of rates by plaintiff for the sale and distribution of natural gas in the several cities of Kansas and Missouri, that these defendants, the Public Service Commission of Missouri, have by and through their public utterances, declarations or threats advised, counseled or encouraged consumers of natural gas in said several cities to refuse to pay the price and rates fixed therein, or have sought by such method to render nugatory and ineffective the order and decree of this court, but these answering de-

651 defendants aver that all the orders, utterances or declarations made by them have been made and given under the provisions of section 70 of the Public Service Commission Act of Missouri, and for and under the suspension of the proposed changes in rates for a period of not exceeding 120 days pending investigation and determination by the Public Service Commission of Missouri of the reasonableness and lawfulness of the acts and proposed changes of schedule of rates by the various local companies in the several cities of Missouri selling and distributing natural gas to consumers in said cities.

And these defendants, further answering, deny that they have made any orders in the premises other than those hereinbefore mentioned, and for not exceeding 120 days, and for the purpose of inves-

tigating the lawfulness and reasonableness of the said respective changes of schedules of rates.

These defendants deny that the rates at which natural gas has been sold in said several towns and cities by the local gas companies purchasing natural gas from plaintiff, or from the Kansas Natural Gas Company, were or are unreasonably low and confiscatory.

These answering defendants, further answering, repeat and reiterate the matters and things set forth by them in their answer heretofore filed to the plaintiff's bill of complaint.

These defendants deny that the plaintiffs are entitled to any relief whatsoever, or any part of the relief in the said bill of complaint, or in the said supplemental bill of complaint, demanded, and allege that plaintiffs have no standing in this court, or in the court of equity, and defendants pray that a hearing be had upon the issues of law arising upon the face of the bill of complaint and upon the face of the supplemental bill of complaint, and that the said bill of complaint and said supplemental bill of complaint be dismissed as against them, and that they go hence without day, and that they have judgment for their costs.

W. G. BUSBY,

A. Z. PATTERSON,

JAMES D. LINDSAY,

*Solicitors for Above Defendants.*

STATE OF MISSOURI,

*County of Cole, ss:*

James D. Lindsay, being duly sworn on his oath, deposes and says that he is one of the solicitors for the defendants filing the above and foregoing answer; that he has read the foregoing answer, knows the contents thereof, and states that the facts therein alleged are true according to his best knowledge and belief.

JAMES D. LINDSAY.

Subscribed and sworn to before me this 10th day of October, 1916.

BARBARA M. BRANDT,  
*Notary Public.*

My commission expires March 15, 1919.



## EXHIBIT 2.

Before the Public Service Commission of the State of Missouri.

Case No. 1048.

THE KANSAS CITY GAS COMPANY, Complainant,

v.

THE KANSAS NATURAL GAS COMPANY and JOHN M. LANDON, Receiver, Defendants.

*Order to Satisfy or Answer.*

To The Kansas Natural Gas Company, Mr. Chas. D. Bell, Agent, Joplin, Mo.; Mr. John M. Landon, Receiver, The Kansas Natural Gas Co., Independence, Kansas; Mr. F. J. Cole, Agent, J. M. Landon, Receiver, The Kansas Natural Gas Co., 4414 Terrace Avenue, Kansas City, Mo.:

You are hereby notified that a complaint has been filed in the action entitled as above against you as defendant, and you are hereby ordered to satisfy the matters therein complained of or to answer said complaint in writing within ten (10) days from the service upon you of this order and the copies of said complaint, which are herewith attached, one for the Kansas Natural Gas Company and one for yourself.

By THE COMMISSION.

T. M. BRADBURY, *Secretary*.

Dated at Jefferson City, Mo., this 10th day of August, 1916.

654 Revised Sheet No. 1, should be postponed pending an investigation of the existing and proposed rates for gas service furnished the public at Carl Junction, Missouri, and vicinity by the said Carl Junction Gas Company, in order that the Commission may determine the reasonableness and lawfulness of the said proposed rates and charges. Now, upon due consideration, it is

Ordered, 1. That the Commission, upon its own initiative without formal pleading, under and by virtue of the authority conferred upon it by section 70 of the Public Service Commission Law, enter upon an investigation concerning the propriety and lawfulness of the proposed new rates and charges contained in said Carl Junction Gas Company's P. S. C. Mo. No. 1, Third Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, on file with the Commission.

Ordered, 2. That the operation of the proposed new rates and charges contained in said schedule be suspended, and that the use of said rates and charges be deferred for the period of One Hundred

Twenty (20) days from and including September 11, 1916, unless otherwise ordered by the Commission.

Ordered, 3. That this order shall take effect on this date, and that the Secretary of the Commission shall forthwith serve on said Carl Junction Gas Company a certified copy of this order, and that a copy of this order be filed with said schedule in the office of the Commission.

By THE COMMISSION.

T. M. BRADBURY, *Secretary*.

655 STATE OF MISSOURI,

*Office of the Public Service Commission, ss:*

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission, at Jefferson City, this 10th day of October, 1916.

[SEAL.]

T. M. BRADBURY, *Secretary*.

EXHIBIT 3.

STATE OF MISSOURI,

*Public Service Commission:*

At a Session of the Public Service Commission Held at Its Office in Jefferson City on the 17th Day of August, 1916.

Case No. 1057.

Present: William G. Busby, Chairman; John Kennish, Howard B. Shaw, Edwin J. Bean, Commissioners.

In the Matter of the Suspension of Rates and Charges of the Carl Junction Gas Company at Carl Junction, Missouri.

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*Order.*

It appearing that the Carl Junction Gas Company has heretofore, on August 11, 1916, filed with the Commission a proposed new schedule of rates, entitled its P. S. C. Mo. No. 1, Third Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, effective at the August, 1916 meter readings, instituting a general increase in its charges for gas service furnished by said Company to the public at Carl Junction, Missouri, and vicinity; it further appearing to the Commission that the public may be unjustly affected by the proposed increased charges in its rates for gas service, and it being the opinion of the Commission that the effective date of said proposed schedule of rates and charges contained in said Carl Junction Gas Company's P. S. C. Mo. No. 1, Third Revised Sheet No. 1, cancelling its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, should

be postponed pending an investigation of the existing and proposed rates for gas service furnished the public at Carl Junction, Missouri, and vicinity by the said Carl Junction Gas Company, in order that the Commission may determine the reasonableness and lawfulness of the said proposed rates and charges. Now, upon due consideration, it is

Ordered, 1. That the Commission, upon its own initiative without formal pleading, under and by virtue of the authority conferred upon it by section 70 of the Public Service Commission Law, enter upon an investigation concerning the propriety and lawfulness of the proposed new rates and charges contained in said Carl Junction Gas Company's P. S. C. Mo. No. 1, Third Revised Sheet No. 1, 657 cancelling its P. S. C. Mo. No. 1, Second Revised Sheet No. 1, on file with the Commission.

Ordered, 2. That the operation of the proposed new rates and charges contained in said schedule be suspended, and that the use of said rates and charges be deferred for the period of One Hundred Twenty (120) days from and including September 11, 1916, unless otherwise ordered by the Commission.

Ordered, 3. That this order shall take effect on this date, and that the Secretary of the Commission shall forthwith serve on said Carl Junction Gas Company a certified copy of this order, and that a copy of this order be filed with said schedule in the office of the Commission.

By THE COMMISSION.

T. M. BRADBURY, *Secretary*.

STATE OF MISSOURI,

*Office of the Public Service Commission, ss:*

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission, at Jefferson City, this 10th day of October, 1916.

[SEAL.]

T. M. BRADBURY, *Secretary*.

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EXHIBIT 1.

Before the Public Service Commission of the State of Missouri.

THE KANSAS CITY GAS COMPANY, Complainant,

v.

THE KANSAS NATURAL GAS COMPANY and JOHN M. LANDON, Receiver, Defendants.

*Complaint.*

Comes now the complainant and for its complaint against the defendants for inefficient and insufficient service and inadequate supply of natural gas, alleges and states the following facts, to-wit:

1. That the Kansas City Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and engaged in the business of distributing and selling natural gas to Kansas City, Missouri, and its inhabitants under and pursuant to certain franchise-ordinances granting the use of public streets of said City for such purpose.

659 2. That the defendant Kansas Natural Gas Company is a gas corporation, duly organized and existing under the laws of the State of Delaware, and engaged in the business of purchasing, producing, acquiring, transporting, delivering and furnishing natural gas to the Kansas City Gas Company at Kansas City, Missouri, and elsewhere in the State of Missouri, by means of a system of pipe lines, constituting a natural gas plant, operated for public use; said company being duly authorized and licensed to carry on such business in the State of Missouri; and the defendant, John M. Landon, is the Receiver, appointed by the District Court of Montgomery County, Kansas, and in the active possession, control and management of said gas plant, property and business in the State of Missouri.

3. That on September 27th, 1906, the common council of Kansas City, Missouri, duly passed, and the mayor approved, Ordinance No. 33887 of said City, authorizing and providing, among other things, for the distribution and sale of natural gas "for private and public use" and for "domestic consumers" and for "special contract consumers," meaning thereby to authorize and provide for the distribution and sale of natural gas for domestic lighting, cooking, heating, and for boiler, power and manufacturing purposes; and that the rates for general consumption should commence at 25 cents per thousand cubic feet and increase from time to time to 30 cents per thousand cubic feet; and that the rates and charges for gas sold for power, boiler and manufacturing purposes might be determined by "special contract with consumers." Said ordinance was duly accepted, and has since been assigned to the Kansas City Gas Company, and is now in full force and effect, a true and correct copy thereof being filed herewith, marked Exhibit "A" and made a part hereof.

660 4. That on November 17th and December 3rd, 1906, the Kansas City Pipe Line Company, as first party, and McGowan, Small and Morgan, grantees, as second parties, duly entered into certain contracts in writing for a supply of gas to said grantees; that thereafter said contracts were duly assigned by the first party to the Kansas Natural Gas Company, and all the duties and obligations thereof were assumed by said Company; and thereafter said contracts were duly assigned by said grantees to the Kansas City Gas Company, and the right to obtain a supply of gas thereunder was acquired by the Kansas City Gas Company, and said Company is now and long has been receiving and obtaining its supply of natural gas for distribution and sale in Kansas City, Missouri, under and pursuant to said contracts, true and correct copies thereof being filed herewith, marked Exhibits "B" and "C" and made a part hereof.

5. That said contracts were similar in form and identical in sub-

stance and may be treated as one contract; that said contract recited that first party was the owner of gas lands and leases and a pipe line for the conveyance of natural gas to Kansas City, Missouri, and desired a market therefor; that second parties were the owners of a franchise-ordinance for the distribution and sale of natural gas in Kansas City, Missouri, said ordinance being marked Exhibit "1" and attached to said contract, the same being Exhibit "A" hereto attached; that first party agreed, during the period of said franchise-ordinance, until September 27th, 1936, to supply and deliver natural gas to second parties, their successors and assigns, at a pressure of 20 pounds at Kansas City, "in such amounts as will at all times fully supply the demand for all purposes of consumption," subject to accidents, interruptions and failures under certain conditions, for a  
661 certain consideration therein named and agreed to, the same being a certain percentage of the schedule of rates named in said ordinance attached to said contract.

6. Complainant construes said contract to be a binding undertaking on the part of the Kansas Natural Gas Company to furnish and deliver natural gas to the Kansas City Gas Company until September 27th, 1936, at a 20 pound pressure at the city limits, in sufficient amounts to meet all demands for domestic lighting, cooking and heating, and for boiler, power and manufacturing purposes in the summer time, subject to conditions therein set forth, and to accept and receive the compensation of a certain percentage of the schedule of rates referred to and named in said Ordinance No. 33887, of Kansas City, Missouri.

7. That the Kansas City Gas Company and its predecessors have expended vast sums of money for high pressure belt lines and distribution systems, reducing stations, appliances and equipment for distributing and handling said natural gas; and that Kansas City, Missouri, and its inhabitants have expended large sums of money for service pipes, furnaces, stoves, burners, equipment and appliances for using and burning said natural gas, all relying upon said supply-contract and the statements and representations made by said Kansas Natural Gas Company and its officers and agents as to their ability to furnish a supply of natural gas.

8. Complainant states that the whole project, plan and undertaking of the natural gas business originally contemplated, undertook and provided for the supply and sale of natural gas for three purposes, to-wit: lighting and cooking; domestic heating, and boiler, power and manufacturing purposes; that the transportation  
662 lines and systems of the Kansas Natural and the distributing system of the Kansas City Gas Company were designed and constructed to that end; that the aforesaid franchise contemplated and provided for the distribution and sale of natural gas for said three purposes; that said franchise purported to authorize a schedule of rates for the sale of natural gas for domestic lighting, cooking, heating and general consumption, and purported to authorize the sale of said natural gas for boiler, power and manufacturing purposes at special contract rates; that the aforesaid supply-contract contemplated and provided for the furnishing of said natural gas for

said three purposes, and made specific reference to said franchise-ordinance and the purposes for which said natural gas was to be distributed and sold by complainant; that said supply-contract and the franchise-ordinance referred to therein, when read and construed together, clearly bind and obligate the Kansas Natural Gas Company and its Receiver, and their successors and assigns, to furnish and deliver to the Kansas City Gas Company natural gas for lighting, heating, power and manufacturing purposes, delivered at Kansas City at a pressure of 20 pounds and in sufficient amounts to meet all demands for such purposes, subject to the conditions therein set forth, and to accept and receive the agreed compensation of a certain percentage of the schedule of rates referred to in said supply-contract.

9. That Section 20 of said Ordinance No. 33887, among other things, recites "and grantees covenant that their contract for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (corporations), that under the terms thereof after two years from the time natural gas is first furnished to Kansas City thereunder, the division of the gross income received for said 663 gas by the distributing company and the supply company shall be in the proportion of thirty-seven and one-half cents out of each dollar to the former, and sixty-two and one-half cents to the latter; and covenant for themselves, their successors and assigns, that none of the terms of that contract agreement shall be changed without consent of Kansas City expressed by ordinance; and grantees agree for themselves, their successors and assigns, that if Kansas City shall acquire said plant and property they will on demand transfer free of cost to Kansas City all their rights under said contract; and grantees further agree to procure from said two corporations and file with the city clerk within ninety days from the time this ordinance becomes a law, a written agreement in form to be approved by the city counselor, agreeing that they (said two corporations) will, if Kansas City shall acquire said plant as aforesaid, upon demand, furnish and continue to furnish during the remaining period of this franchise gas to Kansas City on the same terms as they have agreed to furnish it to the grantees, their successors and assigns."

10. That the written agreement in form approved by the city counselor was duly procured and filed within the time and in the manner provided; that the city has not consented to any change in the terms and provisions of said supply-contract; that by reason of the foregoing provisions the city has an interest in said supply-contract and a right to demand and receive a supply of gas thereunder, and that the terms and provisions thereof be not changed without its consent, expressed by ordinance.

11. That at a very early period in the history of the natural gas business, the defendant Company failed and defaulted in its 664 undertaking to furnish complainant an adequate and sufficient supply of natural gas to meet the demands for power, boiler and manufacturing purposes as aforesaid, or to supply the same at a price on a competitive basis with other fuels used for like purposes; that soon thereafter defendant commenced to default in

furnishing an adequate supply of gas at sufficient pressure to fully meet the demands for domestic heating; that such failure and default has continued and increased in amount and duration from winter to winter up to the present time; that in the year 1910, the Kansas City Gas Company and its predecessors were supplied, and therefore enabled to sell, 970 million cubic feet of natural gas for boiler, power and manufacturing purposes at special contract rates; that the supply for such purposes decreased until 1913, after which time complainant has not received any power, boiler and manufacturing gas whatever; that in the winter of 1910-11 complainant was furnished and enabled to sell on maximum demand days 49 million cubic feet of natural gas for domestic lighting, heating and cooking purposes; that the decrease and diminution of supply has continued until in the winter of 1915-16 the Company was receiving and enabled to distribute and sell only 15 million cubic feet on maximum demand days; that the demand for natural gas is very great and the number of consumers applying and meters installed is constantly increasing, and the supply furnished by defendants is constantly waning.

12. That the amount of natural gas furnished complainant by defendants from year to year for manufacturing, boiler and power purposes, sold at special contract rates, and the price per thousand cubic feet, the gross receipts therefor, and the net income to complainant therefrom is shown by the following table:

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Table I.

*Annual Boiler Gas Sales.*

Year.	M c. f.	Rate.	Gross receipts.	Net income.
1908....	700,374	25c. first 200	\$99,072.41	\$38,628.96
1909....	923,834		122,386.54	45,894.95
1910....	970,389		123,042.02	46,140.76
1911....	673,915	M c. f.	87,986.20	32,994.83
1912....	382,981	balance 10c.	44,177.89	16,566.71
1913....	110,984	12½c. per M	13,872.96	5,202.36
1914....	None	.....	.....	.....
1915....	None	.....	.....	.....
1916....	None	.....	.....	.....

13. That the amount of natural gas furnished complainant by defendants from year to year since the beginning of the natural gas business for domestic purposes, the price per thousand cubic feet, the gross receipts therefor, and the net income to complainant is shown by the following table:



Table II.

*Annual Domestic Gas Sales.*

Year.	M c. f.	Rate.	Gross receipts.	Net income.
1908.....	5,976,282	25c.	\$1,516,490.11	\$606,596.04
1909.....	6,646,971	25c.	1,687,339.84	632,752.44
1910.....	7,542,566	25c.	1,912,718.04	717,269.27
1911.....	8,133,396	25c. & 27c.	2,077,946.43	779,229.91
1912.....	7,360,654	27c.	2,026,309.35	759,866.01
1913.....	6,068,942	27c.	1,678,115.45	629,293.29
1914.....	5,657,635	27c.	1,568,740.37	588,277.64
1915.....	6,154,177	27c.	1,702,201.65	638,325.62

14. The annual domestic sales per meter in service, and the decline in sales due to inadequate supply is shown by the following table:

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Table III.

*Domestic Sales per Meter.*

Year.	Gas.	Cash.
1908.....	144,142	\$36.58
1909.....	144,963	36.80
1910.....	151,752	38.95
1911.....	152,544	38.97
1912.....	134,313	36.98
1913.....	108,453	29.99
1914.....	96,909	26.87
1915.....	108,229	28.16

15. That the annual gross income of the complainant from both domestic and from boiler, power and manufacturing gas sales per meter in service, showing a decline of approximately 30 per cent due to inadequate supply, is as follows:

Table IV.

*Annual Domestic and Boiler Gas Sales.*

Year.	Cash.
1908.....	\$38.85
1909.....	39.38
1910.....	41.40
1911.....	41.36
1912.....	37.77
1913.....	30.23
1914.....	26.87
1915.....	28.16

16. That by reason of the premises Kansas City and its inhabitants are being denied efficient and sufficient service and an adequate supply of gas by the defendants in disregard and violation of their aforesaid contractual obligations and public duty; that complainant has lost all of its power, boiler and manufacturing gas business; that it has lost the major portion of its domestic heating and furnace gas business; and that it has lost a very considerable portion of its domestic lighting and cooking business; all by reason of the failure and default of the defendants to furnish and deliver an adequate, efficient and sufficient supply of natural gas to meet the demand therefor as per the terms, conditions and provisions of said supply-contract and the franchise referred to therein and made a part hereof.

17. That said supply-contract was entered into and the schedule of rates provided for therein was put into effect, relying upon the representations and inducements of the Kansas Natural Gas Company, its successors and assigns, that they would furnish an adequate and sufficient supply of natural gas to enable the complainant to deliver and sell the same in sufficient quantities for all domestic lighting and heating, and for boiler, power and manufacturing purposes and afford complainant a fair return upon its properties in public service; that by reason of the failure and default of defendants so to do, complainant has heretofore and is now sustaining great and irreparable loss and damage, and the city and its inhabitants are suffering great inconvenience and inadequate and insufficient service.

18. Complainant avers that defendants have from time to time held out promises and inducements to complainant that they were and would be able to furnish better service and an increased and adequate supply of natural gas; that by reason thereof complainant has borne and endured said losses and damages and inconvenience, inadequate and insufficient service, but can no longer afford so to do.

19. That there is a constant increase in the number of meters installed in Kansas City, Missouri, and by reason thereof a constant increase in the demand for natural gas; that on peak-load demand days the consumers demand approximately one thousand cubic feet per meter per day; that the annual average number of meters in service, the number of meters in service at the end of each year, the annual increase in meters, the total supply of gas for the month of January of each year, the average daily January supply per meter, the estimated demand per meter, and the estimated shortage per meter from the beginning of the natural gas business down to the present time, is shown by the following table:

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Table V.

*Increase in Demand and Decrease in Supply.*

Year.	Average No. of meters.	Meters at end of year.	Increase in meters.	Total Jan. supply in M. c. f.	Jan. supply per meter c. f.	Average daily Jan. supply per meter.	Average daily est'd demand per meter.	Average daily est'd shortage per meter.
1908.....	41,588	44,490	....	874,916	21,554	695	700	5
1909.....	45,955	48,603	4,367	1,031,989	23,187	748	776	27
1910.....	49,178	52,702	3,223	1,290,704	26,692	861	900	29
1911.....	52,368	55,196	3,190	1,273,540	24,228	782	900	118
1912.....	54,821	54,599	2,453	1,160,782	21,210	684	900	216
1913.....	55,972	57,075	1,151	776,283	14,136	455	900	445
1914.....	58,381	59,822	2,409	741,005	12,926	416	900	484
1915.....	60,440	61,620	2,059	831,593	13,933	449	900	451
1916.....	.....	.....	....	663,846	10,838	350	900	550

670 On maximum demand days, when the consumers would have used one thousand cubic feet per meter, there was delivered and supplied only 245 cubic feet per meter, resulting in a shortage of 755 cubic feet per meter per day, only 25% of the demand.

The increase in meters in six years prior to December, 1916, has been 14,485, or 31.5%. The decrease in supply per meter from the amount furnished on maximum demand days in the same period has been 75%.

20. Complainant states on information and advice of counsel that defendant Kansas Natural Gas Company and its property and business have been involved in litigation in the state and federal courts since January, 1912; that said litigation has been wholly fruitless of any good results; that a perpetual receivership has been erected in the District Court of Montgomery County, Kansas, in the interest of the Kansas Natural stockholders, resulting in an abatement and bar to the foreclosure of the mortgages of the Kansas Natural Gas Company and the enforcement of its contracts and public obligations; that by reason of said receivership and the construction placed upon a certain stipulation or so-called "creditors' agreement" filed therein, the rights of the stockholders are preferred to the rights, claims and demands of the consumers to an adequate supply of gas and efficient service; that such preference is unfair, unreasonable, illegal and void and in violation of the contract and public obligations of defendants and said stockholders; that the creditors and bondholders of said Company are unable to refinance, reorganize and rehabilitate said properties during the pendency of said suit and receivership, and said receiver should be discharged and said litigation terminated as expeditiously as possible to the end that said property may be

671 used for the purposes for which it was designed and discharge its public and contractual obligations; a true and correct copy of said creditors' agreement and a transcript of the record of said case are filed herewith, marked Exhibits "D" and "E" and made a part hereof.

21. Complainant states on information and belief that during all the time defendants have been litigating technical questions of comity and jurisdiction, other companies and parties have taken up and acquired all the available gas lands, leases and productions of natural gas in the Mid-Continent Gas Field, and defendants have practically discontinued field operations and drilling, development and production of gas; that defendants are at this time producing only 7½% of all the natural gas they sell, and are wholly dependent upon others for their supply; that the parties from whom they obtain such supply are obligated to furnish gas in Oklahoma and Southern Kansas to domestic and industrial consumers and, therefore, furnish defendants only the surplus gas which they are unable to sell to their own consumers; that by reason thereof defendants' supply on maximum demand days is very low, resulting from the larger demand by their own consumers upon said parties, from whom defendants obtain their supply.

22. Complainant further states that, in the year 1912, in total disregard of their contractual obligations to deliver and furnish com-

plainant natural gas "in such amount as will at all times fully supply the demand for all purposes of consumption," defendants removed the Scipio Station north of Ottawa and seventeen miles of main trunk line, necessary to maintain the pipe line at its full carrying capacity; that since said time defendants have not even filled said pipe line to its capacity as impaired by said removals; that prior to said  
672 removals the main trunk line of said system north to Ottawa was capable of carrying 100 million cubic feet of gas per day, and since said removal said northern line is capable of carrying only 70 million cubic feet of gas per day.

23. That defendants have continuously failed and neglected to fill said lines to their full carrying capacity at any time; that the policy of defendants of depending upon chance purchases of gas, renders the supply at the time most needed very uncertain and unreliable; that defendants should be required to restore said system to its former carrying capacity and to fill said pipe lines to their full capacity during peak-load demand days.

24. Complainant further states that on June 15th, 1916, one Henry L. Doherty proposed and offered to purchase the pipe lines of the Kansas Natural Gas Company owned and leased, rehabilitate the carrying capacity of said lines, connect the same with the field and gathering lines in the Mid-Continent Gas Fields owned by the Quapaw Gas Company, the Wichita Natural Gas Company and the Wichita Pipe Line Company, and other lines, and supply said system with at least 140 million cubic feet of gas per day on peak-load demand days, if said properties were sold at foreclosure sale and he was permitted to buy the same free of obligations and authorized to make said connections; that said proposal and offer was rejected by reason of statements, assurances and promises of a certain stockholders' committee of the Kansas Natural Gas Company, consisting of R. A. Long, G. T. Braden, M. L. Benedum, W. W. Splaine, L. C. McKinney, E. T. Whitcomb and V. A. Hays, to the effect that they were ready, able and willing to rehabilitate said system, refinance the Company and perform its public and contractual obligations and  
duties; that by reason thereof the opportunity of complain-

673 ant to acquire an adequate and sufficient supply of gas from the said Henry L. Doherty has been denied, and defendants are estopped from denying their duty and obligation to render an equally adequate and sufficient service and perform their public and contractual obligations. A true and correct copy of said proposition of Henry L. Doherty is filed herewith, marked Exhibit "F" and made a part hereof.

25. Complainant avers, on information and advice of counsel, that in the case of John L. McKinney et al. v. Kansas Natural Gas Company et al., number 1351, and the case of Fidelity Title and Trust Co. v. Kansas Natural Gas Company et al., number 1-N, pending in the United States District Court for the District of Kansas, for the foreclosure of the Kansas Natural Gas Company's mortgages, and Company has filed an answer confessing its insolvency and inability to meet its public and contractual obligations; that in the case of State of Kansas v. Kansas Natural Gas Company et al., Number

13,476, pending in the District Court of Montgomery County, Kansas, in which defendant John M. Landon is receiver, the court has found that said Kansas Natural Gas Company is insolvent and unable to meet and discharge its public and contractual obligations, and that said Company, under the control of said stockholders, is guilty of the perversion, misuse and abuse of its corporate powers, and the receiver, John M. Landon, was appointed to correct said abuses; that all the mortgages of the Kansas Natural Gas Company and its subsidiary companies are in default and would, except for the pendency of state case, be foreclosed and said properties sold to satisfy said liens; that thereupon said properties would pass into the hands of purchasers claiming to be ready, able and willing to rehabilitate and refinance the same and furnish an adequate,

674 efficient and sufficient supply of natural gas; that the aforesaid stockholders' committee was organized for the primary purpose of opposing and defeating said foreclosures and the ordinary administration of the law in such cases; that said stockholders' committee has made statements, representations and promises to the Governor and Attorney-General of Kansas, and to various cities and distributing companies located on said system, giving assurances that they were ready, able and willing to refinance said Company, reconstruct and rehabilitate said system and furnish an adequate, efficient and sufficient supply of gas; that they have acquired and hold under contract and otherwise abundant gas to meet all future demands, and that they will furnish on said northern line at least 80 million cubic feet of gas per day during the winter of 1916-17, and at least 120 million cubic feet per day thereafter.

26. Complainant states that it does not know and has no means of acquiring definite and reliable information as to whether or not said defendants or said stockholders' committee are or will be able to furnish an adequate and sufficient supply of gas, or what amount of gas they will be able to furnish during the winter of 1916-17 and subsequent years; that complainant has requested defendants to state definitely the probable supply of gas for the coming winter and defendants have failed, neglected and refused so to do; that complainant is, therefore, unable to advise and inform the consumers of gas in Kansas City, Missouri, whether or not or to what extent they may depend upon the same, or to make provision for other means of cooking and heating during the coming winter.

27. Complainant is informed and believes that defendants and said stockholders' committee claimed the right to stay and prevent the foreclosure of said mortgages of the Kansas Natural Gas Company, Kansas City Pipe Line Company, and Marnet Mining Company, upon the ground that said stockholders have an interest or equity in said properties over and above the amount of the indebtedness on the same and that said equity should be protected against the claims of creditors, bondholders and lienholders; but complainant is advised by counsel and alleges that the rights of the consumers, under the aforesaid supply-contract and by general law, to an adequate supply and efficient service, and the rights of complainant under said contract to be furnished with "natural gas

in such amount as will at all times fully supply the demand for all purposes of consumption," are paramount, prior and superior to the claims, rights and demands of said stockholders and that the defendants herein should, at all times, be required to perform said public and contractual obligations.

28. Complainant further states that it is powerless to commence, prosecute and maintain to a successful termination and final judgment an action in mandamus or otherwise in any court of competent jurisdiction to compel said defendants to perform their public and contractual obligations or to do any specific act or thing, until this Commission makes specific findings of fact necessary therefor, and issues its orders directing the same; that thereupon the complainant and this Commission will be able to enforce said obligations of said defendants by appropriate proceedings at law and in equity in any court of competent jurisdiction.

29. That the District Court of Montgomery County, Kansas, has no extra-territorial jurisdiction to enforce its orders, judgments and decrees in the State of Missouri; that defendant John M. Landon is therefore operating the properties and business of the Kansas Natural Gas Company in the State of Missouri by common consent of its creditors and stockholders and in his private capacity as the agent, or representative of said Company and its stockholders and creditors, and so far as this State is concerned, he is not acting as Receiver or in any official capacity with reference to said property and business within this State.

30. That complainant is desirous of continuing the sale of natural gas to Kansas City and its inhabitants, as long as practicable; but the rates in force and mentioned in said Ordinance No. 33887, are insufficient to afford this complainant a fair return upon its property in service, figured upon the amount of gas now and heretofore furnished to complainant by said defendants unless defendants comply with said contract and furnish complainant said "natural gas in such amount as will at all times fully supply the demand for all purposes of consumption," this complainant is not and will not be warranted, and will not long continue to deliver said inadequate supply of natural gas, and will not be longer required so to do under Section 14 of said Ordinance and must return to the furnishing of manufactured gas, as provided in said Ordinance, and the consumers will lose the advantages of natural gas.

Wherefore, the premises considered, complainant prays that the Public Service Commission, under the authority vested in it by the Act relating to Public Service Corporations:

(1) Make such investigation as they may deem necessary to ascertain the amount of gas which defendants are, or will be, able to supply to complainant during the winter of 1916-17 and subsequent years,

(2) Require the defendants to furnish the Commission with copies of all contracts, leases, arrangements and agreements which they have for a supply of gas,

(3) Issue processes and subpoenas for the attendance of witnesses



and the production of all books, papers, maps, contracts, and records of every description, affecting the subject matter of the investigation as to the supply of gas.

(4) Require the defendants to furnish reasonably efficient and sufficient service and adequate facilities, pipe lines and compressors for the transportation of an adequate supply of natural gas to complainant.

(5) Ascertain and determine the carrying capacity of the defendants' pipe lines from the junction point near Ottawa, Kansas, to their Rosedale reducing station in their present condition, and from Rosedale station to their reducing stations on 39th Street near Kansas-Missouri State Line and 25th and Genesee in Kansas City, Missouri.

(6) Ascertain and determine whether or not defendants have, hold, own or control sufficient gas to fill said lines to their total carrying capacity in their present condition on peak-load demand days.

(7) Ascertain and determine the carrying capacity of defendants' lines from the Petrolia compressor station to Scipio compressor station prior to the removal of said Scipio station and 17 miles of main line above referred to.

(8) Ascertain and determine the carrying capacity of the defendants' lines from Scipio station to the junction point near Ottawa, Kansas, before the removal of the Scipio station and said 17 miles of main line.

(9) Ascertain and determine whether or not defendants have, hold, own or control sufficient gas to fill said lines to their full carrying capacity prior to the removal of said Scipio station and 17 miles of main line, on peak-load demand days; and if not, how much they are able to furnish.

(10) Ascertain and determine the demands upon the line capacity of said pipe lines at the junction point near Ottawa, Kansas, on peak-load demand days, and if said demands are greater than the present carrying capacity of said lines, require the defendants to restore the Scipio station and said 17 miles of main line.

(11) Ascertain and determine what quantities of gas may be purchased or acquired from other pipe line companies, producers or owners of gas lands, leases and productions in the Mid-Continent Gas Fields, and the price at which same may be acquired, and the names of the owners, and holders thereof; and thereupon (if necessary to the performance of the public and contractual obligations and duties of defendants) order said defendants to acquire the same and make the necessary extensions and connections therefor.

(12) Ascertain and determine the quantity of gas owned, held or controlled by Henry L. Doherty & Company, and their allied companies, Quapaw Gas Company, Wichita Natural Gas Company, and the Wichita Pipe Line Companies, and what portion of such gas could be diverted into the lines of the defendants, and the necessary extensions and connections therefor, and the price at which such gas may be had; and thereupon (if necessary to the performance of the public and contractual obligations of defendants) order said defend-

ants to purchase and acquire the same and make the necessary extensions and connections therefor.

679 (13) Ascertain and determine the amount of gas required at Kansas City, Missouri, on maximum peak-load demand days.

(14) Order and direct the defendants to supply and deliver to complainant, until September 27th, 1936, at a pressure of 20 pounds at the points of delivery, near Kansas City, natural gas "in such amount as will at all times fully supply the demand for all purposes of consumption," including lighting, heating and manufacturing purposes, as agreed to in said contracts of November 17th and December 3rd, 1906; and other proper and appropriate orders and relief.

J. W. DANA,

*Counsel for Kansas City Gas Company.*

STATE OF MISSOURI,

*County of Jackson, ss:*

E. L. Brundrett, being first duly sworn, deposes and says that he is the President of Kansas City Gas Company; that he has read, and knows, the contents of the foregoing Complaint, and that the statements, allegations and averments of fact therein made and contained are true, except such as are made on information and belief and advice of counsel, and as to such affiant believes them to be true; and further affiant saith not.

E. L. BRUNDRETT.

Subscribed in my presence and sworn to before me this 29th day of July, 1916,

[SEAL.]

ALFRED M. SEDDON,  
*Notary Public Within and for  
Jackson County, Mo.*

My commission expires May 10th, 1920.

680

EXHIBIT "A."

No. 33887.

An Ordinance authorizing Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, to lay, acquire and maintain pipes in Kansas City, for the purpose of supplying natural gas to said city and its inhabitants.

Be It Ordained by the Common Council of Kansas City:

Section 1. Subject to the provisions of the present city charter, and to the same provisions so far as they may be embodied in any future charter of the city, permission, right, privilege and authority are hereby granted unto Hugh J. McGowan, Charles E. Small and Ran-

dal Morgan, the survivors or survivor of them, and their or his assigns, for the full period of thirty (30) years from and after the approval and taking effect of this ordinance, within the present or any future corporate boundaries of the City of Kansas City, to lay and maintain gas pipes, regulators and appliances below the surface of the streets, avenues, boulevards, alleys and public grounds of said city, and on the bridges and viaducts owned by said city (provided such bridges and viaducts are of sufficient strength to carry such pipes), for the purpose of carrying and distributing natural gas and selling and supplying the same for private and public use, all upon the conditions provided for in this ordinance.

Section 2. Since it is a matter of large financial concern to the people of Kansas City, as well as the city itself, to secure natural gas within the shortest reasonable time, the grantees (which term  
681 grantees herein named, the survivors or survivor of them and their or his assigns) agree that they will

(1) on or before January 1, 1907, be ready to furnish and be furnishing natural gas on not less than seventy-five miles of mains to all consumers thereon who desire the same, and who have complied with the reasonable rules and regulations of the grantees; and

(2) on or before March 1, 1907, be ready to furnish and be furnishing natural gas on not less than fifty additional miles of mains to all consumers thereon who may desire the same and have complied with said reasonable rules and regulations; and

(3) on or before August 1, 1907, be ready to furnish and be furnishing natural gas to all present consumers on the lines of the Kansas City Missouri Gas Company who may desire the same and who have complied with said reasonable rules and regulations; provided that the grantees shall not be required to furnish patrons from circulating mains.

And said grantees shall within ten (10) days after this ordinance becomes a law file their written acceptance of the same as hereinafter provided, and at the time of filing their written acceptance shall deposit with the City Treasurer, as a special fund fifty thousand dollars (\$50,000.00) in cash, to become the property of the city, unless the requirements of paragraph one (1) of this section hereinbefore mentioned shall be performed within the time above specified.

Whenever the grantees shall file with the City Treasurer a certificate of the Board of Public Works, or other Board or officer of the city then performing the functions of the present Board of Public

682 Works, stating that the grantees have complied with the requirements of paragraph one (1) of this section respecting the furnishing of natural gas in the city, the Treasurer shall repay to the grantees the said sum of fifty thousand dollars (\$50,000.00); and it shall be the duty of the Board of Public Works, upon compliance by the grantees with the said requirements, to make and deliver to them said certificate.

In order to secure their compliance with the requirements of paragraphs two (2) and three (3) of this Section respecting the furnishing of natural gas in the city, the grantees shall, within twenty (20)

days after filing their acceptance of this ordinance, execute and deliver to the city their bond, in form approved by the City Counselor, with surety to the approval of the Mayor and City Comptroller, in the sum of two hundred and fifty thousand dollars (\$250,000.00), to be paid to the city as liquidated damages if the grantees shall fail to comply with the said requirements, said sum being agreed upon by both parties hereto as representing the liquidated damages, for the reason that said parties appreciate and agree that it will be impossible to measure such damages after the breach; and said bond shall be by the city surrendered and canceled on the certificate of the Board of Public Works, which shall be granted when grantees have fulfilled said requirements.

If the commencement of work or the laying of pipes by the grantees necessary for the furnishing of gas to consumers as in this section agreed, or the laying of pipes inside or outside the city or the delivering of natural gas at or within the corporate limits of the city by the grantees or by any persons with whom the grantees may contract for their supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the grantees or such other persons, or by inclement days or by labor strikes, or by any cause beyond the control of the grantees or such other persons, or if the acquisition of the ownership, use or control of the pipes and property of the Kansas City Missouri Gas Company hereinafter provided for shall be prevented, hindered or delayed by injunction or other legal proceedings, the time consumed by such prevention, hindrance or delay shall not be considered any part of the times provided for herein for supplying natural gas in the city, as required hereby, and the times provided for herein for furnishing gas to consumers shall be correspondingly extended for a like period or periods, but such delay or hindrance, in order to entitle the grantees to an extension of time hereunder, must actually so hinder and delay, and must so result after the grantees have done all in their power to prevent and obviate such hindrance and delay. But no such delay shall be excused or time extended on account thereof, if the grantees can, by the exercise of reasonable diligence, and at reasonable expense obtain natural gas elsewhere.

Section 3. All pavements and sidewalks shall be taken up and all excavations in said streets, avenues, boulevards, sidewalks, lanes, highways, alleys and public grounds, shall be made under the supervision of the Board of Public Works, and such pipes, regulators and appliances shall be located in such portion of the streets, avenues, boulevards, lanes, highways or public grounds as may be designated by the Board of Public Works, using alleys as far as practicable; provided, that said pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the grantees to their former condition; and if such pavement shall have been laid under any guaranty for its maintenance and repair for any period of time, the said grantees shall also keep said restored pavement in repair for the unexpired period of such guaranty. Should said grantees fail or refuse to replace or restore said pavement, sidewalk and excavation, within a reasonable time, then the same may

be replaced and restored by the city, under the direction of the Board of Public Works, at the cost and expense of the grantees, who shall, before commencing the work of making any excavation, deposit with the City Treasurer the sum of one thousand dollars (\$1,000) in money, for the faithful compliance with this section; and as often as any portion of said sum is used by said Board, said grantees shall on notice from said Board deposit a corresponding sum with the City Treasurer. Before any excavations are made by said grantees at any time in any street or highway, for any of the purposes named in this ordinance, a permit therefor shall be obtained from the proper officer of said city, which permit shall state the particular part of the street or highway where said work is to be done and the length of time said permit shall authorize work to be done thereunder. The work done under such permits shall be under the inspection of a competent inspector designated by the City Engineer, for whose time, reasonably employed in such service, the grantees shall repay the city at the rate of three dollars and sixty cents (\$3.60) per day.

Section 4. Said grantees shall not open or encumber at any one time more of any such highway or public place than may, in the opinion of the Board of Public Works, be necessary to enable them to proceed with advantage in laying or repairing mains and pipes, nor shall they permit any such highway or public place so opened or encumbered by them to remain open or encumbered for a

longer period of time than shall, in the opinion of the Board  
685 of Public Works, be necessary. In all cases where any such

highway or public place shall be encumbered or excavated by the said grantees they shall take all precautions for the protection of the public usual in such circumstances, and such as may now or hereafter be required by the general ordinances of said city. Whenever the city shall grade or regrade any street, alley or public highway, along or across which said grantees shall have constructed any pipes or mains, it shall be the duty of said grantees, at their own expense, to change said pipes or mains so as to conform to the street, alley or public highway so graded or regraded, on an order therefor from the Board of Public Works of said city.

Section 5. Said grantees shall, at their own expense, bring connecting pipes for consumers to the inside of the curb lines, or to the property line in such cases in which mains are laid in alleys, and construct shut-offs; and may, with the approval of the Board of Public Works, make such reasonable rules and regulations for making connections for private consumers with the distributing or service pipes of said grantees as they may deem proper. No person, company or corporation shall make any such connections without first obtaining a permit therefor from said grantees. Said grantees shall at all times keep and maintain such pressure of gas in all places where the same may be furnished to Kansas City and its inhabitants as may be required by ordinance; provided, the pressure so required shall be reasonable and practicable.

Section 6. Said grantees shall extend their pipes and mains for the distribution of natural gas on such graded streets, avenues, sidewalks, lanes, highways, alleys and public places as may be named by

686 ordinance, followed by notice from the Board of Public Works to proceed thereunder, and within the time specified in said notice; provided, that in every such case at least three consumers on an average for every two hundred feet of extension so made necessary shall first, in writing, agree to take such gas from said grantees for a period of not less than one year, at the general rates; provided, that if the graded street, avenue or highway is about to be paved under ordinances of said city, such extension shall be made ahead of the paving, including connections to curb in cases where buildings are already located, without regard to the number of consumers thereon, and gas shall be furnished by grantees on such extensions. Every ordinance providing for extending pipes and mains as above mentioned shall have appended thereto the signatures of the required number of prospective consumers, and such ordinance shall contain a provision that in case such prospective consumers, or any of them, causing the reduction below the required number of consumers, fail within thirty (30) days after demand has been made by said grantees, to enter into the contract with the grantees as herein required, such ordinance shall not be enforced. If the grantees should fail or refuse to obey any such ordinance for a period of ninety (90) days after the approval of the same, and after said consumers have made the agreements aforesaid, they shall pay to the city the sum of five dollars (\$5) for each and every day that such failure or refusal continues. Failure to obey each ordinance shall constitute a separate violation, and shall entitle the city to the aforesaid sum for the violation of each and every specific independent case.

Section 7. Said grantees shall have the right to shut off gas from any consumer who may be in arrears for a longer period than fifteen (15) days, and the delinquent consumer can reinstate  
687 his right to obtain gas on payment of the bill and shutting off charge of fifty cents.

Section 8. In constructing, repairing and operating said gas plant said grantees shall use every reasonable and proper precaution to avoid damage or injury to persons or property, and shall, at all times and in all places, hold and save harmless the said city from all and every such damage, injury, loss or expense, caused or occasioned by reason of any act or failure to act of said grantees in the construction, repairing or operating of said gas plant or any part thereof, or in the paving, repaving or repairing of any street, or by reason of any act done by said grantees.

Section 9. The said grantees shall file with the Board of Public Works of said city, on or before the first day of February in each and every year, a statement or plat, duly verified, of all pipes, mains, shut-offs and appliances of every kind and nature laid, constructed or built by them in said highways or public places, during the preceding calendar year, and the location thereof; which shall be, by said Board of Public Works, copied into a book kept by it for that purpose.

Section 10. For the purpose of enforcing the provisions of this ordinance and securing the correct measurements of gas furnished under the same and the proper pressure of said gas to produce the



best obtainable results with the least consumption of gas, with due regard to the reasonableness and practicability of such pressure, and to prevent the waste thereof and to protect the city in its corporate rights, and to protect the consumers in their rights, the city shall have the right to provide, by ordinance, for the appointment of one or more inspectors or measurers of gas, and to prescribe their duties

by ordinance, and to pass such ordinances as may be necessary to enforce the provisions of this ordinance. The city

shall pay all costs and charges of such inspection and measurements, the same to be regulated and fixed by ordinance, including the salaries of said inspectors or measurers, and the grantees shall reimburse the city for all these charges, the money to be paid within thirty (30) days after the payment thereof and demand therefor by the city; provided such charges shall be reasonable. The grantees shall also supply and set meters for measuring gas free of charge to consumers, which shall, however, be and remain the property of the grantees and freely accessible to them at all reasonable times, and consumers shall be responsible for negligently or wilfully injuring any meters.

Section 11. The said city shall enact all needful and requisite ordinances to protect said grantees, their works and property, from damages, impositions and frauds, and to prevent unnecessary waste of gas, and said grantees shall have the power to make all reasonable needful rules and regulations for the collection of their revenues, prevention of waste and the conducting and management of their business as they may, from time to time, deem necessary; but the city shall incur no liability by any failure to enact any such ordinance, and the city does not hereby waive its rights of governmental control over this subject matter.

Section 12. Said grantees shall have the right to shut off the gas temporarily from their mains and pipes or any portion thereof, for the purpose of making repairs or extensions of their plant or while repairs or extensions are being made to the pipes or apparatus by which the grantees obtain their supply of natural gas, and shall not be liable to said city or any consumer for any damage occasioned by said temporary suspension of said supply of gas; provided, such repairs and extensions are made with due diligence; and provided, that whenever it is practicable notice of such shutting off of the supply of gas shall be given to consumers by publication in one or more daily newspapers in said city.

Section 13. The said grantees shall be entitled to charge and collect from consumers of such gas, during the period of five years from and after natural gas is first furnished hereunder at the rate of not to exceed twenty-five cents per thousand cubic feet, and during the period of five years next thereafter at the rate of not to exceed twenty-seven cents per thousand cubic feet, and thereafter during the period of the aforesaid grant at the rate of not exceeding thirty cents per thousand cubic feet, and may also make special contracts with consumers at less than the general rate then in force, based upon the amount of gas used and in the conditions of the contract, which



special rates shall be the same to all consumers using the same amount of gas under the same contract conditions, and schedules of such special rates and the contract conditions shall be filed with the city clerk, and each and every change therein shall also be filed with the city clerk, and be open to public inspection. The grantees agree that they will at all times make special contracts at as low rates as those at which natural gas is sold at the time to any consumers of the same class using the same amount of gas under the same contract conditions who are located approximately as distant from the fields from which they are at the time supplied as Kansas City, Missouri, is from the fields from which it is at that time supplied and who are

690 supplied by the grantees, or anyone from whom the grantees obtain their supply, or anyone whose supply is obtained from those from whom the grantees obtain their supply; provided that this agreement to make such special contracts at such rates shall not be construed to compel the grantees to make such special contracts at as low rates as those in effect at the time in any locality where the grantees, or those from whom the grantees obtain their supply, or any one supplied by those from whom the grantees obtain their supply, may be in bona fide competition with any other supplier of natural gas in such locality; but if the demand from special rate consumers threatens the general supply, the grantees may shut off the supply from any special rate consumer, which shall include all other than domestic consumers, in whole or in part, and if the grantees fail or refuse to do so, the city council may by ordinance require the grantees so to do; provided always that the said grantees shall have the right to charge ten (10) per cent additional to all consumers who are in arrears for a longer period than ten (10) days; and provided, further, that the grantees may charge and collect from each person who has a meter installed a minimum monthly bill of fifty cents; provided, however, that if the bill for natural gas consumed in any month shall at the rate then in force exceed the sum of fifty cents, such consumer shall not be charged any minimum bill for that month.

Under the permission and authority hereby granted, the grantees shall furnish natural gas for illuminating, heating and mechanical purposes, which shall at all times be of the same character and quality as when it comes from the earth; and it shall not be mixed with air or otherwise adulterated.

691 Section 14. Should the supply of natural gas, obtainable by grantees reasonably accessible, be, at any time hereafter during the life of this ordinance, inadequate to warrant them in continuing to supply natural gas under the terms of this ordinance, or should the Common Council of Kansas City so find at any time (and in the event of a disagreement as to the facts in this respect either party or a gas consumer may have recourse to the courts to establish the facts), they shall not be longer required to do so, but shall manufacture and furnish manufactured gas to said city and its inhabitants through said mains and pipes under the provisions of this ordinance as far as applicable and subject to all the terms and provi-

sions contained in the ordinance number 6658 granted to Milton J. Payne and others passed August 24, 1895, and the ordinance number 6125 granted to Robert M. Snyder and others, passed January 10, 1895, and the ordinance number 8033, entitled: "An ordinance granting the consent of Kansas City to the consolidation of the Missouri Gas Company and the Kansas City Gas Company," until the expiration of said ordinances and no longer, except as to price, which shall be settled by arbitration, in the following manner:

The grantees shall not discontinue furnishing natural gas without serving at least six months' written notice upon the Mayor of Kansas City of their intention so to do. If grantees and the city cannot agree on the price which shall be thereafter charged for manufactured gas within ninety (90) days after the service of such notice Kansas City and said grantees shall each select one of the judges of the circuit court of Jackson County, Missouri, as an arbitrator, and the two judges so appointed shall immediately choose a third judge of said circuit court. The three judges so appointed shall

692 proceed at once to investigate the matter and shall hear fully all such evidence as is presented to them by either party and shall within ninety (90) days after their appointment make their finding in writing, fixing the just and reasonable maximum rate to be charged by the grantees for manufactured gas during the life of the franchises above described; and said finding, when signed by not less than two of said judges, shall be conclusive between the city and the grantees herein; one copy shall be filed in the office of the city clerk of Kansas City, another with the grantees, and said grantees shall at no time have the right or power to return to the manufacture, distribution or sale of manufactured gas in Kansas City until after such arbitration and award as is herein provided for unless they shall conform to the provisions of said award.

Section 15. As a consideration for the aforesaid grant, the said grantees are hereby required to make a true and faithful report under oath to said city on the first day of February and August in each year for the six months ending on the last day of December and June last preceding, showing the gross amount of money received by them from all such gas delivered to consumers within the corporate boundaries of said city, and shall pay into the City Treasury within fifteen (15) days thereafter an amount equal to two (2) per cent of said gross receipts for said preceding six months. Said city shall have the right at all reasonable times to make such examination and inspection of the books of said grantees as may be necessary to determine the correctness of such reports.

Section 16. All things provided to be done by the Board of Public Works, or other department of the city, may be performed by  
693 any other official or department of said city when so provided by ordinance or charter of said city.

Section 17. If the said grantees shall do or cause to be done any act or thing by this ordinance prohibited, or shall fail, refuse or neglect to do any act by this ordinance required, they shall forfeit all rights and privileges granted by this ordinance, and this fran-

chise and all rights thereunder granted shall ipso facto cease, terminate and become null and void, provided such failure to comply with the conditions of this ordinance shall continue unrectified for sixty (60) days after written notice thereof from the Board of Public Works of said City, or the Common Council of said city.

Section 18. The said grantees shall, within ten (10) days after this ordinance becomes a law, file in the office of the City Clerk of said city a written acceptance of the terms, obligations and conditions in this ordinance set forth, in such form as shall be approved by the City Counselor, and unless such written acceptance shall be so filed, this ordinance shall become null and void.

Section 19. As long as natural gas is furnished and sold to the inhabitants of said City of Kansas City under this franchise, said grantees shall, in consideration of this grant, furnish free to the City of Kansas City natural gas for light in the City Hall, City Prison and all city buildings; provided that all such lights shall be kept extinguished when not needed for illuminating purposes; the city to furnish its own burners, mantles, fixtures and appurtenances, and maintain and keep the same in repair.

Section 20. In order that the city and its inhabitants may receive the benefits of natural gas more speedily and with less disturbance of the streets and inconvenience to the public than would otherwise be possible, the grantees are hereby authorized to acquire the ownership or use or control, by purchase, lease, agreement or otherwise, of the pipes and property of the Kansas City Missouri Gas Company, the consent of the city being hereby given to said company, its successors and assigns, to make such transfer, lease or disposition of its pipes and property to the grantees, and during the time the pipes and property of said company shall be in the possession or under the control of the grantees, said company, its successors and assigns, shall be relieved of any obligation to supply manufactured gas (provided, however, that no consumer of manufactured gas shall be deprived thereof by anything done under this section until such consumer can obtain natural gas from grantees), but the acquirement by the grantees of such ownership or use or control of the pipes and property of the Kansas City Missouri Gas Company, shall be subject to the right of the city to purchase the same under the special provisions of the several ordinances under which said company is now operating, and said right of purchase under said special provisions, shall apply not only to the pipes and property of the Kansas City Missouri Gas Company, as acquired by said grantees, but also to all other pipes and property owned by the grantees in Kansas City, Missouri, and used in connection with said plant, the value of such other pipes and property to be determined at the same time, in the same manner and in the same proceedings. And grantees covenant that their contract for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (corporations), that under the terms thereof, after two years from the time the natural gas is first furnished to Kansas City thereunder, the division of the gross income received for said gas between

695 the distributing company and the supply company shall be in the proportion of thirty-seven and one-half cents out of each dollar to the former, and sixty-two and one-half cents to the latter; and covenant for themselves, their successors and assigns, that none of the terms of that contract agreement shall be changed without consent of Kansas City expressed by ordinance; and grantees agree for themselves, their successors and assigns, that if Kansas City shall acquire said plant and property they will on demand transfer free of cost to Kansas City all their rights under said contract; and grantees further agree to procure from said two corporations and file with the City Clerk within ninety days from the time this ordinance becomes a law, a written agreement in form to be approved by the City Counselor, agreeing that they (said two corporations) will, if Kansas City shall acquire said plant as aforesaid, upon demand, furnish and continue to furnish during the remaining period of this franchise gas to Kansas City on the same terms as they have agreed to furnish it to the grantees, their successors and assigns. If said proposed within agreement to be made by said two corporations is not filed with the City Clerk within the time specified this ordinance shall be null and void. Provided, however, that Kansas City agrees not to exercise the right to purchase the pipes and property of the Kansas City Missouri Gas Company, and of the grantees, under said special provisions, for the period of ten years from the time of the acceptance of this ordinance by grantees, unless grantees shall before the expiration of said period of ten years have ceased to furnish natural gas as required by this ordinance, in which event the right to make such purchase under such special provisions shall be no longer postponed; in consideration whereof the grantees agree  
696 during all the time they may be supplying natural gas to bid annually,

(1) to fit the street lamp posts at present set and in place with incandescent equipment, to furnish natural gas to the same, and to maintain, repair, clean, light and extinguish the same, upon the all night schedule, for the price of not to exceed nine dollars (9.00) per lamp per annum; and

(2) to set, on the line of their mains, such additional street lamp posts as the Council may by ordinance demand, to connect the same, to furnish the same with incandescent equipment, to maintain, repair, clean, light and extinguish and to furnish the natural gas to the same, on the all night schedule, for the price of not to exceed twelve dollars (\$12.00) per lamp per annum; or at the option of the city, in lieu of such bidding, to furnish the natural gas free and without cost to the above and to additional posts that may be set by the city, at the rate of one hundred (100) lamps for each eight thousand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory, having the largest circulation, including the names of business firms; and if the city elects to take natural gas free under this option, and to itself furnish or to contract with others for

the incandescent equipment and for maintaining, repairing, cleaning, lighting and extinguishing, the city shall have the right to use for the purpose the posts at that time owned and set by the grantees, which the grantees agree shall not be less than the number which have been set and are now owned by the Kansas City Missouri Gas Company, and the city agrees that the lights shall be kept extinguished between sunrise and sunset.

697 Section 21. All prohibitions, amendments, forfeitures and obligations and all other provisions of this ordinance shall be binding upon the grantees, the survivors or survivor of them, and their or his assigns, whether expressly so stated herein or not; and all grants and privileges secured by this ordinance to said grantees shall be held to inure to the benefit of the survivors or survivor of them and his or their legal and bona fide successors and assigns. Nothing in this ordinance shall be construed as granting to said grantees any exclusive franchise, rights or privileges; but nothing herein shall be construed to neutralize or impair the provisions of this ordinance respecting the prohibition against merger and consolidation.

Section 22. The said grantees shall not, except as in this ordinance provided, without the consent of the city, evidenced by ordinance, sell, lease or transfer their plant, property, rights or privileges, herein authorized, to any person, company, trust or corporation, now or hereafter engaged, or for the purpose of engaging in the manufacture or sale of gas in said city, under any other ordinance or franchise, or otherwise; and shall not without such consent at any time enter into any combination, with any person or persons, company or companies, authorized by ordinance to sell gas in said city, or with any person or persons, company or companies proposing by application for a franchise to sell gas to Kansas City or its inhabitants, concerning the rate or price to be charged for gas, to be used by the city, or private consumers; and no officer, employee or manager of

698 the gas plant and works, to be constructed and acquired under and in pursuance of this ordinance, shall, at the same time, be in charge of, or be the officer, employee or manager of any other gas works authorized by ordinance to manufacture or sell gas in said city, except the Kansas City Missouri Gas Company, its successors and assigns, provided, however, that said grantees may convey all their rights and privileges herein granted to a corporation, its successors and assigns, to be organized by them, under the laws of the state of Missouri, for the purpose of acquiring, building, constructing and operating the gas plant authorized under this ordinance; but this shall not authorize any grantee to assign the franchise granted to it to any other company to which a franchise has been granted; and provided, further, that notice of said conveyance, and of any conveyance by said proposed assignee corporation, its successors or assigns, shall be filed with the City Clerk of Kansas City, Missouri, within ten (10) days after the execution thereof; and provided, further, that the grantees, or their assigns ("assigns" having the meaning above set forth), shall have the full, complete and unqualified right to assign and transfer and convey this franchise, and their property, by way of mortgage, deed of trust or other form of security

in the nature of a mortgage or deed of trust, for the purpose of securing bona fide indebtedness, and for the purpose of acquiring property and of raising funds to provide, build, construct, equip and operate said plant, and to conduct the business thereunder.

This section shall not be construed, however, in any way to prevent or hinder the grantees from taking over, for the purposes hereinbefore stated, the property or plant of the Kansas City, Missouri, Gas Company, and the taking over of the same shall never be construed as any violation of the provisions of this section of this ordinance. And the grantees further bind themselves to enter into no pooling arrangements or any contract or merger or consolidation, either by way of a holding company, or otherwise, with any other company authorized by ordinance to manufacture or sell gas in Kansas City, except as permitted by this ordinance, and, as a matter of contract, hereby agree to obey all laws of the State of Missouri, and ordinances of Kansas City, now in existence or hereafter passed, in prohibition of mergers, consolidations and pooling.

It being the purpose to safeguard and make sure that there may always be competition in the matter of supplying gas and that gas will be supplied within the city, the grantees and assigns agree that any action on their part impairing or limiting or preventing such competition, or any substantial and continued failure for a period of sixty days to furnish gas in compliance with the provisions of this ordinance, shall constitute a violation of this ordinance, and the city shall have the right to repeal this ordinance by ordinance, and shall have the right to purchase the plant under the same terms and provisions stated in Sections 13 and 14 of ordinance of Kansas City, No. 6658, passed August 24, 1895, commonly known as the ordinance of the Kansas City, Missouri, Gas Company, but the statement of these particular remedies shall not be construed as taking away from the city any of its rights in law or equity.

Provided, the Kansas City Missouri Gas Company, and the grantees and the said corporation so to be formed by them are hereby expressly authorized to sell, lease, convey or otherwise dispose of their pipes and property of every kind, either to the other, and generally to make such contracts and agreements with each other as they may see fit, and said corporation so to be formed, its successors and assigns, may also, subject to the restrictions of this section, sell, lease, convey or otherwise dispose of its property and the franchise hereby granted, provided such action is taken subject to the terms of this ordinance. Kansas City retains to itself the right to itself own and operate a plant or plants for supplying the city, or the inhabitants thereof, with natural or artificial gas (if it shall at any time see fit so to do) for lighting and heating and manufacturing purposes, and to own and operate a plant or plants for supplying the city, or the inhabitants thereof, with any other sort of light.

Section 23. All ordinances or parts of ordinances in conflict with this ordinance are, in so far as they so conflict, hereby repealed.

The form of the above ordinance is hereby approved.

EDWIN C. MESERVEY,  
*City Counselor.*

Passed Sep. 27, 1906.

GEO. HOFFMANN,  
*President Upper House of the Common Council.*

Passed Sep. 27, 1906.

D. R. SPALDING,  
*Speaker Lower House of the Common Council.*

Approved Sep. 27, 1906.

H. M. BEARDSLEY, *Mayor.*

Attest:

[SEAL.] WM. CLOUGH,  
*City Clerk,*

By E. H. ALLEN, *Dpy.*

701 STATE OF MISSOURI,  
*County of Jackson,*  
*Kansas City, ss:*

I, Wm. Clough, City Clerk of Kansas City, Missouri, hereby certify that the annexed and foregoing is a true and correct copy of an ordinance of said City, No. 33887 entitled: "An ordinance Authorizing Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, to lay, acquire and maintain pipes in Kansas City, for the purpose of supplying natural gas to said city and its inhabitants," approved September 27, 1906, as the same appears of record and on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of Kansas City aforesaid, this 5th day of Oct. A. D. 1906.

[SEAL.] WM. CLOUGH,  
*City Clerk,*

By E. H. ALLEN, *Deputy.*

702 EXHIBIT "B."

*Agreement Between The Kansas City Pipe Line Company and Hugh J. McGowan, Charles E. Small and Randal Morgan.*

Dated November 17, 1906.

This Agreement, made this 17th day of November, 1906, between The Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, party of the first part, and Hugh J. McGowan, of Indianapolis, Indiana, Charles E. Small, of Kansas



City, Missouri, and Randal Morgan, of Philadelphia, Pennsylvania, parties of the second part.

Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the State of Kansas to a point at or near the city limits of Kansas City, Missouri, and is desirous of entering into a contract with the parties of the second part for the transportation and supply of natural gas to them; and,

Whereas, the parties of the second part are the owners of an ordinance of the City of Kansas City, Missouri, granting the right to lay, acquire and maintain pipes in Kansas City, Missouri, for the purpose of supplying natural gas to said city and its inhabitants, copy of which ordinance is attached hereto, marked Exhibit No. 1, and desire to secure a supply of natural gas for the said city and its inhabitants:

Now, Therefore, in consideration of the mutuality hereof, it is hereby agreed between the parties hereto as follows:

703 1. The party of the first part hereby agrees that it will during the period of such ordinance, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties of the second part, or of their property, supply and deliver through its said pipe line or lines, to said parties of the second part, or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city at lower rates  
704 than those specified in said ordinance.

In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the

supply of the same, and the agreement of the party of the first part herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part agree that any contract they make to furnish gas to manufacturers shall contain provisions by which the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent of such gross receipts. The parties of the second part make no agreement

705 with the party of the first part respecting the rates at which they shall sell natural gas to any consumers in Kansas City, Missouri, but expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those mentioned in said ordinance which they may agree upon with such consumers; but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, and the parties of the second part shall be at liberty to obtain the same from such other sources as they may find available.

3. A statement shall be rendered by said parties of the second part to the party of the first part on or before the fifteenth day of each month, showing the amount of receipts during the previous month and the amount of outstanding and uncollected bills.

Payments hereunder shall be made by the parties of the second part to the party of the first part upon the fifteenth day of each month for the party of the first part's percentage of all collections made during the previous month. In order to enable the party of the first part to verify the correctness of payments made by the parties of the second part, the party of the first part shall have the right, through its duly appointed representatives, at all times during ordinary business hours, to have such access to such of the

706 books of the parties of the second part as may be necessary to enable it to verify the gas sales of the parties of the second part and the amounts and dates of collection for the same.

4. The parties of the second part hereby agree to have at least fifty (50) miles of their mains prepared and ready to receive and distribute natural gas not later than twelve (12) months after the passage, approval and acceptance of said ordinance, and the balance of their mains laid as rapidly thereafter as their system can be adapted for the purposes, and by advertising, solicitation and all other ordinary methods in vogue with enterprising gas companies to encourage and increase their business. Provided that if the work of making said fifty miles of mains so prepared and ready or laying the balance thereof shall be prevented, hindered or delayed by injunction or legal process of any kind against the parties of the second part, or with whom they may contract for the performance of such work, or by labor strike or any cause beyond the control of the parties of the second part or such other persons, the time consumed by such prevention, hindrance or delay shall not be considered any part of the time provided for herein for the completion of such work, and the time provided for herein for such completion shall be correspondingly extended for a like period or periods.

5. It is further covenanted and agreed between the parties hereto that the parties of the second part will not supply manufacturers at a greater pressure than four (4) ounces at the meter; provided, that if the pressure of gas at the meter is greater than four (4) ounces per square inch, the volume of gas shall be corrected to four (4) ounces pressure and charged to the consumer at the corrected volume.

707 6. It is further covenanted and agreed by and between the parties hereto that all gas sold shall be supplied through meters of approved design, that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by the parties of the second part that each meter shall register as nearly accurately as possible the amount of gas passed through it; that the parties of the second part will at all times permit the officers or authorized agents of the party of the first part to inspect their mains, pipes, regulators, meters and appliances for the purpose of verifying their monthly statements as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that said parties of the second part will forward to the party of the first part a monthly record of the number of contracts made and cancelled, and the number of meters set, connected and discontinued, together with the total number of consumers at the end of each month, and will make and keep at their office a copy of such contracts, together with a full and complete record of the same, and of all meters used; and it shall be the duty of the parties of the second part to keep and maintain their distributing system in good order and condition.

7. It is further covenanted and agreed that the parties of the second part shall not be liable to the party of the first part for any portion of their receipts from the city of Kansas City, Missouri, for street lamps, so far as the present twenty-eight hundred (2800) street

lamps are concerned, and as to any additional number it is hereby agreed that ten thousand (10,000) cubic feet per lamp per annum,

708 at fifteen (15) cents per thousand cubic feet, shall be the agreed upon proportion of the receipts of said parties of the second part from that source on which the percentage of the party of the first part for gas shall be reckoned. The party of the first part agrees to furnish natural gas to the parties of the second part free of charge for use in the present twenty-eight hundred (2800) street lamp posts, and to additional posts that may be set by the city at the rate of twenty-five hundred (2500) lamps for each two hundred thousand (200,000) inhabitants, should the city of Kansas City, Missouri, elect to take natural gas free and itself furnish and contract with others for the incandescent equipment, and for maintaining, repairing, cleaning, lighting and extinguishing. And the party of the first part further agrees to furnish natural gas to the parties of the second part free of charge for lighting the City Hall, City Prison, and all city buildings in said city.

8. It is agreed between the parties hereto that if at any time during the period of said ordinance while the parties of the second part are buying from the party of the first part all the natural gas they are distributing and selling in the said city, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said city or any of its inhabitants with such gas, otherwise than under this agreement, then, and in any such case, the provision contained in Section No. 2 hereof, in the following words, to-wit: "but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen

709 cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices," shall at once become inoperative and cease to have any effect, but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the parties of the second part natural gas to fully supply the demand for all purposes of consumption in said city for sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part from the sale of natural gas in said city at any prices for which the said parties of the second part may choose to sell the same.

9. This agreement shall be binding upon the successors and assigns of the parties hereto.

10. It is understood and agreed that the parties of the second part may assign and convey this agreement and all their rights, titles and interests hereto, herein and hereunder to a corporation, its successors and assigns, organized under the laws of the State of Missouri and competent to take such assignment, and the party of the first part agrees that upon such assignment and acceptance thereof by such

corporation, and written notice thereof to the party of the first part, accompanied by copies of the assignment and acceptance, the parties of the second part shall ipso facto be released from all obligations to the party of the first part hereunder; and the party of the first part further agrees to execute and deliver to the parties of the second part all such evidences of their release as they shall reasonably require.

710 In witness whereof the parties hereto have duly executed these presents the day and year first above written.

[SEAL.] THE KANSAS CITY PIPE LINE COMPANY,  
By PAUL THOMPSON, *President*.

Attest:

C. M. LATOURETTE, *Secretary*.

Signed, sealed and delivered by the Pipe Line Company in the presence of

D. N. OGDEN.

W. F. DOUTHIRT.

HUGH J. MCGOWAN. [SEAL.]

Signed, sealed and delivered by Hugh J. McGowan, in the presence of

ANNA L. BOWMAN.

W. F. DOUTHIRT.

CHARLES E. SMALL. [SEAL.]

Signed, sealed and delivered by Charles E. Small, in the presence of

CALEB S. MONROE.

W. F. DOUTHIRT.

RANDAL MORGAN. [SEAL.]

Signed, sealed and delivered by Randall Morgan, in the presence of

GEORGE S. PHILLER.

W. F. DOUTHIRT.

(Here follows Ordinance No. 33887 of Kansas City, Missouri, being Exhibit "A" attached to this complaint. See pages 22 to 42 of this complaint.)

711

EXHIBIT "C."

(On the Cover.)

*Agreement Between the Kansas City Pipe Line Company and Hugh J. McGowan, Charles E. Small, and Randal Morgan.*

Dated December 3, 1906.

"11 This agreement shall, as between the parties hereto, and their respective heirs, executors, administrators, successors and as-

signs, take the place of and stand instead of that certain other agreement, between the parties hereto, executed and delivered, November 17, 1906, but if the city of Kansas City shall acquire the gas plant, pipes and property of the grantees named in said ordinance No. 33887, then this agreement shall at once terminate and become void, and thereupon the said other agreement shall again come into force and effect as if this agreement had never been made."

712        This Agreement, made this 3rd day of December, 1906, between The Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, party of the first part, and Hugh J. McGowan, of Indianapolis, Indiana, Charles E. Small, of Kansas City, Missouri, and Randal Morgan, of Philadelphia, Pennsylvania, parties of the second part.

Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the State of Kansas to a point at or near the city limits of Kansas City, Missouri, and is desirous of entering into a contract with the parties of the second part for the transportation and supply of natural gas to them;

And Whereas, the parties of the second part are the owners of an ordinance of the City of Kansas City, Missouri, granting the right to lay, acquire and maintain pipes in Kansas City, Missouri, for the purpose of supplying natural gas to said city and its inhabitants, copy of which ordinance is attached hereto marked "Exhibit No. 1," and desire to secure a supply of natural gas for the said city and its inhabitants.

Now, Therefore, in consideration of the mutuality hereof it is hereby agreed between the parties hereto as follows:

1. The party of the first part hereby agrees that it will during the period of such ordinance, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties of the second part, or of their property, supply and deliver through its said pipe line or lines, to said parties of the second part, or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas in such

713        amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under *his* contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interrup-



tions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city at lower rates than those specified in said ordinance, and that they shall and will make such special contracts in accordance with their agreement to that effect contained in Section 13 of said ordinance, copy of which is hereto attached.

In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part  
714 herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part agree that any contract they make to furnish gas to manufacturers shall contain provisions by which the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent. of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent. of such gross receipts. The parties of the second part make no agreement with the party of the first part respecting the rates at which they shall sell natural gas to any consumers in Kansas City, Missouri, but expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those mentioned in said ordinance which they may agree upon with such consumers but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their agreement to that  
715 effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such



lower prices, and the parties of the second part shall be at liberty to obtain the same from such other source as they may find available.

3. A statement shall be rendered by said parties of the second part to the party of the first part on or before the fifteenth day of each month, showing the amount of receipts during the previous month and the amount of outstanding and uncollected bills.

Payments hereunder shall be made by the parties of the second part to the party of the first part upon the fifteenth day of each month for the party of the first part's percentage of all collections made during the previous month. In order to enable the party of the first part to verify the correctness of payments made by the parties of the second part, the party of the first part shall have the right, through its duly appointed representatives, at all times during ordinary business hours, to have such access to such books of the parties of the second part as may be necessary to enable it to verify the gas sales of the parties of the second part and the amounts and dates of collection for the same.

4. The parties of the second part hereby agree that they will

(1) on or before January 1, 1907, be ready to furnish and be furnishing natural gas on not less than seventy-five miles  
716 of mains to all consumers thereon who desire the same, and who have complied with their reasonable rules and regulations; and (2) on or before March 1, 1907, be ready to furnish and be furnishing natural gas on not less than fifty additional miles of mains to all consumers thereon who may desire the same and have complied with said reasonable rules and regulations; and (3) on or before August 1, 1907, be ready to furnish and be furnishing natural gas to all present consumers on the lines of the Kansas City Missouri Gas Company who may desire the same and who have complied with said reasonable rules and regulations; provided that the parties of the second part shall not be required to furnish patrons from circulating mains; and by advertising, solicitation and all other ordinary methods in vogue with enterprising gas companies to encourage and increase their business. Provided that if the commencement of work or the laying of pipes by the parties of the second part necessary for the furnishing of gas to consumers as herein agreed, or the laying of pipes inside or outside the city or the delivering of natural gas at or within the corporate limits of the city by the parties of the second part or by any persons with whom they may contract for their supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the parties of the second part or such other persons, or by inclement days or by labor strikes, or by any cause beyond the control of the parties of the second part or such other persons, or if the acquisition of the ownership, use or control of the pipes and property of the Kansas City Missouri Gas Company provided for in said ordinance hereto attached shall be prevented, hindered or delayed by injunction or other legal proceedings, the time consumed by such prevention, hindrance or delay shall not be considered any part of the times provided for  
717 herein for supplying natural gas in the city, as required hereby, and the times provided for herein for furnishing gas

to consumers shall be correspondingly extended for a like period or periods.

5. It is further covenanted and agreed between the parties hereto that the parties of the second part will not supply manufacturers at a greater pressure than four (4) ounces at the meter; provided, that if the pressure of gas at the meter is greater than four (4) ounces per square inch, the volume of gas shall be corrected to four (4) ounces pressure and charged to the consumer at the corrected volume.

6. It is further covenanted and agreed by and between the parties hereto that all gas sold shall be supplied through meters of approved design, that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by the parties of the second part that each meter shall register as nearly accurately as possible the amount of gas passed through it; that the parties of the second part will at all times permit the officers or authorized agents of the party of the first part to inspect their mains, pipes, regulators, meters and appliances for the purpose of verifying their monthly statements as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that said parties of the second part will forward to the party of the first part a monthly record of the number of contracts made and cancelled, and the number of meters set, connected and disconnected, together with the total number of consumers at the end of each month, and will make and keep at their office a copy of such contracts, together with a full and complete record of the same, and of all meters used; and it shall be

the duty of the parties of the second part to keep and maintain their distributing system in good order and condition.

7. It is further covenanted and agreed that the parties of the second part shall not be liable to the party of the first part for any portion of their receipts from the city of Kansas City, Missouri, for street lamps, so far as the street lamp posts, or an equivalent number, set and in place on September 27, 1906, (the date of the passage and approval of said ordinance) are concerned, and as to any additional number it is hereby agreed that ten thousand (10,000) cubic feet per lamp per annum, at fifteen (15) cents per thousand cubic feet, shall be the agreed upon proportion of the receipts of said parties of the second part from that source on which the percentage of the party of the first part for gas shall be reckoned. The party of the first part agrees to furnish natural gas to the parties of the second part free of charge for use in the said street lamp posts, or an equivalent number, set and in place on said September 27, 1906, and to additional posts that may be set by the city at the rate of one hundred (100) lamps for each eight thousand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory having the largest circulation including the names of business firms, should the city of Kansas City, Missouri, elect to take natural gas free and itself furnish or contract with others for the incandescent equipment, and for maintaining, repairing, cleaning, lighting and extinguishing.

And the party of the first part further agrees to furnish natural gas to the parties of the second part free of charge for lighting the City Hall, City Prison, and all city buildings in said city.

719 8. It is agreed between the parties hereto that if at any time during the period of said ordinance while the parties of the second part are buying from the party of the first part all the natural gas they are distributing and selling in the said city, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said city or any of its inhabitants with such gas, otherwise than under this agreement, then, and in any such case, the provision contained in Section No. 2 hereof, in the following words, to-wit: "but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices," shall at once become inoperative and cease to have any effect but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the parties of the second part natural gas to fully supply the demand for all purposes of consumption in said city for sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part from the sale of natural gas in said city at any prices for which the said parties of the second part may choose to sell the same.

720 9. The parties of the second part shall have the right, authority and power to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise convey this agreement and all their rights, titles and interests hereto, herein and hereunder; and they agree that they will, on or before December 31, 1907, assign and convey this agreement and all of their rights, titles and interests hereto, herein and hereunder to a corporation organized under the laws of the State of Missouri and competent to take such assignment, and that such corporation shall thereupon accept such assignment and the party of the first part agrees that upon such assignment and acceptance, and written notice thereof to the party of the first part, accompanied by a copy of the assignment, and by a copy of the acceptance, the parties of the second part shall ipso facto be released from all obligations to the party of the first part hereunder; and the party of the first part further agrees to execute and deliver to the parties of the second part all such evidences of their release as they may reasonably require. The said corporation organized under the laws of the State of Missouri, and its successors and assigns, shall also have the right, authority and power, to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise

convey this agreement and all its or their rights, titles and interests hereto, herein and hereunder.

10. This agreement shall be binding upon the successors and assigns of the parties hereto.

11. This agreement shall, as between the parties hereto, and their respective heirs, executors, administrators, successors and assigns, take the place of and stand instead of that certain other agreement, between the parties hereto, executed and delivered, November 17,

1906, but if the city of Kansas City shall acquire the gas plant, pipes and property of the grantees named in said ordinance No. 33887, then this agreement shall at once terminate and become void, and thereupon the said other agreement shall again come into force and effect as if this agreement had never been made.

In witness whereof the parties hereto have duly executed these presents the day and year first above written.

[CORPORATE SEAL.]

THE KANSAS CITY PIPE LINE COMPANY,  
By PAUL THOMPSON, *President*.

Attest:

C. M. LATOURETTE, *Secretary*.

Signed, sealed and delivered by Kansas City Pipe Line Company in presence of

D. N. OGDEN,

W. F. DOUTHIRT,

HUGH J. MCGOWAN. [SEAL.]

Signed, sealed and delivered by Hugh J. McGowan in presence of  
ANNA L. BOWMAN.

CHARLES E. SMALL. [SEAL.]

Signed, sealed and delivered by Charles E. Small in presence of  
CALEB S. MONROE.

RANDAL MORGAN. [SEAL.]

Signed, sealed and delivered by Randal Morgan in presence of  
GEORGE S. PHILLER,  
W. F. DOUTHIRT.

722 STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

Be it remembered that on this 3rd day of December, 1906, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came Paul Thompson, President of The Kansas City Pipe Line Company, a corporation duly organized, incorporated and existing under the laws of the State of New Jersey,

who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself, the President thereof.

In witness whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.  
[NOTARIAL SEAL.] F. H. MACMORRIS,

*Notary Public.*

My commission expires 2/12/1909.

STATE OF PENNSYLVANIA,

*County of Philadelphia, ss:*

I, Thomas K. Finletter, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do by my Deputy James W. Fletcher, authorized by Act of Assembly of May 26, 1897, Certify, that F. H. MacMorris, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 4th day of December in the year of our Lord one thousand nine hundred and six.

[SEAL.]

THOMAS K. FINLETTER,

*Prothonotary,*

By JAS. W. FLETCHER,

*Dep. Prothonotary, Durante Absentia, Secundum Legem.*

STATE OF INDIANA,

*County of Marion, ss:*

On this 6th day of December, 1906, before me personally appeared Hugh J. McGowan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal at Indianapolis, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the 19th day of September, 1908.

[NOTARIAL SEAL.]

ANNA L. BOWMAN,  
*Notary Public.*

724 STATE OF INDIANA,  
*County of Marion, set:*

I, William E. Davis, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court, within and for said County and State, the same being a Court of Record, and having a seal, do hereby certify that Anna L. Bowman, whose name is subscribed to the acknowledgment to the annexed instrument, was at the time of taking such acknowledgment, to-wit: Dec. 6, 1906, an acting Notary Public within and for the County aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify the same, as well as take and certify all affidavits, and the acknowledgment and proof of deeds or conveyances, and all other instruments of writing.

And further, that I am well acquainted with the handwriting of said Anna L. Bowman, and verily believe that the signature to said Certificate or Proof of Acknowledgment or Jurat is genuine and that said instrument is executed and acknowledged according to the laws of the State of Indiana.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, at Indianapolis, Indiana, this 6th day of December, A. D. 1906.

[SEAL.]

WILLIAM E. DAVIS, *Clerk.*

STATE OF MISSOURI,  
*County of Jackson, ss:*

On this 7th day of December, 1906, before me personally appeared Charles E. Small, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

725 In witness whereof, I have hereunto set my hand and affixed my official seal at Kansas City, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the eighteenth day of September, 1910.

[NOTARIAL SEAL.]

CALEB S. MONROE,  
*Notary Public.*

STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

On this 4th day of December, 1906, before me personally appeared Randal Morgan, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal at Philadelphia, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the 12th day of February, 1909.

[NOTARIAL SEAL.]

F. H. MACMORRIS,  
*Notary Public.*

(Here follows Ordinance No. 33887 of Kansas City, Missouri, being Exhibit "A" attached to this complaint. See pages 22 to 42 of this complaint.)

726

EXHIBIT "D."

In the District Court of Montgomery County, Kansas.

No. 13476.

THE STATE OF KANSAS, Plaintiff,

vs.

THE INDEPENDENCE GAS COMPANY, THE CONSOLIDATED GAS, OIL & MANUFACTURING COMPANY, Kansas Natural Gas Company et al.,  
Defendants.

*Stipulation.*

Dated December 17; filed December 29, 1914.

[Erroneously denominated "Creditors' Agreement" on the cover of a printed copy issued by the Receiver.]

It is stipulated and agreed, by and between the parties hereto, as follows, to-wit:

First. That the jurisdiction of this court to have possession, control and management through its receivers of the property and assets of the Kansas Natural Gas Company rests upon section 1728 of the General Statutes of Kansas of 1909 and other laws of the state of Kansas, the pleadings filed herein and the orders and decrees of the United States District Court for the District of Kansas and of the Circuit Court of Appeals of the Eighth Circuit; that the receivers of said Kansas Natural Gas Company appointed herein and ancillary



hereto may continue in the possession, control and operation of said Kansas Natural property and assets as hereinafter provided and said case conducted and finally concluded as contemplated by said section 1728 and other laws in the interest, first, of the public service, second, of the creditors, and third, of the stockholders and the company.

727      Second. That all amended and supplemental petitions in the above entitled case in so far as they charge or attempt to charge the defendants The United Gas Improvement Company, Wyandotte County Gas Company, The Kansas City Pipe Line Company, The Kansas City Gas Company and The Marnet Mining Company with acts subjecting them to penalties, are hereby withdrawn, in so far as they demand the assessment and collection of penalties from said defendants or either of them; all proceedings against the other defendants may continue.

It is agreed that the said receivers for The Wyandotte County Gas Company shall continue until April 1, 1915, unless the Court shall sooner terminate the same; that the receivers for The Marnet Mining Company and The Kansas City Pipe Line Company shall continue until such a time as it may appear to the Court advisable and to the best interest of the estate that such receivership be discontinued.

It is further agreed that the maintenance of the said receivership of Wyandotte County Gas Company from and after January 1, 1915, is continued for the benefit and in the interest of the general estate of Kansas Natural Gas Company, and that the costs of said receivership, including the salary of Willard J. Briedenthal, the active receiver in charge of said property, shall be paid out of the business of The Wyandotte County Gas Company, but the salary of John F. Overfield, co-receiver with said Willard J. Briedenthal, and all counsel fees of said receivers hereafter allowed and paid, shall be paid out of the general estate of Kansas Natural Gas Company.

It is further agreed that the continuation of the receivers of The Kansas City Pipe Line Company and The Marnet Mining  
728      Company from and after January 1, 1915, is in the interest of and for the benefit of the general estate of Kansas Natural Gas Company, and all expenses of each of said receiverships, including the salary of receivers and counsel fees, shall be paid out of the general estate of Kansas Natural Gas Company.

Three. All parties hereto and intervenors herein, including the lienholders, creditors and stockholders, the state of Kansas and the receivers, agree that the business in which the properties involved in this suit and the custody of this court are used, to-wit: The production, transportation and sale of natural gas, is a public utility business of an extra hazardous and temporary character; that the return of the capital investment in said business and properties, with interest, must be provided during the life expectancy of the business; that the life expectancy, in the opinion of experts of said business, as it now exists, is not exceeding six years; that the creditors and lienholders against the property devoted to public use in said business, consent to the deferring of their right to foreclose and assert their

several claims against said property, legal and equitable, and to have execution therefor, only upon the condition that their said investments and claims be returned with interest within said six year period, or so much thereof as will properly secure the return of the balance; that the creditors and lienholders consent that said property may be operated by the receivers appointed by this court not as pending the foreclosure and sale of said property in their behalf, but as enabling said property to serve the public with natural gas for the period named, in the interest of the public and in the interest of the Company in which the legal title to said property is now lodged; that upon such condition and consideration, all parties hereto consent and agree that the receivers of this court, for and on behalf  
729 of and in the name of the legal and equitable owners of said property, may, as expeditiously as possible and whenever deemed advisable by the court, make such application and showing to the Public Utilities Commission of the state of Kansas, and other public authorities, as may to the court and its receivers be deemed proper, and all parties hereto hereby tender to the court and the receivers all the aid, assistance and information in their possession and under their control, for the purposes of said application and hearing.

Four. Upon due notice and opportunity to be heard, the court shall determine the rights of The Independence Manufacturing and Power Company.

Five. That the creditors and lienholders of the Kansas Natural Gas Company and The Kansas City Pipe Line Company consent that \$500,000.00 may be reserved during the year 1915, out of current earnings for said year and \$200,000.00 annually thereafter during the receivership for extensions, betterments and additional gas supply; the same to be expended only by order of court after notice to the creditors or their committee and opportunity to be heard, and upon condition that the properties are being operated upon a compensatory rate; and said creditors may appoint a committee consisting of three members, one for the Kansas Natural first mortgage bondholders, one for the Kansas Natural second mortgage bondholders and one for The Kansas City Pipe Line bondholders, who shall aid and assist the court and receivers with all proper facts and proofs concerning said extensions and betterments.

Six. That the court upon notice and opportunity to be heard, may allow and pay reasonable sums out of Kansas Natural trust funds on hand, in full payment and satisfaction of all court costs in  
730 said court, receivers' and counsel fees, charges and expenses of all receivers of all companies and of all counsel in the case, either for plaintiff or the receivers, to January 1, 1915. All orders as to allowances and payments referred to in this paragraph shall, as by agreement, be final and conclusive.

Seven. That the balance of cash in the hands of the receivers on January 1, 1915 (less \$100,000.00 retained as working capital) may be distributed as follows:

(a) To the payment in full of past due and accrued interest to January 1, 1915, and \$79,000.00 on the principal of the bonds of

The Marnet Mining Company now outstanding, the payment of the remaining \$468,000.00 Marnet bonds to be extended and paid one-sixth annually as provided in section (a) paragraph 8, the intent hereof being to reduce the annual sinking fund requirements of the receivers after January 1, 1915, for said bonds from about \$200,000.00 to \$78,000.00; Provided, that none of said payments either under this section or under section (a) of paragraph 8, shall be allowed or applied upon the bonds of said company owned by the Kansas Natural Gas Company and held as collateral security by the Fidelity Title & Trust Company;

(b) To the payment of \$256,000.00 in full of interest due and accrued to January 1, 1915, on Kansas Natural first mortgage bonds, and \$334,483.83 in full of interest due and accrued to January 1, 1915, on Kansas City Pipe Line first mortgage bonds, not including twenty-five bonds held by R. M. Snyder, Jr., or his assigns, as follows:

Bonds numbered.	Series.	Due.	Amount.
2201—2203	F	February 1, 1913.....	\$3,000.00
2751—2753	G	February 1, 1914.....	3,000.00
3301—3302	H	February 1, 1915.....	2,000.00
3851—3858	I	February 1, 1916.....	8,000.00
4251—4258	J	February 1, 1917.....	8,000.00
4651	K	February 1, 1918.....	1,000.00

731 interest on which is also to be paid on the best terms obtainable.

(c) The balance on hand January 1, 1915, shall be distributed fifty per cent. to the Kansas Natural first mortgage bondholders and fifty per cent. to the Kansas City Pipe Line bondholders (not including the twenty-five Kansas City Pipe Line first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified) and applied to the retirement of said bonds at a rate corresponding with the terms of adjustment of their respective claims on that date as herein set forth; that is to say, the outstanding first mortgage bonds of the Kansas Natural Gas Company being \$1,600,000.00 par as of said date, after payment of said interest; on the \$1,600,000.00 bonds now outstanding there is now in the hands of the trustee the sum of \$166,666.66, with interest, which on payment of the sum to be distributed under this stipulation, is to be added to such sum and the \$1,600,000.00 reduced by the aggregate of the two sums, and said first mortgage bondholders, when such payment on principal is made, shall surrender for cancellation, first mortgage bonds in said proportions corresponding to the amount of said payment; and it is further understood and agreed that the first mortgage bonds represent the full face value thereof, paid into the treasury of the Kansas Natural Gas Company, and that the balance January 1, 1915, due thereon is the sum of \$1,856,000.00, of which sum \$256,000.00 is the interest and \$1,600,000.00, less the above mentioned sum with interest now in the hands of the Kansas Natural first mort-

gage trustee is the unpaid principal, and that in all computations and agreements herein, and in all actions that may hereafter be taken, such computation and balance shall be final between all

732 the parties, their privies, successors and assigns; and the outstanding bonds of The Kansas City Pipe Line Company, being \$2,520,000.00 par (not including the twenty-five Kansas City Pipe Line Company first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified) and the balance of indebtedness owing upon said \$2,520,000.00 par of bonds, as of said date, after payment of said interest, being, for the purpose of this stipulation, \$1,677,875.43, the holders of said \$2,520,000.00 bonds when such payment is made, shall surrender for cancellation, first mortgage bonds of The Kansas City Pipe Line Company in said proportion corresponding to the amount of such payment. Payment of the said twenty-five bonds held by R. M. Snyder, Jr., or his assigns, shall be made by the receivers upon the best terms obtainable.

Eight. That all the net earnings and other available funds of the receivers, in each year, after January 1, 1915, over and above all taxes and necessary operating expenses and the allowances for betterments and gas purchases provided for in paragraph 6 hereof, shall be applied and distributed in the following order, to-wit:

(a) To the payment of interest when due and \$78,000.00 annually on the principal of the bonds of The Marnet Mining Company outstanding after the payments provided for in section (a), paragraph 7 hereof.

(b) To the payment of interest when due on all the outstanding first mortgage bonds of the Kansas Natural Gas Company and the payment, semi-annually (February 1 and August 1) of the interest on the indebtedness due to The Kansas City Pipe Line Company bondholders, as calculated and ascertained for the purposes of this stipulation (not including the twenty-five Kansas City Pipe  
733 Line first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified).

(c) To the payment of the Kansas Natural Gas Company first mortgage bondholders, and on the indebtedness due the Kansas City Pipe Line bondholders (not including the twenty-five Kansas City Pipe Line first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified) pro rata according to the amounts of Kansas Natural Gas Company first mortgage bonds at the time outstanding; and of the remaining indebtedness, as calculated and ascertained for the purposes of this stipulation, on the first mortgage bonds of The Kansas City Pipe Line Company, not including the said twenty-five bonds above mentioned; Provided, that an amount equal to one-sixth of the sum of said Kansas Natural Gas Company outstanding first mortgage bonds and the said The Kansas City Pipe Line Company indebtedness, after the distribution of January 1, 1915, shall be paid annually.

(d) To the payment of interest coupons of Kansas Natural Gas Company second mortgage bonds as the same shall mature after January 1, 1915, at the rate of seventy-five per cent. of the face value thereof.

(c) The balance of said net earnings, and other available funds, to be applied to payment of Kansas Natural Gas Company first mortgage bonds and the indebtedness due the Kansas City Pipe Line bondholders, as ascertained for the purposes of this stipulation (not including the twenty-five Kansas City Pipe Line Company first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinbefore specified), in the same proportion and to the same end as provided in section (c) of this paragraph.

734 (f) After payment in full shall have been made to the Kansas Natural and the Kansas City Pipe Line first mortgage bondholders, of all said bonds and indebtedness, then all said net earnings shall be applied to the payment of outstanding interest coupons of the said second mortgage bonds of the Kansas Natural Gas Company due on and before January 1, 1915, and to any such interest coupons as may mature and remain unpaid after that date, the interest coupons due on and before January 1, 1915, to bear interest from said date at the rate of six per cent. per annum;

(g) After the fulfillment of the requirements of the foregoing sections of this paragraph, then the said net earnings are to be applied to the payment and retirement of the second mortgage bonds of the Kansas Natural Gas Company at the rate of seventy-five per cent. of their par value, until said bonds are paid and retired at said rate, it being understood that the par value of said outstanding second mortgage bonds as of January 1, 1915, is \$2,267,000.00.

(h) It is understood and agreed that upon fulfillment of the requirements of section (a), (b) and (c) of paragraph 7, and section (a), (b) and (c) of paragraph 8, then and thereupon:

(I) All The Marnet Mining Company bonds and all other collateral now held by the trustee of the first mortgage bonds are to be delivered to trustee of second mortgage bonds of Kansas Natural Gas Company.

(II) All the shares of capital stock of The Marnet Mining Company held by the owners of the said \$2,520,000.00, The Kansas City Pipe Line Company bonds, to-wit: 2,145 shares, are to be assigned, transferred and delivered to the Kansas Natural Gas Company.

735 (III) All the first mortgage bonds of the Kansas Natural Gas Company are to be surrendered and canceled.

(IV) All the shares of the capital stock of The Kansas City Pipe Line Company held by the owners of the bonds of said Company, to-wit: 22,250 shares, are to be assigned, transferred and delivered to the Kansas Natural Gas Company; and all the pipe lines, compressors, leases, properties and assets of every kind and description owned or standing in the name of The Kansas City Pipe Line Company shall be duly assigned, sold, transferred and conveyed to the Kansas Natural Gas Company, thus vesting in it title to all the property of The Kansas City Pipe Line Company which shall thereupon pass under and become subject to the lien of the Kansas Natural second mortgage bonds.

(i) It is understood and agreed that upon fulfillment of the requirements of section (g) of paragraph 8, 15,000 shares of Kansas

Natural Gas stock now held by the owners of the hereinbefore mentioned \$2,520,000.00 Kansas City Pipe Line bonds are to be surrendered to the treasurer of said Kansas Natural Gas Company, and canceled.

(j) It is further stipulated that pending the performance of this agreement, the holders of said \$2,520,000.00 first mortgage bonds of The Kansas City Pipe Line Company shall deposit with The Kansas Trust Company, of Kansas City, Kansas, as Trustee, the said 2,145 shares of stock of The Marnet Mining Company, the said 22,250 shares of stock of The Kansas City Pipe Line Company, and said 15,000 shares of stock of the Kansas Natural Gas Company, to be held by the said trustee under the terms of this agreement, and to be delivered to the Kansas Natural Gas Company, or its lawful representative, upon performance of the terms hereof; that 736 is, said 2,145 shares of Marnet Mining stock are to be delivered upon performance of sections (a) of paragraphs 7 and 8, and said 22,250 shares of Kansas City Pipe Line stock are to be delivered upon performance of sections (b) and (c) of paragraphs 7 and 8; and said 15,000 shares of Kansas Natural stock are to be delivered upon performance of section (i) of paragraph 8.

(k) In as much as some holders of second mortgage bonds of the Kansas Natural Gas Company are unknown and cannot be located and other holders may be unwilling to reduce the face of their bonds to \$750.00, and provision for the present payment of certain interest on the said bonds was inserted herein to induce holders thereof to reduce the face of their bonds, it is now stipulated and agreed that no interest shall be paid upon any bond and no holder thereof shall be entitled to such interest unless and until he shall sign a written receipt therefor in a form which shall refer to this stipulation and obligate the signer to the terms hereof and particularly to the reduction of the face of his bonds to \$750.00 each. Upon his signing such a receipt, he shall be entitled to all rights of a second mortgage bondholder hereunder and to be paid interest thereon according to the terms hereof. All payments hereunder, of interest on second mortgage bonds shall be made only at the office of Kansas Natural Gas Company, at Independence, Kansas, and upon the surrender of the corresponding interest coupons and not otherwise.

Nine. It is further stipulated and agreed that the Court may order the calling of a meeting of the stockholders of the Kansas Natural Gas Company and a vote to be taken upon the proposition of reducing the issued and outstanding capital stock of said Company from \$12,000,000.00 par value to \$6,000,000.00 par 737 value for the purpose of reducing the capitalization of said Company to the physical value of the property and assets, as found by the Public Utilities Commission of Kansas; said \$6,000,000.00 par value of capital stock being the value of said properties so found by the Commission in excess of the lien indebtedness upon said property and the property of The Kansas City Pipe Line Company, which latter shall be, when and as provided under this stipulation, merged in and become a part of the Kansas Natural prop-



erties; that the above reduction shall be made by an amendment to the Company's charter, reducing the par value of the shares of stock of the Company from \$100.00, the present par value, to \$50.00 per share; that the stockholders hereto subscribing agree to vote at said stockholders' meeting for the aforesaid reduction of capital stock, and to do, perform and take such other acts and proceedings as may be necessary under the laws of the domicile of said corporation to effect the reduction of the outstanding stock of said company as aforesaid.

Ten. The property and business of Kansas Natural Gas Company, The Marnet Mining Company and The Kansas City Pipe Line Company remain under the control of this Court through its receivership until the indebtedness of the first mortgage bondholders of the Kansas Natural Gas Company and bondholders of The Marnet Mining Company and The Kansas City Pipe Line Company, as hereinbefore determined and provided, shall be paid, and then all property of Kansas Natural Gas Company and The Kansas City Pipe Line Company shall be delivered over to directors chosen by stockholders of Kansas Natural Gas Company at an election to be ordered by the Court; and the property of The Marnet Mining Company shall be delivered over to the directors of said The Marnet Mining  
738 Company; provided further that the court may discharge said receivership and conclude said cause at an earlier date.

Eleven. In determining the total amounts payable to The Kansas City Pipe Line Company bondholders and the Kansas Natural first and second mortgage bondholders, said amounts being as hereinbefore stated, the basis of computation was to ascertain how far such bonds represent money or value actually received and expended in or upon the properties of said Companies deducting therefrom all payments and credits heretofore made upon said bonds and allowing interest on the balance at six per cent. per annum; and all bondholders, creditors and claimants upon the trust estate or funds of the Kansas Natural Gas Company or The Kansas City Pipe Line Company consented to said basis of computation in the settlement and payment of their respective bonds, claims and demands against said Companies or their estates under this stipulation.

Twelve. It is agreed that the rights of all creditors and parties to this and other pending suits shall during the administration of the estate of the Kansas Natural Gas Company pursuant to this stipulation, remain in statu quo (except as herein fixed as to the fact that the first mortgage bonds have been paid for at one hundred cents on the dollar, and the balance due thereon is correctly ascertained and determined), and the payment of interest due upon the first mortgage bonds of the Kansas Natural Gas Company, or the payment of principal upon said bonds, shall not be deemed or construed to be a waiver of the default heretofore declared upon said bonds under the terms of the mortgage securing the same; and in the event of the inability of said properties to earn the requirements to carry out the provisions or to make the payments provided for herein,



739 and after a default in said payments for one year then the rights of all creditors may after said default be resumed and prosecuted with the same force and effect as of the date of this stipulation, leave of Court thereto having been duly obtained; provided, that any and all claims and demands of personal liability against the receivers of the Federal Court in the case of John L. McKinney v. The Kansas Natural Gas Company et al., and the case of The Fidelity Title and Trust Company et al. v. The Kansas Natural Gas Company et al., or against their bondsmen or the plaintiffs in said suits for a personal judgment are hereby waived and shall be withdrawn in said suits; but any and all claims against the Kansas Natural Gas Company or against the estate or funds of the Kansas Natural Gas Company and the Federal Receivers in their official capacity as receivers shall continue and remain in full force and effect until the payments provided for within six years of the date hereof are fully made; and provided further, that any and all payments made to any such claimants pursuant to the provisions of this stipulation, shall, in the event of default, under paragraphs 7 and 8 hereof, be credited upon said claims respectively and no refunding of said payments shall be required of any of said claimants receiving payments under and pursuant to this stipulation; the creditors reserve the right at any time hereafter for good cause and upon proper showing that said properties are being operated at a loss or that the security is being materially repaired or wasted or that the statute of limitations is about to run against any of their said rights, claims or evidences of indebtedness, to intervene and interplead herein and preserve said rights or to submit a plan to this Court for approval for the liquidation of the indebtedness of said Kansas Natural  
740 Gas Company and the final winding up of its affairs and concerns in conformity with section 1728, General Statutes of 1909 and the law in such case made and provided.

Signed and dated this 17th day of December, 1914.

THE STATE OF KANSAS,

By JOHN S. DAWSON, *Attorney General*,

75% OF THE KANSAS NATURAL FIRST  
MORTGAGE BONDHOLDERS,

Represented by

HARRISON NESBIT,

T. N. BARNSDALL,

*Owning More Than 50% of Kansas Natural  
Second Mortgage Bonds,*

By His Attorney in Fact,

SAMUEL S. MEHARD,

\$401,000.00, BEING OVER 17%, KANSAS  
NATURAL SECOND MORTGAGE BONDS,

Represented by

SAMUEL S. MEHARD,

\$2,520,000.00, BEING 99%, KANSAS CITY  
PIPE LINE BONDS,

Represented by

RANDAL MORGAN,

THE KANSAS CITY PIPE LINE COMPANY,

By W. F. DOUTHIRT, *Its Secretary,*

KANSAS NATURAL GAS COMPANY,

By EUGENE MACKEY, *Its President,*

RECEIVERS KANSAS NATURAL GAS COM-  
PANY,

JOHN M. LANDON,

R. S. LITCHFIELD,

741

THE MARNET MINING COMPANY,

By V. A. HAYS,

*Its Acting Secretary,*

JOHN H. LUCAS,

CHAS. BLOOD SMITH,

*Counsel for 75% of the Kansas Natural First  
Mortgage Bondholders,*

Represented by

HARRISON NESBIT,

J. W. DANA,

*Counsel for \$2,520,000.00, Being Over 99% of  
Kansas City Pipe Line Bonds, and The  
Kansas City Pipe Line Company.*

F. J. FRITCH,

T. S. SALATHIEL,

O. P. ERGENBRIGHT,

JOHN H. ATWOOD,

CHESTER I. LONG,

Counsel for Receivers,

JOHN M. LANDON AND

R. S. LITCHFIELD.

Filed December 29, 1914. W. R. Hobbs, Clerk of the District  
Court, Montgomery County, Kansas.

STATE OF KANSAS,

*Montgomery County, ss:*

I, W. R. Hobbs, Clerk of the District Court in and for said county  
and state, do hereby certify that the above and foregoing nineteen  
pages is a true and correct copy of the Stipulation filed, in the above  
entitled cause, on December 29, 1914. Witness my hand and seal  
of said court, this . . . . day of . . . . . 191 . . .

.....  
*Clerk of District Court,*  
By ....., *Deputy.*

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## EXHIBIT "F."

*Plans and Suggestions for a Reasonable Supply of Gas to the Cities on the Kansas Natural Gas Company System.*

By Henry L. Doherty &amp; Co., June 15, 1916.

To the Governor, the Attorney General, and Public Utilities Commission of the State of Kansas:

Referring to our interview with you on the 13th inst. and to your request that we submit to you in writing our plans and suggestions looking to the rehabilitation of the Kansas Natural Gas Company property and the restoration of a reasonably adequate supply of natural gas to the cities and towns in Kansas and Missouri dependent upon that system, we now submit the following:

The mortgage indebtedness against the Kansas Natural Gas Company properties owned and leased is as follows:

Kansas Natural Gas Company, First Mortgage Bonds .....	\$428,800.00 face amt.
Kansas Natural Gas Company, Second Mortgage Bonds .....	2,267,000.00 face amt.
Kansas City Pipe Line Company, First Mortgage Bonds .....	1,386,000.00 face amt.
Marnet Mining Company, First Mortgage Bonds .....	292,000.00 face amt.
Total .....	\$4,373,800.00 face amt.

We have been in negotiation with various holders of the above bonds and have arranged to acquire more than 75 per cent of the total outstanding bonds, and we are negotiating for additional large amounts of bonds.

Our purpose in acquiring the above bonds is to bring the properties covered by the mortgages to foreclosure sale as expeditiously as possible and to bid therefor at the sale. If we shall acquire the  
 743 properties, we will consolidate or combine or connect them with the properties of other corporations in Kansas and Oklahoma in which we are interested, to the end of augmenting the supply of natural gas and of supplying the quantities hereinafter mentioned. But we are unwilling to take any steps to those ends, except upon the conditions hereinafter mentioned.

It appears from the statements of the Kansas Natural Gas Company that on December 31, 1914, there were approximately 115,000 domestic consumers in the cities and towns dependent upon the system, located on the lines north of and including Ottawa, Kansas. Of these domestic consumers 43,589 were in the State of Kansas and 71,906 in the State of Missouri. The following is a tabulation showing the names of the cities in both Kansas and Missouri located on the lines north of and including Ottawa and the number of consumers in each city as of December 31, 1914:

Table.

*Number of Domestic Consumers on Kansas Natural Gas Company Lines North of and Including Ottawa, as of December 31, 1914.*

Northern Trunk:	Dec. 31, 1914.	
	Kansas.	Missouri.
Ottawa .....	1,919	
Baldwin .....	384	
Weston .....	.....	298
Farmers' Lines .....	.....	67
Lawrence .....	3,432	
Topeka .....	11,241	
Tonganoxie .....	240	
Leavenworth .....	3,543	
Atchison .....	2,506	
St. Joseph .....	.....	11,710
Main Line Taps .....	319	
	<hr/> 23,584	<hr/> 12,075
 744 Kansas City Trunk:		
Wellsville .....	280	
Edgerton .....	114	
Gardner .....	202	
Lenexa .....	124	
Merriam and Shawnee .....	202	
Farmers' Lines .....	281	
Kansas City, Kan. ....	17,709	
Kansas City, Mo. ....	.....	59,831
Olathe .....	846	
Main Line Taps .....	247	
	<hr/> 20,005	<hr/> 59,831
Totals Dec. 31, 1914 .....	43,589	71,906
Total Kansas, Dec. 31, 1914 .....	43,589	37.73%
Total Missouri, Dec. 31, 1914 .....	71,906	62.27%
Total Kansas and Missouri, Dec. 31, 1914 ..	115,495	100.00%

Since December 31, 1914, there has been a constant gradual increase in the number of consumers and it is estimated that during the year and a half elapsed since that date the number has increased something like four or five per cent, so that there are now doubtless approximately 120,000 households in the cities mentioned above dependent upon the Kansas Natural system for natural gas.

To furnish a reasonably adequate supply to this number of consumers north of and including Ottawa, Kansas, it will be necessary to provide approximately one hundred million cubic feet of gas available for consumption at and north of Ottawa, Kansas, for the maximum day's consumption. In addition to these 120,000 consumers, there are located south of Ottawa, Kansas, along what is known as the northern trunk line, and on the southern trunk line to Joplin and the field lines, 26,456 additional domestic consumers to be provided for as of December 31, 1914, as follows:

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Table.

*Number of Domestic Consumers on Kansas Natural Gas Company Line South of Ottawa, as of December 31, 1914.*

## Field Trunk:

	Kansas.	Missouri.	Total.
Independence City .....	1,145		
Independence Field .....	959		
Elk City .....	214		
Coffeyville .....	3,096		
	<hr/> 5,414		

## Southern Trunk:

Liberty .....	109		
Altamont .....	215		
Oswego .....	531		
Columbus .....	708		
Scammon .....	251		
Weir City .....	262		
Cherokee .....	174		
Galena and Empire .....	852		
Pittsburgh .....	2,699		
Carl Junction .....		316	
Joplin .....		5,495	
Webb City .....		16	
Oronogo .....		264	
Lead and Zinc District .....		1,276	
Main Line Tape .....		47	
	<hr/> 5,801	<hr/> 7,414	

## Northern Trunk:

	Kansas.	Missouri.	Total.
Caney .....	773		
Parsons .....	3,364		
Thayer .....	187		
Fort Scott .....	1,769		
Nevada .....		904	
Fort Scott Line .....	13		
Deerfield .....	19		
Moran .....	206		
Bronson .....	189		
Colony .....	166		
Welda .....	54		
Richmond .....	112		
Princeton-Scipio .....	71		
	<hr/> 6,923	<hr/> 904	
Grand Total .....	18,138	8,318	26,456

It will require, to give a reasonably adequate supply to these consumers on the coldest day, approximately 20 million cubic feet 746 actually available for consumption on the maximum day.

This is exclusive of such gas as is consumed in the compressor stations or unaccounted for in transportation, which may be estimated at 20 million cubic feet per day, making a total required supply to be delivered into the mains to provide a reasonably adequate service to all of the domestic consumers on the system of 140 million cubic feet of gas on the maximum day, tabulated as follows:

Ottawa and north thereof .....	100 million c. f.
Balance of the system .....	20 million c. f.
Fuel and unaccounted for .....	20 million c. f.
Total .....	<hr/> 140 million c. f.

During the period of the receivership the quantity of gas produced has continuously declined, and the outlook for the future is for further reduced supply, unless great expenditures can be made to reach large fields distant and now unavailable to this plant. The plant as at present equipped and in its present condition cannot deliver north of Ottawa, Kansas, to exceed 60 to 70 million cubic feet maximum per day. At one time in the past, before the Scipio and part of the Petrolia stations and about 17 miles of 16-inch main trunk line were removed to Oklahoma to extend the plant southerly, the capacity of this northern division was 100 million cubic feet or more per maximum day, and a supply of 100 million cubic feet per day cannot now be delivered at Ottawa without the restoration of these stations or of additional new line to effect the same purpose.

To accomplish this will require the expenditure of at least \$500,-

000 to replace the stations or lay suitable extra lines. To repair the present lines so as to put them in good condition to safely  
747 carry higher pressure and operate under the necessary conditions to give reasonably adequate service will require the expenditure of \$350,000, making a total estimated expenditure of \$850,000 for the rehabilitation of the plant in Kansas north of Grabham Station. After this necessary rehabilitation of the existing plant in Kansas, other investments must be made in completing the installation of the present plant in Oklahoma and the extension of new lines, including compressor stations, to reach distant fields to secure the necessary supply for the reasonable service above mentioned.

Of the 140 million cubic feet of gas required for the maximum day, not over 20 million cubic feet can reasonably be expected under present conditions to be obtained along the present lines in the state of Kansas; and fully 120 million cubic feet must be had from Oklahoma as the only reasonable source of supply. Of this 120 million not more than 50 million feet can be secured and transported on the maximum day from the present Oklahoma plant, even after its installation is completed as outlined herein, and at this time there is much less than 50 million cubic feet available to the present Oklahoma line for next winter. However, we assume that this 50 million can be procured by laying additional lines and making the necessary additions to the Owasso compressor station. We estimate that to obtain and transport this 50 million cubic feet of gas daily from Owasso Station north will require an expenditure of \$500,000. This quantity, together with 20 million cubic feet to be procured along the main line in Kansas, as above suggested, would provide 70 million of the 140 million necessary as above stated, or just one-half, leaving the other 70 million to be procured from other sources.

748 We agree with the testimony of Mr. Landon that the nearest available source of supply for this additional 70 million cubic feet per day is the Blackwell field in Kay county, Oklahoma—distant 90 miles from the nearest available point on the Kansas Natural line. It will be advisable to carry this gas to the Grabham Station before entering the main lines, a total distance of 100 miles. There are approximately ten miles of 16-inch parallel main running south from the Grabham Station, and the reasonable point of connection to the present plant would be at the southern extremity of these parallel lines, leaving approximately 90 miles of new line to be constructed to the Blackwell field.

In order to deliver 70 million cubic feet of natural gas at Grabham Station at pressures at which that station can handle the quantity passing there through, it is necessary to install 90 miles of 18-inch trunk line from the Blackwell field and to install a compressor station of not less than 4,000 effective horse power midway on said line. In addition to this there must be installed the necessary gathering lines, meters, gates, valves, fittings, etc.

The construction of such a line in time for next winter's service is entirely out of the question, on account of the impossibility of securing deliveries of pipe and materials from the mills in their



present crowded condition. Such pipe is not carried in stock and is not available elsewhere as secondhand material. New pipe at this time is very expensive. Twelve-inch line which we are now purchasing and which normally is of relatively lower cost than this 18-inch pipe and much easier obtainable is now selling at four cents per pound delivered in Kansas in large quantities. The 18-inch pipe for this line to withstand the pressure necessary to deliver these quantities weighs approximately 70 pounds per foot and will cost to construct per mile as follows:

Pipe, 70 lbs. @ 4c.....	\$2.80 per foot
Hauling and laying .....	.50 per foot
Couplers per ft. of pipe.....	.35
Rights of way, damages, superintendence.....	.10 per foot
River crossings, railroad crossings, gates, valves, fittings, drips, etc. ....	.25 per foot
Telephone line .....	.04 per foot
<hr/>	
Total .....	\$4.04 per foot, or
\$21,330.00 per mile.	
90 miles of 18-inch line at \$21,330 per mile.....	\$1,920,000.00
4,000 horsepower compressor station at \$80 per h. p. ....	320,000.00
<hr/>	
Total .....	\$2,240,000.00

In addition to the station, but included in the price thereof, are the necessary dwelling houses for operatives, coolers, water system, real estate, etc., all distant from the railroad in the rough Osage country, entailing heavy hauling and other expense.

With this installation made, there is no reasonable question but that this plant can furnish the supply as herein stated, entailing the total expenditure as follows:

Rehabilitation of plant in Kansas.....	\$ 850,000.00
Completion of Owasso Station and pipe lines in connection with the present Oklahoma line.....	500,000.00
Extension of 18-inch line and stations to Blackwell..	2,240,000.00
<hr/>	
Total .....	\$3,590,000.00

Upon completion of this installation and placing same in operation, we then have a plant that is dependent absolutely upon outside producers for its entire supply, the company having no natural gas production owned by the company to assure continuity of service, either in the Blackwell field or the Oklahoma field, and the producers of this gas not only have no direct responsibility to provide gas as required to furnish a reasonably adequate service to the domestic consumers enumerated, but at best most of the 50 million cubic feet of southern Oklahoma production is excess gas after having provided the full requirements of large demand for domestic consumers, that gas being in reality nothing but the sur-

plus after providing for the maximum day's demand on the part of their consumers, meaning that the larger quantity will be available for the Kansas Natural Gas Company in warm weather and the smaller quantity in cold weather, as has been proven by the statistics of deliveries during the past and previous winters, and as indicated by the following table:

Table.

*Amount of Gas Delivered to Kansas City, Kansas, and Kansas City, Missouri, During Month of January, 1916.*

1916, January.	Minimum temperature.	Total gas received. (M cu. ft.)	Gas per meter per day. (cu. ft.)
1	29	34,300	428
2	26	34,000	425
3	27	34,500	431
4	42	31,900	398
5	14	38,400	480
6	12	27,300	341
7	14	23,500	293
8	15	26,600	332
9	32	30,400	380
10	27	35,000	437
11	18	35,500	443
12	—12	31,200	390
13	—15	19,600	245
14	—4	20,100	251
15	5	23,500	293
16	3	26,700	333
17	0	22,100	276
18	14	22,600	282
19	17	23,100	288
20	35	24,900	311
21	36	31,600	395
22	31	35,000	437
23	35	35,500	443
24	36	32,600	407
25	24	38,400	480
751			
26	26	32,100	401
27	7	22,500	281
28	6	21,500	268
29	12	23,700	296
30	12	22,200	77
31	7	22,500	281

Figured on a basis of 62,000 active meters in Kansas City, Missouri  
18,000 active meters in Kansas City, Kansas.

80,000 active meters in the two cities.

As to the Blackwell field, the situation is not very much better, as the present large available supplies are practically all subject to prior contracts of the large smelting and other industries located or locating in that vicinity. Under these circumstances, prudent business judgment would not warrant the investment in the proposed lines, and it is a question whether under such conditions a reasonably adequate service can be furnished.

Without the ownership or absolute control of an ample production, the expenditure of such a line would be folly. And further, to base such a large expenditure upon any one pool is unreasonable and will ultimately defeat the object which is sought to be obtained.

The main lines of the Quapaw and Wichita Natural Gas Companies and Wichita Pipeline Company extend over a wide expanse of newly developed and prospective gas territory. These lines are so located with reference to the Kansas Natural system that a combination between them would give access to practically all of the important gas developments in the mid-continent field today, at a minimum expenditure for line extension and upon a basis which would permit a more efficient operation of all these lines and a better assurance of reasonably adequate service for both systems and the continuation thereof. Such a combination would make available large

quantities of now parallel lines and equipment to permit the  
752 necessary extensions chiefly with this material to provide the necessary supply, eliminating the delay of securing pipe and material from the mills in their present overcrowded condition.

It is with this point in view that we realize that we are in position to offer a feasible solution of the supply of gas for the Kansas Natural system.

Recognizing this, and with a view of acquiring the said Kansas Natural system on a basis that will permit the effecting of this result, we estimate that we can provide the plant necessary to furnish a reasonably adequate supply as herein outlined in time for this winter's business, if immediate action is taken to make it possible for us to do so.

To rehabilitate the present system of the Kansas Natural Gas Company in Kansas will cost us approximately \$850,000, the same amount as we estimate it would cost the Kansas Natural Gas Company, and in addition thereto we estimate it will necessitate an expenditure of \$1,150,000 to make other necessary adjustments and extensions on our part to provide the supply herein stated, or a total estimated expenditure on our part for betterments of \$2,000,000, provided immediate action is taken to make it possible for us to acquire the Kansas Natural property. We have arranged to finance this immediately as the money is required.

To assure you that we are in strong position for a supply of gas now and in the future, and are not dependent to great extent upon other operators on whom no responsibility rests, we need but say that our interests, now own and hold in excess of 700,000 acres of selected developed and reserve gas leases in Kansas and Oklahoma, and that it is our policy to produce ourselves from 60 to 75 per cent of the gas we supply.

753 It is also our policy to encourage the development of gas by other producers, providing them market, as advisable to assure conservation and to encourage the development of new territory by such operators as well as by ourselves.

It is recognized by all of the leading operators of the mid-continent field that our methods of locating and developing fields are probably the most modern, and our results based upon these methods have proven very successful in opening up new territory, and it is upon the same basis of geological study that the vast bulk of our lease was selected.

We have available today a number of new pools reasonably accessible to our pipeline system which have been proven, but to which no lines have yet been laid, but which are held in reserve.

In our plans for providing gas to take care of the Kansas Natural system, we wish it to be definitely understood that it will not in any manner interfere with our supply to the communities we are now serving, and we are now laying 25 miles of 12-inch main line to reach Wichita and that territory.

We have shown above that it would require the expenditure of \$3,590,000 on the part of the Kansas Natural Gas Company or its receiver to furnish a reasonably adequate supply of gas, such supply, however, being very largely dependent upon gas procured from other operators, the sources not being under the control of the Company or its receiver.

We have also shown above that it would cost our interests not less than \$2,000,000 to furnish the same supply, even with the advantage of being able to use material now in duplicate lines and equipment. Our supply, on the other hand, would, as shown  
754 above, be to the extent of 60 to 75 per cent under our own control, and therefore not to so great an extent dependent upon other sources.

From the foregoing it is wholly obvious that the expenditure of \$750,000, as recommended by the Federal Court in its recent opinion, would be entirely inadequate to make possible a reasonable supply of gas.

The conditions precedent to the Doherty interests undertaking to make the investment aforesaid, and connect their aforesaid lines, and furnish the aforesaid gas supply, are as follows:

1. That the Governor and the Attorney General of Kansas forthwith cause the State's anti-trust suit to be dismissed and the receivers therein discharged.

2. That the Governor and the Attorney General and the Public Utilities Commission of Kansas forthwith issue a statement that the physical connection, consolidation and combination, and the unity of ownership or management or control of all the present pipelines of the Kansas Natural Gas Company, The Kansas City Pipe Line Company, Marnet Mining Company, Quapaw Gas Company, Wichita Natural Gas Company and Wichita Pipeline Company, and such other lines as they may construct, is reasonable, and it is advisable for the furnishing of an adequate supply of gas to the markets reached by all the aforesaid lines and systems.

Thereupon, the foreclosure of all mortgages will proceed as rapidly as possible in the Federal Court having jurisdiction over the entire property in the three states, and the properties of the Kansas Natural Gas Company, owned and leased, may be sold at public foreclosure sale, freed of encumbrances, contracts, and obligations, at  
755 an upset price determined by the court, and the rights and interests of the cities, the public, the distributing companies, bondholders, stockholders and creditors will be determined and protected by the court in such final decree and foreclosure sale, giving and reserving to all parties the right to bid and compete for said properties at such public foreclosure sale.

Any city, consumer, distributing company, stockholder, bondholder, creditor or other party in interest having any rights, legal, equitable or otherwise, arising out of contract or the so-called "Creditors' Agreement," or by virtue of the receiverships, or otherwise, may present same to the court having jurisdiction over the property in the three states, and such rights will be adjudicated, determined and protected by the court in proper decrees; during all of which time and procedure the rights of the consumers and public to a reasonably adequate supply of gas may be protected and given preference.

Dated: June 15, 1916.

HENRY L. DOHERTY AND COMPANY,

By J. C. McDOWELL.

Filed in the District Court on Oct. 18, 1916. Morton Albaugh, Clerk.

756 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LONDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Amended Answer to Bill of Complaint and Answer to Supplemental Bill of Complaint by Defendant Kansas City Gas Company.*

756½ In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Amended Answer to Bill of Complaint and Answer to Supplemental  
Bill of Complaint by Defendant Kansas City Gas Company.*

Leave of court having first been obtained for its amended answer to the bill of complaint herein and answer to the supplemental bill of complaint herein, the defendant Kansas City Gas Company alleges:

I.

That there is a misjoinder of parties defendant herein, and that this defendant is not a proper or necessary party to this cause.

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II.

That there is a misjoinder of causes of action herein, in that there are many defendants herein and the liability or causes of action asserted by plaintiff is different against each defendant, and no sufficient grounds appear for uniting said causes of action in order to promote the convenient administration of justice.

III.

That this court has no jurisdiction of so much of plaintiff's bill and supplemental bill of complaint as seeks to put in issue the duty, obligation or liability or discretion of the plaintiff Landon, as Receiver of the Kansas Natural Gas Company, to comply with the supply-contracts of November 17th and December 3d, 1906, by which the Kansas Natural Gas Company is bound to supply this defendant with natural gas for distribution to the City of Kansas City and its inhabitants, or, if this court has such jurisdiction, it should not exercise the same, for the reason that it appears from the pleadings and record in this proceeding and the original proceedings in this court, causes No. 1351 and No. 1-N, in Equity, to which this proceeding is dependent and ancillary, that the plaintiff Landon, as Receiver, is in control, possession, management and administration of the estate and property of the Kansas Natural Gas Company, by appointment of the District Court of Montgomery County, Kansas,

and is under the control and direction of said State Court as such Receiver, in the conduct and administration of said property, and subject to its orders.

#### IV.

758 That neither the original bill of complaint nor the supplemental bill of complaint, nor both of them together, state facts sufficient to constitute a legal cause of action against this defendant in equity.

#### IV-A.

This defendant further states that on the 16th day of October, 1916, there was submitted to the District Court of Montgomery County, Kansas, a motion by the Kansas Natural Gas Company to discharge the Receiver, John M. Landon, as Receiver in said cause of the State of Kansas v. Kansas Natural Gas Company, pending in said court, being cause No. 13,476, and to restore the property of said Company to the possession and control of said Company; and there was also at the same time submitted to said District Court a motion to dismiss said cause and discharge said Receiver by the State of Kansas, both of said motions alleging as the reason therefor that said Kansas Natural Gas Company is no longer insolvent and is no longer violating the anti-trust laws of said State; that said court after having heard the testimony offered on said motions and the argument of counsel thereon, took the same under advisement and the same is still under consideration but undetermined by said court; that if either of said motions are sustained and said Receiver is discharged said Landon, as Receiver in said cause in said State Court, will no longer have any interest in this suit and no right to question the legality or binding force of said supply-contracts either upon himself as such Receiver or upon said Kansas Natural Gas Company; wherefore this court should not further proceed in this cause with the hearing of this cause until the matter of discharging said Receiver in said State Court is finally disposed of.

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#### IV-B.

Further answering herein, this defendant refers to and adopts its answer heretofore filed in this cause the same as if said answer was fully set out and repeated herein.

#### V.

For further answer herein, the defendant admits the allegations of paragraph I of the supplemental bill, except defendant denies that this defendant is or ever was selling or distributing natural gas for the plaintiff Receiver as his agent, and denies that the rates mentioned in said paragraph I were established by the plaintiff in pursuance of the order of this court entered on June 3d, 1916, and denies that the plaintiff is entitled to an average rate of 32 cents per



thousand cubic feet for natural gas transported and sold by him and denies that this court or any court ever determined that anything less than an average rate of 32 cents to the consumers will be non-compensatory and confiscatory, and denies that the rates established by said Receiver are graduated according to the distance the several cities are located from the gas fields and from Grabham Station, as alleged in said paragraph I.

## VI.

This defendant admits that it filed on or about August 10th, 1916, with the Public Service Commission of the State of Missouri its complaint against the plaintiff as Receiver for Kansas Natural Gas Company, and the Kansas Natural Gas Company, and that a copy of said complaint, marked Exhibit "I" is filed with said supplemental bill, as alleged in paragraph II thereof, but this defendant denies that this

defendant in said bill of complaint prayed for any order, or  
760 orders, of said Commission, requiring the plaintiff to do anything which was a substantial burden or any burden whatever upon or an undue interference or any interference with the interstate commerce business in which plaintiff is engaged and engaging or in direct or any conflict with the decree of this court of June 3d, 1916, in this cause. This defendant denies that this court in said decree reserved exclusive jurisdiction over all or any matters and things in controversy in this suit for the further determination by this court, as alleged in said paragraph II of said supplemental bill of complaint. Defendant admits that in said complaint, filed before said Public Service Commission of Missouri this defendant prayed for an order requiring the plaintiff to comply with the supply-contracts of November 17th and December 3d, 1906, between the Kansas City Gas Company and the Kansas Natural Gas Company. But this defendant alleges that it alleged in said complaint that the plaintiff had adopted said contracts, and was bound thereby, and was therefore in law compelled to comply therewith, which this defendant says in no way affected interstate commerce, except as such commerce is and may be affected by the said contracts of the Kansas Natural Gas Company which the plaintiff adopted and therefore agreed to comply with.

## VII.

This defendant admits that on the 10th day of August, 1916, it filed a new schedule of rates with the Public Service Commission of Missouri, as alleged in paragraph III of the supplemental bill of complaint, and that said schedule fixed rates for natural gas in said City of Kansas City from and after November 9th to 19th, 1916, at 30 cents per thousand cubic feet, in conformity with the contracts

761 of November 17th and December 3d, 1906, between this defendant and the Kansas Natural Gas Company. Admits that the defendant City of Kansas City agreed to such schedule of rates and approved the same, as alleged in said paragraph III. Defendant

also admits that said Public Service Commission of Missouri made an order putting said rates into effect, as prayed for, in conformity with said contracts of November 17th and December 3d, 1906, as alleged in said paragraph III, but this defendant denies that said schedule of rates or the approval of the same by said City of Kansas City and the said order of the Public Service Commission of Missouri putting same into effect were a substantial burden, or any burden upon, or an undue, or any interference with the interstate commerce business in which plaintiff is engaged and is engaging; or were in direct or any conflict with the decree of this court of June 3d, 1916; and denies that said decree reserved exclusive jurisdiction of all or any matters and controversies in this suit for the further determination of this court. Defendant admits that a copy of said application or complaint of this defendant for a schedule of rates conforming to said contracts of November 17th and December 3d, 1906, is filed with said supplemental bill of complaint, marked Exhibit "2," and that a copy of the order thereon of the Public Service Commission of Missouri is attached to said supplemental bill, marked Exhibit "3," but this defendant says that it will appear from an inspection of said application and said order that the plaintiff Landon, Receiver, was not a party thereto, and in no manner affected thereby, and that said application and order merely permitted this defendant, with the consent of the City of Kansas City and consent of said Public Service Commission of Missouri to charge the rates for natural gas to said City  
762 and its inhabitants mentioned and provided by the franchise under which this defendant is supplying natural gas to said City and its inhabitants, and thus enable this defendant to comply with its said contracts of November 17th and December 3d, 1906, made with the Kansas Natural Gas Company.

This defendant further says that neither said Kansas Natural Gas Company nor the plaintiff, as its Receiver, was ever authorized by any franchise or otherwise to furnish or supply any natural gas to said City of Kansas City and its inhabitants or ever did supply said City or its inhabitants with natural gas, and that said Public Service Commission of Missouri was never asked to fix and never did fix or attempt to fix any rate or price which the said Receiver or said Kansas Natural Gas Company should charge or receive for natural gas sold or supplied to said City of Kansas City or its inhabitants; nor was said Commission ever asked to fix any rate which said Receiver or said Kansas Natural Gas Company was to receive for natural gas supplied to this defendant, except by said complaint filed by this defendant mentioned in said supplemental bill before said Public Service Commission of Missouri to compel the plaintiff Receiver and said Kansas Natural Gas Company to comply with said contracts of November 17th and December 3d, 1906, hereinbefore mentioned, which complaint, if sustained, would in no way be an undue or unlawful burden upon interstate commerce or take the property of the Kansas Natural Gas Company or of its Receiver without due process of law, for the reason that any such order made by the said Commission upon said complaint would be based upon the contracts of said Kansas

Natural Gas Company, adopted by the plaintiff Receiver and found binding upon him.

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## VIII.

This defendant admits that on August 23, 1916, it commenced the suit in the Circuit Court of Jackson County, Missouri, against the Kansas Natural Gas Company and the plaintiff Receiver, praying for the specific performance of said contracts of November 17th and December 3d, 1906, mentioned in paragraph IV of the supplemental bill; that summons were served therein upon said defendants and that said cause was removed to the United States District Court for the Western Division of the Western District of Missouri, and that the same is now pending therein, as alleged in said paragraph IV; but defendant denies that the bringing of said suit is in direct or any conflict with the decree of this court of June 3d, 1916, and denies that by said decree this court reserved exclusive jurisdiction over all or any of the matters and things in controversy in this suit for the further determination by this court. Defendant admits that a copy of the petition filed in said Circuit Court of Jackson County, Missouri, is filed with the supplemental bill of complaint, marked Exhibit "4," as alleged in said supplemental bill.

## IX.

This defendant says that it has no concern with the matters and things alleged in paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV and XVI of said supplemental bill of complaint, and that they are directed against other defendants herein, and that therefore this defendant makes no answer thereto.

## IX-A.

This defendant further says that on or about the 1st day of January, 1908, defendant Kansas Natural Gas Company leased all the gas wells, pipe lines, plant and property of the said The Kansas City Pipe Line Company and assumed all the obligations of the supply-contracts made with said McGowan, Small and Morgan, the assignors of this defendant, and thereupon took possession of all of said property, and that it and the receivers of said Kansas Natural Gas Company have ever since been in possession and operation thereof; that said lease was in writing and for the term of 99 years, and that as a part of the consideration for said lease the said Kansas Natural Gas Company agreed for itself, its successors and assigns, that if the gas wells of said Pipe Line Company situate in the territory of said Pipe Line Company did not furnish a sufficient volume of gas or if the pipe lines of said lessor should not have a delivery capacity sufficient to supply the demand for gas in the cities of Kansas City, Kansas, and Kansas City, Missouri, defendant, the lessee, namely said Kansas Natural Gas Company, would supplement said gas supply from its own gas wells up to an amount equal to 50

per cent of the gas which, by the use of due diligence in connecting existing wells and drilling new ones, it might be able to produce from the territory then or thereafter controlled by it, said Kansas Natural Gas Company, and that said Kansas Natural Gas Company would at its own cost and expense construct the additional pipe lines necessary for the delivery of gas to supply such demands, whether from the territory of The Kansas City Pipe Line Company, leased by it, or from the territory of said Kansas Natural Gas Company, provided, that if the expectation of continuance of the supply of gas should not be sufficient to warrant the laying of an additional pipe line, at any time, that said Kansas Natural Gas Company, lessee, should not be required to do so and the said Kansas Natural Gas Company should not  
765 be required to lay a line for manufacturing purposes mainly or only. It was further provided in said lease and as a part of the consideration thereof that said Kansas Natural Gas Company, lessee, should, during the continuance of said lease, in good faith, and to the best of its ability, operate said Pipe Line Company's works and plants and furnish all apparatus and equipment in substitution for and in addition to that demised by said lease, which might be necessary or profitable to such operation, and that said Kansas Natural Gas Company should carry on, preserve and extend the business heretofore carried on by the said The Kansas City Pipe Line Company in such manner and as at all times to meet the demands of the public service, and that it would do and perform all other things necessary to make and maintain said works and plants leased by it as a first class pipe line company, provided, that all extensions, plants, structures, improvements, betterments, renewals, rights, privileges and franchises paid for by said Kansas Natural Gas Company not out of the proceeds of bonds belonging to said Pipe Line Company should belong to and remain the sole and separate property of said Kansas Natural Gas Company.

Plaintiff states that within the last year or six months numerous new and large fields of natural gas have been discovered in Kansas and Oklahoma within reasonable distances of the existing pipe lines and property of the Kansas Natural Gas Company and that the expectation for the continuance of such supply of gas is sufficient to warrant the extending of said defendant's existing lines thereto and if necessary to supplement the pipe lines mentioned in said lease running to Kansas City so as to fully supply Kansas City, Kansas, and this defendant and the City of Kansas City, Missouri, with an  
766 adequate supply of gas as required by said supply-contracts, and the terms and provisions of said lease of January 1, 1908, made by The Kansas City Pipe Line Company to said Kansas Natural Gas Company; that in fact the said Kansas Natural Gas Company has made arrangements to increase its capital stock and has moved the District Court of Montgomery County, Kansas to discharge said Receiver and restore the property of said Company to the owners thereof to the end that it may make such extensions to said new gas fields; that said motion has been submitted to said court for a decision, and that said court has the same now under consider-

ation. A copy of said lease of January 1, 1908, is filed herewith, marked Exhibit "K" and made a part hereof.

### X.

This defendant admits that it refused to put into force and effect the scale of prices fixed by the plaintiff from and after September 1, 1916, and that it declined to pay, for gas delivered to it by the plaintiff, the price of 18 cents per thousand cubic feet, as alleged in paragraph XVII in said supplemental bill of complaint, and that this defendant demanded that plaintiff deliver gas to it and receive in pay therefor 62½ per cent of the rate of 27 cents for natural gas as measured by the consumers' meters until November, 1916, and that thereafter plaintiff should receive 62½ per cent of a rate of 30 cents as measured by consumers' meters, all as fully appears from copies of letters of this defendant attached to and made part of the supplemental bill of complaint, and marked Exhibits "24" and "25." This defendant denies that since giving of said notice mentioned in said paragraph XVII of said supplemental bill, the plaintiff Receiver has insisted upon payment from this defendant for natural gas delivered to it from and after September 1, 1916, at the rate of 18

767 cents per thousand cubic feet as measured by meter at the gate of the defendant's distributing plant in said City of Kansas City, Missouri. This defendant says that although plaintiff as Receiver gave this defendant notice that he would charge this defendant 18 cents per thousand cubic feet for all gas delivered to it, measured at the City limits, on or about August 12th, 1916, as stated in said supplemental bill, this defendant notified plaintiff that it would not pay that sum therefor, but would only receive said gas under and in pursuance of said supply-contracts of November 17th and December 3d, 1906, and only pay the price therefor fixed by said contracts, to-wit: A sum equal to 62½ per cent of the gross receipts from the sale of the same at the rate of 27 cents per thousand cubic feet as measured by the consumers' meters until November, 1916, and thereafter at the rate of 30 cents, as measured by consumers' meters, and that said plaintiff has continued to supply this defendant with natural gas ever since said August 12th, 1916, and defendant has never agreed to pay for same except under said supply-contracts and at the rates therein fixed, all of which appears by the correspondence between the parties, copies of which are hereto attached and made a part hereof, marked as follows, to-wit:

Notice of June 12th, 1916.....	Exhibit "A"
Letter of June 26th, 1916.....	Exhibit "B"
Letter and schedule of August 4th, 1916.....	Exhibit "C"
Notice served August 12th, 1916.....	Exhibit "D"
Letter of August 12th, 1916.....	Exhibit "E"
Letter of August 18th, 1916.....	Exhibit "F"
Letter of August 22d, 1916.....	Exhibit "G"
768 Letter of August 26th, 1916.....	Exhibit "H"
Letter of September 11th, 1916.....	Exhibit "I"
Letter of September 20th, 1916.....	Exhibit "J"

As to whether said 18 cents per thousand cubic feet so measured by said meter is necessary in order that plaintiff may secure an average rate of 32 cents per thousand cubic feet for natural gas, or that it is necessary for plaintiff to obtain said rate of 18 cents in order to make any profit on natural gas transported by plaintiff to defendant for delivery to consumers in said City of Kansas City, Missouri, this defendant has no knowledge and therefore denies the allegations to that effect in said paragraph XVII. This defendant denies that, by all or any of the acts of this defendant mentioned in said paragraph XVII this defendant is substantially or is at all burdening or unduly, or at all interfering, with the interstate commerce business in which plaintiff is engaged in violation of the commerce clause of the Constitution of the United States or any other constitution or law.

## XI.

This defendant admits, as alleged in paragraph XVIII of the supplemental bill, that since the making of the order of preliminary injunction herein, the stockholders of the Kansas Natural Gas Company have projected a plan of reorganization, whereby they propose to raise, out of the sale of stock, \$4,500,000.00 for the purpose of paying the present indebtedness under the Creditors' Agreement and to furnish a large sum of money for making the necessary pipe-line extensions to the distant gas fields. Admits that said plan of reorganization has been put in form and signed by the subscribers to the capital stock, and is to be presented to the District Court 769 of Montgomery County, Kansas, for its approval. Admits that said stockholders stand ready, able and willing to furnish and advance the money to pay such indebtedness and to make such extensions. But this defendant has no knowledge whether said reorganization plan was made relying upon the enforcement of the temporary injunction herein, and the likelihood of this court making such injunction permanent upon the final trial of this cause, nor whether said reorganization plan is primarily predicated upon the payment of the indebtedness owing by the Kansas Natural Gas Company on the basis of the Creditors' Agreement, and upon the procurement of reasonable and adequate rates for the sale of natural gas, so as to make a just return upon the moneys now invested and to be invested by them and the protection of such rates by this court. But this defendant says, and charges the fact to be, that said Kansas Natural Gas Company and its stockholders are not entitled to receive any other or greater rate for natural gas from this defendant than the rates fixed in said supply-contracts of November 17th and December 3d, 1906. That said Receiver is not entitled to receive any greater rate from this defendant than is provided in said contracts of November 17th and December 3d, 1906, unless it is necessary in order to pay the general creditors or the bondholders of said Kansas Natural Gas Company. This defendant says that the Kansas Natural Gas Company has no general creditors, except for insignificant amounts, and that its bondholders are abundantly se-



cured by the property of the Kansas Natural Gas Company, which is pledged to secure them by the mortgages which are being foreclosed in proceedings in this court. That said property is worth considerably more than the amount owing said bondholders, and the costs, in said foreclosure proceedings. That ever since the property of said Kansas Natural Gas Company has been in the hands of receivers appointed by this court and of receivers appointed by said District Court of Montgomery County, Kansas, natural gas has always been supplied to this defendant at the rate and under the terms and conditions set forth in said supply-contracts of November 17th and December 3d, 1906. This defendant says that since said Kansas Natural Gas Company has been in the hands of receivers, either of this court or of said State Court, to-wit: since the 9th day of October, 1912, a period of more than four years, this defendant has paid said Receivers, in pursuance of and under said supply-contracts of November 17th and December 3d, 1906, and as the 62½ per cent of the gross receipts of the gas sold by the plaintiff, which said Receivers were, under said supply-contracts, entitled to receive, the sum of \$4,044,550.73. That all of said sum, less certain expenses for operation and improvements and costs of said receivership, has been paid over to and received by the said bondholders of said Kansas Natural Gas Company, which, together with the moneys received by said Receivers from other gas distributing companies, also paid over to said bondholders, has reduced the amount of the principal thereof more than the sum of \$2,800,000.00. That when said Receivers were first appointed, said Kansas Natural Gas Company was insolvent and unable to pay its debts, and its property was worth far less than the amount of its bonds, secured by mortgages thereon, and that its bonds were worth less than par. That since the appointment of said Receivers, large sums have been expended in maintaining said property as a going concern out of moneys received from the defendant for natural gas under said supply-contracts and from others, as aforesaid. That by reason thereof and because of payments made on said bonds, as aforesaid, said Kansas Natural Gas Company has become solvent and its property worth more than the amount of its indebtedness, including its bonded indebtedness; so that the stockholders of said company, and its bondholders, have received a great benefit from the large sums of money paid to said Receivers by this defendant under said supply-contracts of November 17th and December 3d, 1906. That by reason of all of which this defendant says that said Receiver Landon, either as the representative of said bondholders, or of the stockholders of said company, should not, in equity, be permitted to repudiate, but should be held bound by and estopped from repudiating said supply-contracts of November 17th and December 3d, 1906. That there is no necessity that said supply-contracts should be repudiated, so far as said bondholders are concerned, because the property of said Kansas Natural Gas Company securing their remaining unpaid bonds is worth more than the amount of such bonds still remaining unpaid, and could be sold at any time at foreclosure sale for more than enough to pay off said bondholders



and costs of foreclosure. The said Kansas Natural Gas Company and its stockholders are, in law and equity, bound and held by said supply-contracts and said Receiver Landon should be permitted, in equity, to cancel or repudiate said supply-contracts for the benefit of said company or its stockholders. That in equity said property should be administered by said Receiver for the benefit of all persons or corporations, including this defendant, having executory contracts with said Kansas Natural Gas Company, before any benefit should accrue therefrom to said company or its stockholders.

772 This defendant admits, as alleged in paragraph XVIII of said supplemental bill of complaint, that Exhibit "26" filed therewith, is a correct copy of the application of the Kansas Natural Gas Company for the discharge of said Landon as Receiver, filed in the District Court of Montgomery County, Kansas. Also admits that the Attorney-General of the State of Kansas has filed a motion to discharge plaintiff as Receiver in said District Court of Kansas, and that Exhibit "27" attached to plaintiff's supplemental bill of complaint is a correct copy thereof.

### XIII.

As to matters and things alleged in paragraphs XIX and XX of the supplemental bill of complaint, this defendant says it has no knowledge and therefore denies the same.

Wherefore, This defendant prays that the plaintiff's bill of complaint and supplemental bill of complaint herein be dismissed as to this defendant, and that this defendant be allowed its costs in this behalf incurred and expended.

KANSAS CITY GAS COMPANY,  
By J. W. DANA,  
C. E. SMALL,  
*Solicitors.*

STATE OF MISSOURI,  
*County of Jackson, ss:*

J. M. Scott, being first duly sworn, deposes and says that he is the Secretary of the Kansas City Gas Company; that he has read and knows the contents of the foregoing pleading, and that the statements, allegations, averments and denials therein made and  
773 contained are true, except such as are made on information and belief, and as to such affiant believes them to be true.  
And further affiant saith not. J. M. SCOTT.

Subscribed in my presence and sworn to before me this 17th day of October, 1916.

[SEAL.] WILLIAM SHELDON McCARTHY,  
*Notary Public within and for Jackson County, Missouri.*

My commission expires January 16, 1918.

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## EXHIBIT "A."

*Notice of June 12, 1916.*

"In the District Court of Montgomery County, Kansas.

No. 13476.

STATE OF KANSAS

VS.

THE INDEPENDENCE GAS COMPANY et al.

To the City of Kansas City, Missouri, and The Kansas City Gas Company, distributor of Natural Gas in said City:

You and each of you are hereby notified that on Thursday, June 29th, 1916, at the hour of Nine o'clock A. M. or as soon thereafter as the same may be heard, John M. Landon, as receiver for Kansas Natural Gas Company, will present to the above named court his special report as receiver and application for instructions to guide such receiver in the establishment of a rate for natural gas to be charged by the Kansas City Gas Company, the distributing company and said Receiver to consumers of natural gas in the city of Kansas City, Missouri.

That said application will be supported by affidavit and oral testimony, and said city and said distributing company are notified to be present at said time with such evidence they or either of them may have to present for the purpose of showing what rate should be charged and collected from consumers in said city for natural gas by the undersigned receiver and said distributing company.

JOHN M. LANDON,

*Receiver for Kansas Natural Gas Company,*

By T. S. SALATHIEL,

*His Attorney."*

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## EXHIBIT "B."

*Letter of June 26, 1916.*

"Kansas City Gas Company

June 26, 1916.

Mr. John M. Landon, Receiver, Kansas Natural Gas Company, Independence, Kansas.

DEAR MR. LANDON: Your circular letter addressed to the Kansas City Gas Company, suggesting a meeting on June 29th, 1916, at Independence, Kansas, before the District Court of Montgomery County, Kansas, at which time you as Receiver will report to the

court and offer evidence 'for the purpose of showing what rates should be charged and collected from consumers in' Kansas City, Missouri, 'for natural gas,' has been referred to me by said Company for answer.

Replying will say, that the Kansas City Gas Company, together with the City of Kansas City, Missouri, and the Public Service Commission of Missouri, with whom it must deal in the matter of rates, was made a party defendant in the case of John M. Landon, Receiver, v. Public Utilities Commission of the State of Kansas et al., No. 136-N, pending in the District Court of the United States for the District of Kansas; that the bill in said case alleged that it was dependent upon and ancillary to the cases entitled 'John L. McKinney et al. v. Kansas Natural Gas Company, No. 1351,' and 'Fidelity Title & Trust Company v. Kansas Natural Gas Company and Delaware Trust Company, No. 1-N,' pending in said court, and was brought for the purpose of protecting the property in the potential possession of that court in said causes and of enforcing the jurisdiction of said court; and said dependent bill further at-

776 tacked the legality and binding force of the supply contract existing between the Kansas City Gas Company and the Kansas Natural Gas Company and its Receiver; that thereafter the Kansas City Gas Company filed its verified answer and counter-claim to said dependent bill in said cases, hereby referred to and made a part hereof; that said answer set up and exhibited said contract existing between the Kansas Natural Gas Company and the Kansas City Gas Company under which the latter is obtaining gas, and set forth the ordinance under which the Kansas City Gas Company is distributing and selling gas in Kansas City, Missouri, and alleged and showed to the court that this Company was precluded from consenting to any change or modification in said supply-contract without the consent of the City given by ordinance; said answer and counter-claim further showed to the court the continuous default in the supply of gas under said contract and the losses sustained by this company by reason thereof, and prayed for the specific performance of said supply-contract; that on the hearing for a temporary injunction this Company appeared and argued said matter before the court and consistently insisted upon its contract rights as alleged in said answer; that on June 3d, 1916, the court, as then constituted for the sole purpose of considering the application for a temporary injunction, rendered its opinion and decree, in which it expressly stated that 'the court pretermits references to matters that are not indispensable to the determination of the crucial question in hand, as well as discussion of those that are indispensable to such question, and confines itself to a statement of the conclusions which the law and evidence in its opinion compel.'

777 Thereupon the court decreed a temporary injunction against the Kansas Commission interfering with all the parties putting into effect a reasonable rate, not exceeding 32c, leaving the other matters such as contracts and ordinances 'pretermitted' or passed over for the time by the court as then consti-

tuted to be later taken up by the court as usually constituted and adjudicated in the dependent and final foreclosure suits; the court expressly reserving 'jurisdiction of the subject-matter of the application for an injunction and the parties thereto, and reserves its power and authority to add to, take from, modify or supplement the injunction decreed, or any other provision of the decree at any time during the pendency of the suit,' and denies all other relief, and in its opinion the court expressly declines 'as at present constituted,' 'to determine the validity of the city ordinances, the contracts between the cities and the distributing companies and the Natural Gas Company and the duties and obligations of the Receiver under them.'

Further answering your communication will say, that this Company acknowledges the jurisdiction of the Public Service Commission of the State of Missouri in the matter of rates to be charged and collected by it in the City of Kansas City, Missouri, and that under the ruling of the Supreme Court of the State of Kansas in the case of *State v. Flannelly*, 154 Pac. 235, denying the jurisdiction of the District Court of Montgomery County to summon the Kansas Commission before it, and under the ruling of the United States District Court for the District of Kansas in the case of *John M. Landon, Receiver, v. the Public Utilities Commission of the State of Kansas et al.*, 136-N, sustaining the power and jurisdiction of the

District Court of the United States for the District of Kansas 778 as to subpoena and bring the Public Service Commission of the State of Missouri before it, the Kansas City Gas Company would be without protection as against the Public Service Commission of Missouri or the City of Kansas City, Missouri, if it should undertake to change or modify its supply-contract with the Kansas Natural Gas Company or put into force and effect any changes in existing rates.

By reason of the foregoing the status of the contract existing between the Kansas City Gas Company and the Kansas Natural Gas Company, under which you as Receiver of the latter are and have been furnishing gas to the Kansas City Gas Company, has been submitted to the United States District Court for the District of Kansas and that court has taken and reserved jurisdiction thereof in the original foreclosure suit and the aforesaid bill dependent thereon filed therein.

Further answering your communication, will say that under the circumstances, and after consultation with the city authorities, the Kansas City Gas Company is unwilling to undertake to procure the consent of the City of Kansas City, Missouri, to the *recision*, cancellation or modification of the supply-contract existing between the company and the Kansas Natural Gas Company and its Receiver; and until you as receiver, or the Kansas Natural Gas Company, or its successor, can definitely state the volume of gas which may reasonably be expected to be furnished to this company for distribution and sale in Kansas City, Missouri, it has been, is, and will be impossible and futile for this company to offer any evidence before the

Public Service Commission of Missouri, or before any other court or tribunal 'for the purpose of showing what rate should be charged and collected from consumers in Kansas City, Missouri.'

Hoping that you will soon be able to advise us that you have an adequate and definite supply of gas as a basis for such evidence, we remain,

Very sincerely yours,

KANSAS CITY GAS COMPANY,  
By J. W. DANA, *Attorney.*"

J. W. D.-L. M.

### EXHIBIT "C."

*Letter and Schedule of August 4, 1916.*

"Kansas Natural Gas Company.

Independence, Kansas,

August 4, 1916.

Kansas City Gas Company, Kansas City, Missouri.

GENTLEMEN: We enclose you herewith schedule and notice of change of price at which you are authorized to sell gas to your consumers.

Would suggest that you forthwith send to each of your consumers a notice reading as follows:

'We are in receipt of a schedule and notice from John M. Landon, Receiver for Kansas Natural Gas Company, of a change in price of natural gas, as follows:

(Copy schedule and notice here.)

You are therefore notified that from and after the August, 1916, meter reading, you will be charged for all gas consumed at the foregoing price.'

Yours very truly,

JOHN M. LANDON,  
*Receiver for Kansas Natural Gas Company.*

### Schedule and Notice.

Independence, Kansas,

August 4th, 1916.

Kansas City Gas Company, Kansas City, Missouri.

GENTLEMEN: You are hereby notified that from and after the August, 1916, meter readings, and until further notice, the price you will charge for gas delivered to domestic and gas engine consumers

in the city of Kansas City, Missouri, and vicinity, shall be as follows:

A minimum bill of One Dollar (\$1.00) per month, which is uniform over our entire system, which will cover the first two thousand (2,000) cubic feet, or fraction thereof, of gas consumed.

All gas consumed in any one month in excess of two thousand (2,000) cubic feet, thirty-eight (38) cents per thousand cubic feet.

A discount of three (3) cents per thousand cubic feet will be allowed on all gas in excess of the two thousand (2,000) cubic feet covered by minimum bill, to all consumers paying their bills on or before the tenth day of the month following that in which the gas is consumed.

Yours very truly,

JOHN M. LANDON,

*Receiver for Kansas Natural Gas Company."*

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EXHIBIT "D."

*Notice Served August 12, 1916.*

"The Kansas City Gas Company, Kansas City, Missouri.

GENTLEMEN: You are hereby notified by the undersigned as the duly appointed, qualified and acting Receiver of the properties, assets and business of the Kansas Natural Gas Company, that the preservation of the estate of said Kansas Natural Gas Company, and of said business, properties and assets and the conservation of the same, which devolves as a duty upon said Receiver, no longer makes it possible for said Receiver to sell to the Kansas City Gas Company, natural gas at the price and under the terms and conditions at which and under which the same has heretofore been delivered to said Kansas City Gas Company, by said Receiver, and that on and after September 1st, 1916, any gas received by said Kansas City Gas Company, from said Receiver, must be paid for at the rate of eighteen cents per thousand cubic feet measured on an eight-ounce basis at the meters nearest to the lines of said Kansas City Gas Company, quantities to be determined by said meters and when meters' accuracy is questioned, same to be tested and adjustments made in the customary manner. All gas supplied to be paid for on the Fifteenth day of the month following delivery.

The said Receiver asks the Kansas City Gas Company to promptly notify him whether or not it is the purpose of said company on and after September 1st, to receive natural gas from said Receiver at the place and pay for same at the price aforesaid, to-wit: eighteen cents per thousand cubic feet, and under the conditions aforesaid."

Respectfully,

JOHN M. LANDON,

*Receiver of the Kansas Natural Gas Company.*

J.H.A.-S."

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## EXHIBIT "E."

*Letter of August 12, 1916.*

"Kansas Natural Gas Company,

(Letterhead.)

Independence, Kansas,

August 12, 1916,

Kansas City Gas Company, Kansas City, Missouri.

GENTLEMEN: The newspaper report that the rates are suspended is incorrect. The only modification is that the distributing companies can fix the minimum charge as they think their necessities require.

Yours very truly,

JOHN M. LANDON, *Receiver.*"

J.M.L.S.

785

## EXHIBIT "F."

*Letter of August 18, 1916.*

"Kansas City, August 18, 1916.

John M. Landon, Receiver, Kansas Natural Gas Company, Independence, Kansas.

DEAR MR. LANDON: Your letter of August 4th, enclosing a proposed change in consumers' rates to 38 cents and \$1.00 minimum bill; also your communication of August 11th, delivered through Mr. Atwood's office, suggesting an 18 cent price for gas metered and delivered to the Kansas City Gas Company at the city limits; also your letter of August 12th, further modifying the minimum charge, have all been turned over to me by the Company for answer.

Replying will say that the Kansas City Gas Company repeats and adheres to the statements made and the position taken in our letter to you dated June 26th, 1916, hereby referred to and made a part hereof.

Further answering your communications, will say that all of your suggestions contemplate modifications of the supply-contracts existing between the Kansas City Gas Company and the Kansas Natural Gas Company, under which you are and have been operating, dated November 17th and December 3rd, 1906, and that none of said suggestions, purporting to be notices to the Kansas City Gas Company, appear to have been sent by order of the District Court of Montgomery County, Kansas, and, as recently said by the Federal Court in the St. Joseph case, involving the same character of contract, 'until the question of such modification or abrogation of the



786 contract is presented to the court of which you are an officer, and determined by order of that court, neither the Receiver nor any one for him is authorized to make any binding agreements with reference to the same.'

We, therefore, construe your communications as merely suggestions or offers to modify the existing supply-contracts, which offers, for the reasons assigned in our letter of June 26th, 1916, and others sufficient for our purpose, we do not care to consider.

The Company will, therefore, continue to accept and receive natural gas and remit to you for the same under and pursuant to the terms and provisions of the supply-contracts existing between the Kansas Natural Gas Company and its Receiver and the Kansas City Gas Company, dated November 17th and December 3rd, 1906; without, waiving, however, and saving and reserving, any and all rights, claims, demands and choses in action against you or the Kansas Natural Gas Company, which the Kansas City Gas Company now has or may hereafter have under said contracts or by reason of defaults or breach thereof.

Very sincerely yours,

KANSAS CITY GAS COMPANY,

By J. W. DANA, Counsel."

J.W.D.-E.A.T.

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EXHIBIT "G."

*Letter of August 22, 1916.*

"T. S. Salathiel,

Attorney at Law.

Independence, Kansas,

August 22, 1916.

The Kansas City Gas Company and Mr. J. W. Dana, Its Attorney,  
Kansas City, Mo.

DEAR SIRS: Your letter of August 18, 1916, which by reference makes your letter of June 26, 1916, a part thereof, written to Mr. John M. Landon, Receiver, of Kansas Natural Gas Company, Independence, Kansas, has been referred to me for reply.

In reply thereto, I will say that Mr. John M. Landon, as Receiver for Kansas Natural Gas Company, does not now have, and he has not at any time, had contractual relations with the Kansas City Gas Company other than the implied relations that exist by virtue of his delivering gas to your company and accepting of a settlement therefor upon the former basis of dealing between the Federal Receivers and your Company.

Mr. John M. Landon, as Receiver for Kansas Natural Gas Company, has never at any time recognized or adopted the contract or

contracts referred to in your letter of August 18, 1916, as being dated November 17, 1906, and December 3, 1906, respectively, and does not have, and never has had, any liability, duty, or obligation to adopt, recognize, or perform said contracts or either of them or any part thereof.

Mr. John M. Landon, as Receiver for Kansas Natural Gas Company, is not now and never has been under contractual obligations of any kind or character with the city of Kansas City,

Missouri, and under no duty or obligation by virtue of any franchise or agreement entered into by and between McGowan, Small and Morgan, for and on behalf of your company, or any other person, to supply, or furnish to Kansas City, Missouri, or its inhabitants natural gas.

Kansas Natural Gas Company, a Delaware corporation, takes the position and asserts the fact to be, that it is not now and for four years last past has not had any contractual relation whatever with the Kansas City Gas Company, or McGowan, Small and Morgan. The Kansas Natural Gas Company takes the position and asserts the fact to be that the contract entered into on November 17, 1906, between the Kansas City Pipe Line Company and McGowan, Small and Morgan, and the contract dated December 3, 1906, entered into between the Pipe Line Company and McGowan, Small and Morgan, no longer exist as binding contracts upon Kansas Natural Gas Company, or either of said corporations, for the reason that the said contracts have been fully performed by Kansas Natural Gas Company, for itself and for and in the interest of the Kansas City Pipe Line Company and the Kaw Gas Company, and that by reason of the full and complete performance thereof, the said contracts have expired by their terms.

The said corporations further assert that all of the transactions carried on between the said companies, or either of them, and the Kansas City Gas Company, since on or about the month of July, 1911, have been wholly dehors the contract, and has been the mere carrying on of business in the customary way, as had been established under the contracts, but without the recognition, extensions, or further adoption of such contracts.

That in the contract of November 17, 1906, it is specifically provided that the Kansas City Pipe Line Company agrees to supply gas to McGowan, Small and Morgan, or for any corporation which they may organize, for the purpose of taking over the contract from the lands and leases in the gas belt of Kansas, and gas reasonably accessible to the pipe lines of the Kansas City Pipe Line Company, and said contract further provides that,

"The party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part shall be able to command or capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable

for any loss, damage or injury that may result either directly or indirectly from such shortage and interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all purposes."

That each, every, all and singular of the obligations and duties assumed by the Kansas City Pipe Line Company under said contract, and as defined and fixed by said clause in said contract, and each and every other clause, covenant or agreement therein has been fully performed.

Your Company as an instrumentality owned, controlled and dominated by the United Gas Improvement Company of Philadelphia, Pennsylvania, which United Gas Improvement Company at the same time owned one-half of the capital stock and all of the bonds of the Kansas City Pipe Line Company, and whose officers were likewise officers of and dominated and controlled the Kansas City Pipe Line Company, has, and since July, 1911, has had knowledge of the fact that natural gas in the gas fields of Kansas adjacent to and upon which the Kansas City Pipe Line Company's pipe line is dependent for a gas supply, and with reference to which your contract of November 17th was made, is exhausted and that natural gas is no longer reasonably accessible to the said pipe lines of the Kansas City Pipe Line Company, and that the Kansas City Pipe Line Company has no resources or means available, with which or by which it can acquire or obtain gas along its said pipe lines for supplying Kansas City Gas Company, or the city of Kansas City.

Further answering your communication of August 18, 1916, will suggest that John M. Landon, as Receiver for Kansas Natural Gas Company, has at no time suggested or contemplated any modification of any contract, for the reason that he does not recognize that he ever had any contract, and has not adopted the contract claimed by your company to exist between it and Kansas Natural Gas Company, and has no desire or intention of adopting the same, and, therefore, no intention of modifying the same; and each of his communications submitted to you has been for the purpose of advising you at what price and only at what price the Receiver will supply gas to your company for sale in Kansas City, and at which you will be required to pay for the same after the date fixed in such notices, and which we will enforce.

We deny that we have been operating under the contract of November 17, and December 3, 1906, or under any other contract, a fact of which you have full knowledge, and have had full knowledge at all times, and a fact which you presented to the Circuit

Court of Appeals, argued strenuously, and which the Circuit Court of Appeals decided adversely to you.

You are not, therefore, authorized, justified, or encouraged in construing our communications as suggestions to modify existing contracts, but you are only authorized to construe those communi-

cations as the fixing of a definite price for natural gas, which you must pay at the gate of your plant.

Respectfully yours,

JOHN M. LANDON, *Receiver,*  
By T. S. SALATHIEL,  
*His Attorney.*

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## EXHIBIT "H."

*Letter of August 26, 1916.*

"Kansas City, Mo.,

August 26, 1916.

Kansas Natural Gas Company, a corporation, and Mr. John M. Landon, Its Receiver, Independence, Kansas.

GENTLEMEN: Answering your letter of August 22, 1916, sent out by Mr. T. S. Salathiel, addressed to The Kansas City Gas Company, and Mr. J. W. Dana, Its Attorney, the Kansas City Gas Company cannot and does not concede any of the statements and assertions contained therein with reference to the supply contracts existing between the Kansas Natural Gas Company and its Receiver and the Kansas City Gas Company, dated November 17, 1906, and December 3, 1906; and, therefore, this is to again notify the Kansas Natural Gas Company and its receivers, agents, representatives and attorneys that the Kansas City Gas Company adheres to its position taken in its letters addressed to Mr. Landon, dated June 26th, 1916, and August 18, 1916; and this is to further notify you that this Company will continue to accept and receive such natural gas as you may hereafter deliver to it and remit for the same under and pursuant to the terms and provisions of said supply contracts; saving and reserving any and all rights, claims, demands and choses in action against the Kansas Natural Gas Company or its Receiver which the Kansas City Gas Company now has or may hereafter have under said contracts, or otherwise.

Very sincerely yours,

KANSAS CITY GAS COMPANY,  
By J. W. DANA, *Counsel.*

J.W.D.-E.A.T.

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## EXHIBIT "I."

*Letter of September 11, 1916.*

"T. S. Salathiel,

Attorney at Law.

Independence, Kansas,

September 11, 1916.

Kansas City Gas Company, Kansas City, Mo.

GENTLEMEN: Answering your letter of August 26th written by your Mr. J. W. Dana, Counsel, to Kansas Natural Gas Company and John M. Landon, Its Receiver, I beg to say that John M. Landon as receiver for Kansas Natural Gas Company will furnish you gas only at the prices and under the terms referred to in his letter of August 22nd, and as theretofore in letters given you, to-wit, 18c at the gate of your city system.

John M. Landon, as receiver for Kansas Natural Gas Company, has no contract of any kind or character with your company for the supply of natural gas to your company, and demands and will continue to demand, and will take all necessary steps to enforce payment by you for all gas delivered by him to your company at the above named rate of 18c per thousand cubic feet at the gate of your plant.

Very truly yours,

(Signed)

T. S. SALATHIEL."

T. S. S.-B. G.

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## EXHIBIT "J."

*Letter of September 20, 1916.*

"J. W. Dana,

Attorney and Counselor,

910 Grand Avenue.

Kansas City, September 20, 1916.

Kansas Natural Gas Company, John M. Landon, Its Receiver, and Mr. T. S. Salathiel, Attorney, Independence, Kansas.

GENTLEMEN: Answering your letter of September 11, 1916, written by Mr. T. S. Salathiel, addressed to Kansas City Gas Company, the Kansas City Gas Company adheres to its position taken in its letters addressed to you or any of you, dated June 26, 1916, August 18, 1916, and August 26, 1916, and its Answer and Counter

Claim' filed in the case of Landon v. The Commission, No. 136-N, pending in the District Court of the United States for the District of Kansas, and its 'Petition for Specific Performance' filed in the case of Kansas City Gas Company v. Kansas Natural Gas Company, John M. Landon, Receiver, and George H. Sharritt, Receiver, No. 104,443, filed in the Circuit Court of Jackson County, Missouri; and the Company will continue to accept and receive such natural gas as you or any of you are now delivering or may hereafter deliver to it, and remit for the same under and pursuant to the terms and provisions of the supply-contract existing between you and said Company, dated November 17th and December 3rd, 1906; saving and reserving its rights as stated in its former communications.

Sincerely yours,

KANSAS CITY GAS COMPANY,  
By J. W. DANA, *Counsel.*"

J. W. D. E. A. T.

Filed in the District Court on Oct. 18, 1916. Morton Albaugh, Clerk.

796 Exhibit K, being lease of The Kansas City Pipe Line Company to Kansas Natural Gas Company, dated 1/1/08, is omitted.

797 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Kansas City Gas Company to the Joint Bill of Complaint or "Separate Answer" of George F. Sharritt, Receiver.*

797½ In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Kansas City Gas Company to the Joint Bill of Complaint or "Separate Answer" of George F. Sharritt, Receiver.*

Now comes the defendant Kansas City Gas Company, by leave of court, and in answer to the joint bill of complaint denominated "Separate Answer" of George F. Sharritt, Receiver, filed herein, alleges, avers and states the following facts, to-wit:

1. That said George F. Sharritt is the Receiver appointed by the above entitled court in the case of John L. McKinney v. Kansas Natural Gas Company et al., No. 1351, in Equity, and Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, in Equity; that by the orders of this Court, hereby referred to 798 and made a part hereof, said George F. Sharritt has been and is now divested of any possession, control or management of the Kansas Natural Gas Company, its business, estates and properties, and the same is now lodged in John M. Landon as Receiver appointed by the District Court of Montgomery County, Kansas, in the case of The State of Kansas v. The Independence Gas Company, Consolidated Gas, Oil and Manufacturing Company, Kansas Natural Gas Company et al., No. 13476, pending in said District Court.

2. That this defendant Kansas City Gas Company hereby refers to and adopts all the allegations, statements and averments in its "Answer and Counterclaim" and its "Amended Answer to the Bill of Complaint and Answer to the Supplemental Bill of Complaint" filed herein, and makes the same a part hereof as fully and completely as if written at full length herein.

Wherefore, the premises considered, this defendant Kansas City Gas Company moves and prays this Honorable Court that the defendant Kansas Natural Gas Company take nothing by its Separate Answer or joint bill of complaint filed herein; that the relief therein demanded be denied; that said Separate Answer or joint bill be dismissed; that this defendant have and recover of and from the defendant Kansas Natural Gas Company a decree for the specific performance of said supply-contract, as prayed for in its original Answer and Counterclaim filed herein on April 27, 1916, and such other and



further relief as to this Honorable Court may seem equitable and just, and for its costs herein expended.

KANSAS CITY GAS COMPANY,  
By C. E. SMALL,  
J. W. DANA,  
*Solicitors.*

799 STATE OF MISSOURI,  
*County of Jackson, ss:*

J. M. Scott, being first duly sworn, deposes and says that he is the Secretary of the Kansas City Gas Company; that he has read and knows the contents of the foregoing pleading and that the statements, allegations, averments and denials therein made and contained are true, except such as are made on information and belief, and as to such affiant believes them to be true. And further affiant saith not.

J. M. SCOTT.

Subscribed in my presence and sworn to before me this 17th day of October, 1916.

[SEAL.]

WILLIAM SHELDON McCARTHY,  
*Notary Public within and for Jackson County, Missouri.*

My commission expires January 16, 1918.

Filed in the District Court on Oct. 18, 1916. Morton Albaugh, clerk.

800 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Kansas City Gas Company to the Joint Bill of Complaint Designated "Separate Answer of the Kansas Natural Gas Company."*

800½ In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al., Defendants.

*Answer of the Kansas City Gas Company to the Joint Bill of Complaint Designated "Separate Answer of the Kansas Natural Gas Company."*

Now comes the defendant Kansas City Gas Company, by leave of court, and in answer to the joint bill of complaint denominated "Separate Answer of the Kansas Natural Gas Company" filed herein, alleges, avers and states the following facts, to-wit:

1. That there is a misjoinder of parties defendant in said joint Bill of Complaint.

2. That there is a misjoinder of causes of action in said joint Bill of Complaint.

3. That the defendant Kansas Natural Gas Company has no capacity to sue, bring or maintain said joint Bill of Complaint.

801 4. That the several causes of action sought to be joined in said joint Bill of Complaint are not joint, and the relief demanded and liability asserted therein is not one and the same relief and liability asserted against all of the material defendants, and no sufficient grounds appear for uniting the several causes of action against the several defendants in order to promote the convenient administration of justice; and the pretended cause of action alleged against this defendant by its co-defendant, the Kansas Natural Gas Company, in said joint Bill of Complaint upon its contract with said defendant and the exercise of its rights thereunder, and the cause of action against the Kansas Public Utilities Commission and the Missouri Public Service Commission cannot be conveniently disposed of together.

5. That the Kansas Natural Gas Company is the real party in interest in any cause of action pretended to be alleged against this defendant in said joint Bill of Complaint and said Company should be joined as plaintiff, for the reason that its alleged Answer filed herein adopts all the allegations of the plaintiff's Bill and prays for the same relief, and said defendant is in truth and in fact the plaintiff and real party in interest and no showing is made that said defendant has refused to join as plaintiff.

6. That said joint Bill of Complaint does not state facts sufficient to constitute a valid cause of action in equity in favor of the defend-

ant, Kansas Natural Gas Company, and against this defendant, Kansas City Gas Company, as appears upon the face of said joint Bill of Complaint and the Bill of Complaint and Supplemental Bill of Complaint adopted by said defendant, Kansas Natural Gas Company, and the exhibits thereto attached and filed therewith and made a part thereof.

802 7. That it appears upon the face of said joint Bill of Complaint and the exhibits thereto attached and filed therewith and the Bills referred to and adopted therein, that the present and prior possession, jurisdiction and administration of the estate of the Kansas Natural Gas Company by the District Court of Montgomery County, Kansas, in the case of the State of Kansas v. The Independence Gas Company, Consolidated Gas, Oil and Manufacturing Company, Kansas Natural Gas Company, et al., is a bar to the relief demanded by the Kansas Natural Gas Company's joint Bill against this defendant, and this action in this court must be abated until such prior possession and jurisdiction is surrendered.

8. That this court has no jurisdiction of the subject of the action or the relief demanded by the defendant Kansas Natural Gas Company against this defendant.

9. This defendant further answering said defendant's joint Bill of Complaint and the Bill of Complaint and Supplemental Bill of Complaint referred to therein and made a part thereof, hereby refers to and adopts all the statements, allegations, averments and denials made by this defendant in its Answer and Counterclaim filed herein to the plaintiff's Bill of Complaint, and its "Amended Answer to the Bill of Complaint and Answer to the Supplemental Bill of Complaint" filed herein of even date herewith, and makes the same a part hereof as fully and completely as if written at full length herein.

10. Further answering said defendant's joint Bill of Complaint or "Separate Answer of Kansas Natural Gas Company," this defendant states:

(1) That it admits that the defendant Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is a citizen of the State  
803 of Delaware and is authorized to do business in the State of Oklahoma, as alleged in paragraph 1 of said "Separate Answer."

(2) That it admits, denies and pleads to the Bill of Complaint of plaintiff adopted by the defendant Kansas Natural Gas Company as shown by its "Answer and Counterclaim" and its "Amended Answer to the Bill of Complaint and Answer to the Supplemental Bill of Complaint" above referred to; and admits that the matter and amount in controversy herein exceeds, exclusive of interest and costs, the sum and value of \$3,000.00, as alleged in paragraph 2 of said "Separate Answer."

(3) Defendant admits the averments of paragraphs 3, 4 and 5 of said "Separate Answer," but states that they are immaterial as to this defendant.

(4) Answering paragraph 6 of said "Separate Answer," defendant admits that on December 17, 1914, the Kansas Natural Gas Company

joined with its several creditors and stockholders in executing a certain stipulation; but denies that it was a "Creditors' Agreement"; admits that "Exhibit A" attached to the original Bill of Complaint is a true and correct copy thereof except the designation "Creditors' Agreement" on the cover thereof, which does not appear on the original instrument on file; admits that at the time of entering into said stipulation the bonds of said defendant Kansas Natural Gas Company secured by trust deeds were in default and that said trust deeds were subject to foreclosure and were in the process of foreclosure; admits that certain bonds of the Marnet Mining Company were in default, and that the trust deeds securing the same were subject to foreclosure; admits that certain of the bonds of The Kansas City Pipe Line Company were in default, and the trust deeds securing said bonds were subject to foreclosure; but denies that one of the

804 purposes of said stipulation was any advantage or benefit to said defendant Kansas Natural Gas Company and denies that the purpose of said stipulation was to procure to said Kansas Natural Gas Company an extension of the time for the payment of said bonds of said defendant and the bonds of the Marnet Mining Company and of The Kansas City Pipe Line Company; and denies that said stipulation was intended to prevent the filing of foreclosure suits for foreclosing said trust deeds; and denies that said stipulation was intended to stay the prosecution of the said equity suits No. 1,351 and No. 1-N, pending in this court for the foreclosure of mortgages on said defendant's property; but this defendant avers that the purposes of said stipulation were to provide for the distribution of funds on hand and accruing during the receivership and to improve and continue the service and supply of natural gas to this defendant and others similarly situated and the public, as will appear from an examination of said stipulation.

(5) Defendant denies that said stipulation provided for the extension of the time for the payment of all said bonds including those in process of foreclosure in said equity suits over a period of six years from January 1, 1915, and denies that it provided for the payment and retirement of one-sixth of each of said first mortgage bonds each year, as alleged in paragraph 6 of said Separate Answer; admits that said stipulation contained the provision quoted in said paragraph; admits that "it is necessary in order to provide funds with which to meet the maturing obligations of the said several creditors of Kansas Natural Gas Company and comply with the terms of said (so-called) Creditors' Agreement for the payment of the same within the 6-year period, that additional gas supply be provided

805 sufficient to carry on said business during the 6-year period"; and admits that "it is necessary in order to procure said gas supply to make extensions of pipelines to new gas fields and to new gas wells and to construct and equip compressor stations"; admits that "large sums of money will be required to procure such additional gas supply greatly in excess of the sums of money provided in the said (so-called) Creditors' Agreement"; admits that "unless said extensions are made and funds provided for meeting the terms of said (so-called) Creditors' Agreement, to-wit, the payment of one-sixth

of the first mortgage bonds of Kansas Natural Gas Company, The Kansas City Pipe Line Company and Marnet Mining Company each year, said (so-called) Creditors' Agreement will become forfeited and void and the parties thereto released from the obligations and terms thereof"; and admits that "they will be put in statu quo and permitted to prosecute said equity suits, and to institute actions to foreclose their respective claims"; and admits that "the property of said defendant may thereby be wasted and sacrificed by forced sale"; but denies that "the usefulness and utility of the pipeline system operated by the plaintiff as receiver will be destroyed by separate or joint foreclosure and sale"; and admits that the usefulness and utility of said pipeline system will be destroyed by the failure of said defendant or some other person to procure gas supply sufficient to operate the same. But defendant Kansas City Gas Company states that all said averments are immaterial as to this defendant for the reason that the price it is required to pay to the defendant Kansas Natural Gas Company for its supply of gas is fixed and determined by said supply-contracts of November 17 and December 3, 1906, hereinbefore referred to.

806 (6) Defendant avers that it is without knowledge of the facts alleged in paragraph 7 of said joint Bill or Separate Answer of the defendant Kansas Natural Gas Company and leaves defendant to its proofs, but states that the same are immaterial as to this defendant for the reason that the price and rate it is required to pay for gas furnished by said defendant and its Receiver to this defendant is fixed, determined and measured by said supply-contracts.

(7) Defendant avers that it is without knowledge of the facts alleged in paragraph 8 of said joint Bill or Separate Answer and leaves defendant to its proofs, but states that the same are immaterial as to this defendant, except that defendant denies that said defendant Kansas Natural Gas Company is being deprived of its property without compensation and without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States in so far as the rates and prices paid for said gas by this defendant *is* concerned for the reason that said rates and prices are fixed, determined and measured by said contracts between this defendant and the said defendant Kansas Natural Gas Company as aforesaid.

(8) Defendant is without knowledge of the facts alleged in paragraphs 9, 10 and 11 of said joint Bill or Separate Answer and leaves defendant to its proofs, but states that said averments are immaterial as to this defendant for the reason that if said defendant Kansas Natural Gas Company is engaged in interstate commerce, the rates and prices which this defendant is required to pay to said defendant Kansas Natural Gas Company for the gas furnished by it to this defendant are fixed, determined and measured by said contracts, 807 as aforesaid.

Wherefore, the premises considered, defendant Kansas City Gas Company moves and prays this Honorable Court that the defendant Kansas Natural Gas Company take nothing by its Separate Answer or joint Bill of Complaint filed herein; that the relief therein demanded *by* denied; that said Separate Answer or joint Bill be dis-

missed; that this defendant have and recover of and from the defendant Kansas Natural Gas Company a decree for the specific performance of said supply-contracts and the terms and provisions of said lease of January 1, 1908, as prayed for in its original Answer and Counterclaim filed herein, and such other and further relief as to this Honorable Court may seem equitable and just, and for its costs herein expended.

KANSAS CITY GAS COMPANY,  
By C. E. SMALL,  
J. W. DANA,  
*Solicitors.*

STATE OF MISSOURI,  
*County of Jackson ss:*

J. M. Scott, being first duly sworn, deposes and says that he is the Secretary of the Kansas City Gas Company; that he has read and knows the contents of the foregoing pleading and that the statements, allegations, averments and denials therein made and contained are true, except such as are made on information and belief, and as to such affiant believes them to be true.

And further affiant saith not.

J. M. SCOTT.

Subscribed in my presence and sworn to before me this 17th day of October, 1916.

[SEAL.] WILLIAM SHELDON McCARTHY,  
*Notary Public within and for Jackson County, Missouri.*

My commission expires Jany. 16, 1918.

Filed in the District Court on Oct. 18, 1916. Morton Albaugh,  
Clerk.

808 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Amended Answer to Bill of Complaint and Answer to Supplemental  
Bill of Complaint by the Wyandotte County Gas Company.*

808½ In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Amended Answer to Bill of Complaint and Answer to Supplemental  
Bill of Complaint by the Wyandotte County Gas Company.*

Now comes the defendant, The Wyandotte County Gas Company, by leave of court, and in further answer to the Bill of Complaint and in answer to the Supplemental Bill of Complaint filed herein alleges, avers and states the following facts, to-wit:

1. That there is a misjoinder of parties defendant in said Bills of Complaint.

2. That there is a misjoinder of causes of action in said Bills of Complaint.

809 3. That the several causes of action sought to be joined in said Bills are not joint, and the relief demanded and liability asserted in said Bills is not one and the same relief and liability asserted against all of the material defendants, and no sufficient grounds appear for uniting the several causes of action against the several defendants in order to promote the convenient administration of justice; and the cause of action alleged against this defendant upon its contracts and the exercise of its rights thereunder, and the cause of action against the Kansas Public Utilities Commission or the Missouri Public Service Commission cannot be conveniently disposed of together.

4. That this action is not prosecuted in the name of the real parties in interest, to-wit, the Kansas Natural Gas Company and its stockholders.

5. That the Kansas Natural Gas Company and its stockholders are the real parties in interest in any cause of action alleged against this defendant in said Bills and said Company should be joined as plaintiff for the reason that it has filed an Answer herein adopting the allegations of said Bills and praying for the same relief and no showing is made that it has refused to join as plaintiff.

6. That said Bills do not state facts sufficient to constitute a valid cause of action in equity in favor of the plaintiff, John M. Landon, as Receiver, and against this defendant. The Wyandotte County Gas Company, as appears upon the face of said Bills and the exhibits thereto attached and filed therewith and made a part thereof.

7. That it appears upon the face of said Bills and the exhibits thereto attached and filed therewith that the present and prior pos-



session and jurisdiction and administration of the estate of the Kansas Natural Gas Company by the District Court of Montgomery County, Kansas, in the case of the State of Kansas v. The Independence Gas Company, Consolidated Gas, Oil and Manufacturing Company, Kansas Natural Gas Company et al., is a bar to the relief demanded in the plaintiff's Bills against this defendant, and this action in this court must be abated until such prior possession and jurisdiction is surrendered.

8. That this court has no jurisdiction of the subject of the action or the relief demanded by the plaintiff against this defendant.

9. This defendant further answering said Bill of Complaint and Supplemental Bill of Complaint hereby refers to and adopts all the statements, allegations, averments and denials made in its "Answer" filed herein on March 9, 1916, and its "Petition to Dissolve Injunction and Supplemental Answer, Counterclaim and Cross Bill" filed herein on October 11, 1916, together with all the exhibits attached thereto and filed therewith, and makes the same a part hereof as fully and completely as if written at full length herein.

10. Further answering said Supplemental Bill of Complaint this defendant states:

(a) As to paragraph "I," it admits that plaintiff filed the bond required by this court and the same was approved, and the Clerk issued the writ of preliminary injunction ordered by the court on June 3, 1916, and that the plaintiff directed this defendant to put into force and effect on September 1, 1916, certain rates; but defendant denies that said direction was given in the due course of the administration of the estate of the Kansas Natural Gas Company by said Receiver, or was given by order or authority of any court or commission, and that this defendant is or was the agent of said Receiver or the Kansas Natural Gas Company, and that said rates so demanded were reasonable and just, and that they were made or fixed in pursuance of the order of this court entered on June 3, 1916, and that the plaintiff is entitled to an average rate of 32 cents per thousand cubic feet for natural gas transported and sold by him to this defendant, and that this court determined that any less than an average rate of 32 cents to the consumers of this defendant is non-compensatory and confiscatory; but defendant avers that all the allegations of said paragraph "I" are immaterial as to this defendant.

(b) As to paragraphs "II," "III," "IV," "V," "VI," "VII," "VIII," "IX," and "X" this defendant is without knowledge of the averments in said paragraphs and therefore leaves plaintiff to such proof as it may be advised is material, but avers that said allegations are immaterial as to this defendant.

(c) As to paragraph "XI" this defendant admits that on August 10, 1916, the City of Kansas City, Kansas, the City of Rosedale, Kansas, and this defendant as complainants filed with the Public Utilities Commission of the State of Kansas their Complaint re Gas Supply against the Kansas Natural Gas Company and the plaintiff as Receiver, praying for an order requiring said plaintiff and said Kansas Natural Gas Company to comply with the contract dated

February 1, 1906, existing between The Wyandotte County Gas Company and the Kansas Natural Gas Company, and requiring the plaintiff and said Company to make certain extensions of the pipe lines operated and controlled by him and it in the State of Oklahoma, and requiring the plaintiff and said company to do and perform other acts and things and improve the service to this defendant, as shown by said Complaint, and that the copy of said Complaint filed with said Supplemental Bill and marked "Exhibit 12" is a true and correct copy; and that upon the filing of said Complaint the Public Utilities Commission of Kansas made and entered an order requiring plaintiff herein to answer said Complaint and assigning the same for hearing on October 19, 1916, and that on October 2, 1916, the plaintiff filed a motion to said Complaint as shown by "Exhibit 13" to said Supplemental Bill, and that "Exhibit 13" is a true and correct copy of said motion; but defendant denies that the validity of said contract was and is involved in the determination of this suit, and that the extensions and relief demanded in said Complaint is or was a direct and substantial or any burden upon and an undue or any interference with the interstate commerce in which the plaintiff herein is engaged and engaging; and that said Complaint and the relief therein demanded was in direct or any conflict with the decree of this court of June 3, 1916, and that said decree reserved exclusive jurisdiction over the subject matter or parties to said Complaint in this suit before said Commission; and defendant avers that all the allegations of said paragraph "XI" are immaterial as to this defendant for the reason that the rights, duties, obligations and liabilities as between this defendant and the Kansas Natural Gas Company and its Receiver are fixed, determined and measured by said contract dated February 1, 1906.

(d) As to Paragraph "XII," this defendant admits that on August 10, 1916, it filed with the Public Utilities Commission of the State of Kansas a proposed New Schedule of Rates, wherein it sought to change the rates charged for natural gas in Kansas City, Kansas, from 28 cents per thousand cubic feet net to 30 cents per thousand cubic feet net, effective on and after November 19, 1916, as provided by and in conformity with the contract of February 1, 1906, between The Kansas City Pipe Line Company and The Wyandotte Gas Company which The Wyandotte County Gas Company claims is still existing and in force against the Kansas Natural Gas Company and the plaintiff herein, and that hearing was had on said Application and Schedule of said The Wyandotte County Gas Company, at which the City of Kansas City, Kansas, appeared by its City Attorney, and that said hearing was had on the 21st day of September, 1916, and said City of Kansas City, Kansas, through its said Attorney, consented to the change of rates as proposed in said Schedule, and that the Commission has taken such application under advisement and has not yet given its decision thereon, and that "Exhibit 14" is a true and correct copy of said Application and 30-cent Schedule filed before the Public Utilities Commission of Kansas; but this defendant denies that it sought by said Application and Schedule to determine the validity of the contract of February 1,

1903, existing between this defendant and the Kansas Natural Gas Company and its Receiver, and that said contract is one of the issues in this suit that has been reserved for consideration by this court; and defendant is without knowledge as to whether or not the action of this defendant so taken, if the same is consummated and said 30-cent rate put into effect, will prevent plaintiff from securing an average rate of 32 cents net on all natural gas which he purchases and produces in Kansas and Oklahoma and sells to consumers in Kansas and Missouri; but defendant denies that said action or said 30-cent rate if allowed or if put into effect by this defendant is a substantial or any burden and an undue or any interference with the interstate commerce business in which the plaintiff is engaged and engaging, and that such action and rate is in direct or any  
814 conflict with the decree of this court of June 3, 1916, and that said decree reserved exclusive jurisdiction over the subject matter.

(c) Defendant further answering paragraph "XII" avers that it is required under the contract of February 1, 1906, existing between this defendant and the Kansas Natural Gas Company and its Receiver, to charge and put into force and effect and collect on and after November 19, 1916, a net rate of 30 cents per thousand cubic feet, and that in order to maintain and continue said contract in force and effect as between the parties thereto and their successors and assigns this defendant will on or before said date put into force and effect and thereafter charge and collect said 30-cent rate unless enjoined and restrained by some court of competent jurisdiction. This defendant avers that while the Public Utilities Commission of Kansas has not yet approved, ordered and allowed said 30-cent rate it believes said Commission will allow the same before November 19, 1916, so as to enable this defendant to continue the performance of its contract with the Kansas Natural Gas Company and the plaintiff herein.

(f) Answering paragraph "XIII," this defendant admits that after the plaintiff undertook to make and publish schedules of rates in the several cities of Kansas the Public Utilities Commission of Kansas made and entered an order on the 13th day of September, 1916, requiring the plaintiff to file with said Commission a schedule of rates, that plaintiff herein complied with said order and filed with said Commission a schedule of rates, that "Exhibit 15" is a true copy of the Commission's order and that "Exhibit 16" is a true copy of the schedule so filed, that after said schedule was filed and on the 21st day of September, 1916, the Commission made and entered an order that upon its own motion it would enter into a general  
815 investigation of the rates, joint rates, rules, services, regulations and practices of the plaintiff as shown by the schedule filed by him with said Commission, and that a hearing has been set for October 24, 1916, and that "Exhibit 17" is a true copy of the Commission's order; but defendant avers that the allegations of said paragraph are immaterial as to this defendant.

(g) Answering paragraph "XIV," defendant avers that it is

without knowledge of the facts alleged therein and leaves plaintiff to his proofs, but states that said allegations are immaterial as to this defendant.

(h) Answering paragraph "XV," defendant denies that it has conspired together with the cities of Kansas City, Kansas, and Rosedale, Kansas, to prevent the putting into force and effect of the schedule of rates published by the plaintiff to be charged consumers of gas in Kansas City, Kansas, and Rosedale, Kansas; but avers that it has resisted said rates for the reason that they were in violation of and sought to repudiate the contract existing between this defendant and the Kansas Natural Gas Company and the plaintiff, as will hereinafter more fully appear; and admits that it has since said time and always denied that it is the agent of the Receiver or of the Kansas Natural Gas Company for the sale and distribution of natural gas in said cities; and admits that it avers and asserts that it is a purchaser of natural gas; and admits that it refuses to put into force and effect the rates and prices ordered to be put into force and effect in said cities by the plaintiff; and denies that such course of action and position taken by it was taken at the instance and upon the advice and in furtherance of any plan entered into between it and said cities to prevent the plaintiff from obtaining and collecting compensatory rates for gas supplied to the inhabitants of said

816 cities; but avers that said course of action and position of this defendant is to prevent the Kansas Natural Gas Company, acting by and through the plaintiff herein, from unlawfully and without warrant or authority, repudiating its contract with this defendant; and admits that plaintiff after receiving notice from this defendant that it would not put into force and effect the rates for the selling of natural gas sought to be ordered and directed by the plaintiff, the plaintiff endeavored to fix and establish a price of 18 cents per thousand cubic feet to be charged this defendant for gas supplied for distribution and sale in said cities at the gate of the city plant where the gas passes from the pipe line of the plaintiff to the distributing plant of the defendant; and admits that plaintiff attempted to notify this defendant thereof; but defendant avers that said pretended order and direction and attempt to fix and establish a price of 18 cents per thousand cubic feet at the city gates to this defendant was done without authority or order of any court or commission and in violation and repudiation of the contract existing between this defendant and the Kansas Natural Gas Company and the plaintiff and is a part of a plan and conspiracy entered into between the plaintiff and the Kansas Natural Gas Company and certain of its stockholders to unlawfully and wrongfully defraud this defendant and repudiate said contract; and denies that plaintiff has at all times demanded and insisted that this defendant pay for the natural gas delivered to it at the gates of the city at said rate of 18 cents per thousand cubic feet. Defendant admits that it has refused to pay

817 said rate of 18 cents per thousand cubic feet; and denies that there is any conspiracy between it and Kansas City, Kansas, and Rosedale, Kansas. That defendant is without knowledge of the averment in paragraph "IV"

"That by inhibiting the plaintiff from selling said natural gas at a price of 18 cents per thousand cubic feet at the gate of Kansas City, Kansas, and Rosedale, Kansas, the said defendants are preventing the plaintiff from securing an average rate of 32 cents per thousand cubic feet on all natural gas which he purchases and procures and sells to consumers in Kansas and Missouri. That it is necessary for plaintiff to obtain said rate of 18 cents in order to make any profit. That 62½ per cent of the 30 cent rate on natural gas delivered to consumers in Kansas City, Kansas, and Rosedale, Kansas, as measured at the meters of said consumers, is non-compensatory, confiscatory, and unreasonable,"

and leaves the plaintiff to his proofs, but states that said averment is immaterial as to this defendant for the reason that the aforesaid contract, dated February 1, 1906, existing between this defendant and the plaintiff and Kansas Natural Gas Company binds and obligates the Kansas Natural Gas Company and the plaintiff to furnish and deliver said gas to this defendant to be sold at a price of 30 cents per thousand cubic feet on and after November 19, 1916, and to accept and receive therefor 62½ per cent of the gross receipts from the sale of such gas at said 30-cent rate. Defendant denies that said 30-cent rate would directly and substantially or in any manner burden the interstate commerce business in which plaintiff is engaged in delivering natural gas to consumers in Kansas; and denies that said rate is so unreasonably low as to unduly interfere with and substantially burden the interstate commerce business conducted by

818 plaintiff in transporting and delivering natural gas to consumers in Kansas and Missouri, but states that said averments are immaterial for the reason that said 30-cent rate is fixed by contract, as aforesaid.

(b-1) Defendant admits "that the ordinances passed by the cities of Kansas City, Kansas, and Rosedale, Kansas, have been superseded and repealed by the public utilities act and the power of said cities to contract as to rates has been taken away. That it has been decided in the case of *State of Kansas v. The Wyandotte County Gas Company*, 88 Kans. 165 (*The Wyandotte County Gas Company v. State of Kansas*, 231 U. S. 622), that the city of Kansas City, Kansas, being a city of the first class, never had the power to enact the ordinance" fixing rates; but defendant states that said averment is immaterial as to this defendant for the reason that the right of this defendant to purchase gas from the plaintiff and the Kansas Natural Gas Company at a certain percentage of the gross receipts realized from the sale of gas at 30 cents per thousand cubic feet, is not determined by any ordinances of said city, but by the contract of February 1, 1906, existing between this defendant and the Kansas Natural Gas Company and plaintiff. Defendant admits that said ordinances have been violated by the respective cities since January 1, 1911, and are not now and never have had any legal force and effect as between said cities and this defendant or as between said cities and the Kansas Natural Gas Company. Defendant admits that the contract between The Wyandotte County Gas Company and the Kansas

Natural Gas Company and its predecessors in interest dated February 1, 1906, incorporates the said ordinances into the said contract and makes them a part thereof; but denies that, as the ordinances are no longer and never have been in force, the contract based on the 819 ordinances has been changed without the consent of the Kansas Natural Gas Company, and denies that said contract is no longer in force as to it; but avers that said contract is in full force and effect and that said ordinances, though having no binding force and effect as contracts suspending the state's power of rate regulation, nevertheless name the schedule of rates and fix the price at which the Kansas Natural Gas Company has, by contract, agreed to furnish gas to this defendant for distribution and sale in Kansas City, Kansas, and Rosedale, Kansas.

(h-2) And defendant denies that said contract is not binding on said Receiver and that it has never been adopted by him; but states the fact to be that said Receiver and the receivers of this court have continued to operate under said contract and perform its terms and conditions and deliver gas thereunder and in the manner provided for therein and receive payment therefor from this defendant according to the terms and provisions of said contract from October 9, 1912, to the present time; that no order of court, state or federal, has ever been made disavowing or abrogating said contract; that this court at the time it appointed receivers, October 9, 1912, expressly reserved to itself the right to pass upon and not only disapprove and disavow, but approve said contract; and both this court and the District Court of Montgomery County, Kansas, ordered and directed their receivers to continue the business of said defendant Kansas Natural Gas Company and perform said contract until the further order of the court, and the same has never been modified, cancelled or set aside by agreement of parties or decree or order of any court or commission and is still in full force and effect and binding upon the Kansas Natural Gas Company and its Receiver.

820 (h-3) Defendant further answering said paragraph "XV" states that the pretended notices and demands of the plaintiff and the Kansas Natural Gas Company referred to in said paragraph and this defendant's answers thereto were all in writing, and true and correct copies thereof are hereto attached and made a part hereof, marked exhibits, as follows:

Exhibit.	Subject.	Date.
A.	Circular from Mr. Landon, requesting The Wyandotte County Gas Company to offer evidence at Independence showing what rate should be charged—meeting .....	6/29/16
B.	Answer of The Wyandotte County Gas Company, by Mr. Dana, to circular, Exhibit A, adhering to contract .....	6/27/16
C.	Circular from Mr. Landon, requesting The Wyandotte County Gas Company to notify consumers of increase after August, 1916, meter readings. ....	8/4/16



Exhibit.	Subject.	Date.
D.	Circular from Mr. Landon, proposing 38-cent rate, \$1.00 minimum and 3-cent discount.....	8/4/16
E.	Letter from Mr. Landon, through Atwood's office, proposing 18-cent price at city limits.....	8/11/16
F.	Letter from Mr. Landon, proposing change in minimum bill.....	8/12/16
G.	Answer of The Wyandotte County Gas Company, by Mr. Dana, to letters from Mr. Landon, Exhibits C, D, E, & F.....	8/18/16
H.	Answer of Kansas Natural and Mr. Landon to The Wyandotte County Gas Company's letter of 8/18/16, Exhibit G.....	8/23/16
I.	Answer of The Wyandotte County Gas Company, by Mr. Dana, to letter of K. N. G. & Mr. Landon, of 8/23/16, Exhibit H.....	8/26/16
821		
J.	Letter from Mr. T. S. Salathiel, purporting to change and modify supply-contract.....	9/11/16
K.	Answer of The Wyandotte County Gas Company to letter of 9/11/16, from Mr. T. S. Salathiel, Exhibit J.....	9/20/16

(i) Answering paragraph "XVI," defendant denies that the acts and things which it has done as alleged in said paragraph substantially or in any manner burden and unduly or in any manner interfere with any interstate commerce business in which the plaintiff is engaged; and denies that said acts in any manner violate the decree of this court of June 3, 1916; but avers that said allegations are immaterial for the reason that the relations between this defendant and the Kansas Natural Gas Company and its Receiver are fixed, determined and measured by contract.

(j) Answering paragraph "XVII," defendant avers that it is without knowledge and leaves plaintiff to his proofs, but states that the allegations of said paragraph are immaterial as to this defendant.

(k) Answering paragraph "XVIII," defendant avers that it is without knowledge of the facts therein alleged and leaves plaintiff to his proofs, but states that said allegations are immaterial as to this defendant, except that this defendant objects to the carrying out of the plan of re-organization of said stockholders' committee in the interest of said stockholders and the Kansas Natural Gas Company in such a manner as will repudiate the contract existing between this defendant and said Kansas Natural Gas Company: that such re-organization would be a fraud upon this defendant and the public it serves, and unwarranted in law or equity.

822 (l) Defendant is without knowledge of the facts alleged in paragraphs "XIX" and "XX" and leaves plaintiff to his proofs, but avers that said allegations are immaterial as to this defendant.



11. Defendant further states and shows to the court that, if the plaintiff and the Kansas Natural Gas Company are engaged in interstate commerce, as alleged in plaintiff's Amended and Supplemental Bills, and if they are, by reason thereof, free from the jurisdiction, supervision and control of the Public Utilities Commission of the State of Kansas; nevertheless the rate and price that this defendant is required to pay the plaintiff and the Kansas Natural Gas Company for gas furnished to it by them is fixed and determined by said contract of February 1, 1906, filed with this defendant's original Answer, marked "Exhibit D," hereby referred to and made a part hereof; said rate and price being  $62\frac{1}{2}$  per cent of the gross receipts realized from the sale of said gas at 27 cents net per thousand cubic feet at the present time and 30 cents net per thousand cubic feet on and after November 19, 1916; that this defendant is now collecting and receiving from consumers and paying to said plaintiff  $62\frac{1}{2}$  per cent of 28 cents net per thousand cubic feet (1 cent in excess of said contract price); and this defendant will, on and after November 19, 1916, charge and collect from its consumers and pay to the plaintiff herein  $62\frac{1}{2}$  per cent of the gross receipts from the sale of said gas at 30 cents net per thousand cubic feet; that by reason thereof, the rates now in force and collected by this defendant are fixed by contract and not by any order, rule or regulation of the Public Utilities Commission of the State of Kansas, and plaintiff herein is not entitled to a decree of injunction against said Commission, enjoining the rates now in force and collected by this defendant; but the  
823 plaintiff and this defendant will be entitled to an injunction against said Commission if it should attempt to interfere with this defendant putting into force and effect said 30 cent net rate on and after December 19, 1916.

12. Defendant further alleges and shows to the court that, if the rate and price which plaintiff receives from this defendant for the natural gas furnished by plaintiff is noncompensatory and confiscatory, as alleged in plaintiff's Bill and Supplemental Bill of Complaint; nevertheless, said rate and price is fixed, determined and measured by said contract of February 1, 1906, existing between this defendant and the plaintiff and Kansas Natural Gas Company, and this defendant is now paying to plaintiff more than said contract price for the gas so furnished by him and said contract has never been disavowed, cancelled, set aside, abrogated or rescinded; by reason thereof, plaintiff is not entitled to any injunction against the rates now charged and collected by this defendant and the price now paid by this defendant to the plaintiff for the gas furnished by him; and will not be entitled to any injunction unless the Public Utilities Commission of the State of Kansas fails, neglects or refuses to allow this defendant to charge and collect said 30-cent net rate on and after November 19, 1916, and interferes with this defendant charging and collecting said 30-cent net rate from its consumers.

13. Defendant further shows to the court that on October 16, 1916, the Kansas Natural Gas Company submitted to the District Court of Montgomery County, Kansas, a motion to discharge the

Receiver, John M. Landon, as receiver in said case of "State of Kansas v. Kansas Natural Gas Company et al., No. 13,476," pending in said court, and to restore the property of said company to the possession and control of said company; that there was also at the same time submitted to said court a motion by the State of Kansas to dismiss said cause and discharge said receiver, both of said motions alleging as the reason therefor that said Kansas Natural Gas Company is no longer insolvent and is no longer violating the anti-trust laws of said state; that said court, after hearing the testimony offered on said motion and argument of counsel, took the same under advisement and they are still undetermined by said court; that if either of said motions is sustained and said receiver discharged, said John M. Landon, as receiver in said cause, will no longer have any interest in this suit and no right to maintain the same and no right to question the legality and binding force of said supply-contract, either upon him as such receiver or upon said Kansas Natural Gas Company; wherefore, this court should proceed no further in this cause until the matter of discharging said receiver in said State Court is finally determined; that at the same time the receiver filed and presented a motion in said court and cause praying for instructions as to whether or not he should perform or disavow said supply-contract and the same, after hearing was taken under advisement and is still undetermined, by reason of which jurisdiction of the status of said contract has been assumed and taken by said State Court in said cause, and this court should proceed no further with the consideration thereof until said matter is finally determined by said court in said cause.

Wherefore, the premises and the original Answer filed herein by this defendant, and the Petition to Dissolve Injunction and Supplemental Answer, Counterclaim and Cross Bill filed herein, all considered, this defendant moves and prays the court, as follows:

825 1. That said Bill of Complaint and Supplemental Bill of Complaint be dismissed as to this defendant insofar as said Bills charge or attempt to charge any cause of action or demand any relief against this defendant and in favor of the plaintiff, John M. Landon, or the defendant the Kansas Natural Gas Company.

2. That any cause of action or complaint of the plaintiff or the defendant Kansas Natural Gas Company against said contract of February 1, 1906, existing between this defendant and said plaintiff and defendant Kansas Natural Gas Company, for the disavowal, cancellation or annulment of said contract be abated in this court, pending the exercise of jurisdiction over the defendant Kansas Natural Gas Company and the plaintiff herein and the property, assets, contracts and affairs of said Kansas Natural Gas Company by the District Court of Montgomery County, Kansas, in the case of State of Kansas v. The Independence Gas Company, The Consolidated Gas, Oil & Manufacturing Company, and Kansas Natural Gas Company, et al.

3. That the relief demanded in the plaintiff's original Bill of Complaint against the Public Utilities Commission of the State of Kan-

sus be granted to the extent of enjoining said Commission from interfering with the collection of said 30-cent net rate provided for and agreed to in said contract of February 1, 1906, existing between this defendant and the Kansas Natural Gas Company.

4. That this defendant recover its costs herein expended.

THE WYANDOTTE COUNTY GAS  
COMPANY,

By J. W. DANA,  
C. E. SMALL,  
*Solicitors.*

826 STATE OF MISSOURI,  
*County of Jackson, ss:*

E. L. Brundrett, being first duly sworn, deposes and says that he is the President of The Wyandotte County Gas Company; that he has read and knows the contents of the foregoing pleading and that the statements, allegations, averments and denials therein made and contained are true except such as are made on information and belief, and as to such affiant believes them to be true. And further affiant saith not.

E. L. BRUNDRETT.

Subscribed in my presence and sworn to before me this 16th day of October, 1916.

[SEAL.] WILLIAM SHELDON McCARTHY,  
*Notary Public Within and for Jackson County, Mo.*

My commission expires January 16, 1918.

Filed in the District Court on Oct. 18, 1916. Morton Albaugh,  
Clerk.

827 Exhibit A, being Notice by John M. Landon of the filing and presentation in the District Court of Montgomery County, Kansas, of his report and application for instructions, dated 6/12/16, is omitted.

Exhibit B, being answer of The Wyandotte County Gas Company by Mr. Dana to circular, Exhibit A, adhering to contract, dated 6/27/16, is omitted.

Exhibit C, being circular from Mr. Landon, requesting The Wyandotte County Gas Company to notify consumers of increase after August, 1916, meter-readings, dated 8/4/16, is omitted.

Exhibit D, being circular from Mr. Landon, proposing 38-cent rate, \$1. minimum and 3-cent discount, dated 8/4/16, is omitted.

Exhibit E, being letter from Mr. Landon, through Mr. Atwood's office, proposing 18-cent price at city limits, dated 8/11/16, is omitted.

Exhibit F, being letter from Mr. Landon, proposing change in minimum bill, dated 8/12/16, is omitted.

Exhibit G, being answer of The Wyandotte County Gas Company by Mr. Dana to letters from Mr. Landon, Exhibits C, D, E & F, dated 8/18/16, is omitted.

Exhibit H, being answer of Kansas Natural and Mr. Landon, to The Wyandotte County Gas Company's letter of 8/18/16 (Exhibit G) dated 8/23/16, is omitted.

828 Exhibit I, being answer of The Wyandotte County Gas Company by Mr. Dana, to letter of Kansas Natural and Mr. Landon of 8/23/16, (Exhibit H), dated 8/26/16, is omitted.

Exhibit J, being letter from T. S. Salathiel, purporting to change and modify supply-contract, dated 9/11/16, is omitted.

Exhibit K, being answer of The Wyandotte County Gas Company by Mr. Dana, to letter of 9/11/16 from Mr. Salathiel (Exhibit J), dated 9/20/16, is omitted.

829 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Wyandotte County Gas Company to the Joint Bill of Complaint or "Separate Answer" of George F. Sharritt, Receiver.*

829½ In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Wyandotte County Gas Company to the Joint Bill of Complaint or "Separate Answer" of George F. Sharritt, Receiver.*

Now comes the defendant, The Wyandotte County Gas Company, by leave of court, and in answer to the joint Bill of Complaint denominated "Separate Answer" of George F. Sharritt, Receiver, filed herein, alleges, avers and states the following facts, to-wit:

1. That said George F. Sharritt is the Receiver appointed by the above entitled court in the case of John L. McKinney v. 830 Kansas Natural Gas Company et al., No. 1351, in Equity, and Fidelity Title and Trust Company v. Kansas Natural Gas Company et al., No. 1-N, in Equity; that by the orders of this court, hereby referred to and made a part hereof, said George F. Sharritt has been and is now divested of any possession, control or management of the Kansas Natural Gas Company, its business, estates and properties, and the same is now lodged in John M. Landon as Receiver appointed by the District Court of Montgomery County, Kansas, in the case of State of Kansas v. The Independence Gas Company, Consolidated Gas, Oil and Manufacturing Company, Kansas Natural Gas Company et al., No. 13,476, pending in said District Court.

2. That this defendant, The Wyandotte County Gas Company, hereby refers to and adopts all the allegations, statements and averments in its "Answer," its "Petition to Dissolve Injunction and Supplemental Answer, Counterclaim and Cross Bill," and its "Amended Answer to the Bill of Complaint and Answer to the Supplemental Bill of Complaint" filed herein, and makes the same a part hereof as fully and completely as if written at full length herein.

Wherefore, the premises considered, this defendant, The Wyandotte County Gas Company, moves and prays this Honorable Court that the defendant Kansas Natural Gas Company take nothing by its Separate Answer or joint Bill of Complaint filed herein; that the relief therein demanded be denied; that said Separate Answer or joint Bill be dismissed; that this defendant have and recover of and from the defendant Kansas Natural Gas Company a decree for the specific performance of said supply-contract, as prayed for in its original Answer and Counterclaim filed herein on March 2, 831 1916, and such other and further relief as to this Honorable Court may seem equitable and just, and for its costs herein expended.

THE WYANDOTTE COUNTY GAS  
COMPANY,

By J. W. DANA,  
C. E. SMALL,  
*Solicitors.*

STATE OF MISSOURI,  
*County of Jackson, ss:*

M. J. Barry, being first duly sworn, deposes and says that he is the Secretary of The Wyandotte County Gas Company; that he has read and knows the contents of the foregoing pleading and that the statements, allegations, averments and denials therein made and contained are true, except such as are made on information and belief, and as to such affiant believes them to be true.

And further affiant saith not.

M. J. BARRY.

Subscribed in my presence and sworn to before me this 17th day of October, 1916.

[SEAL.]

WILLIAM SHELDON McCARTHY,  
*Notary Public.*

My commission expires Jany. 16, 1918.

Filed in the District Court on Oct. 18, 1916. Morton Albaugh,  
Clerk.

832 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Wyandotte County Gas Company to the Joint Bill of  
Complaint Designated "Separate Answer of the Kansas Natural  
Gas Company."*

832½ In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Wyandotte County Gas Company to the Joint Bill of  
Complaint Designated "Separate Answer of the Kansas Natural  
Gas Company."*

Now comes the defendant, The Wyandotte County Gas Company,  
by leave of court, and in answer to the joint Bill of Complaint  
denominated "Separate Answer of the Kansas Natural Gas Com-  
pany" filed herein, alleges, avers and states the following facts, to-wit:

1. That there is a misjoinder of parties defendant in said joint  
Bill of Complaint.

833 2. That there is a misjoinder of causes of action in said  
joint Bill of Complaint.

3. That the defendant, Kansas Natural Gas Company, has no capacity to sue, bring or maintain said joint Bill of Complaint.

4. That the several causes of action sought to be joined in said joint Bill of Complaint are not joint, and the relief demanded and liability asserted therein is not one and the same relief and liability asserted against all of the material defendants, and no sufficient grounds appear for uniting the several causes of action against the several defendants in order to promote the convenient administration of justice; and the pretended cause of action alleged against this defendant by its co-defendant, the Kansas Natural Gas Company, in said joint Bill of Complaint upon its contract with said defendant and the exercise of its rights thereunder, and the cause of action against the Kansas Public Utilities Commission and the Missouri Public Service Commission cannot be conveniently disposed of together.

5. That the Kansas Natural Gas Company is the real party in interest in any cause of action pretended to be alleged against this defendant in said joint Bill of Complaint and said Company should be joined as plaintiff for the reason that its alleged Answer filed herein adopts all the allegations of the plaintiff's Bill and prays for the same relief, and said defendant is in truth and in fact the plaintiff and real party in interest and no showing is made that said defendant has refused to join as plaintiff.

6. That said joint Bill of Complaint does not state facts sufficient to constitute a valid cause of action in equity in favor of the defendant, Kansas Natural Gas Company, and against this de-  
834 fendant, The Wyandotte County Gas Company, as appears upon the face of said joint Bill of Complaint and the Bill of Complaint and Supplemental Bill of Complaint adopted by said defendants and the exhibits thereto attached and filed therewith and made a part thereof.

7. That it appears upon the face of said joint Bill of Complaint and the exhibits thereto attached and filed therewith and the Bills referred to and adopted therein, that the present and prior possession, jurisdiction and administration of the estate of the Kansas Natural Gas Company by the District Court of Montgomery County, Kansas, in the case of the State of Kansas v. The Independence Gas Company, Consolidated Gas, Oil and Manufacturing Company, Kansas Natural Gas Company, et al., is a bar to the relief demanded by the Kansas Natural Gas Company's joint Bill against this defendant, and this action in this court must be abated until such prior possession and jurisdiction is surrendered.

8. That this court has no jurisdiction of the subject of the action or the relief demanded by the defendant, Kansas Natural Gas Company, against this defendant.

9. This defendant further answering said defendant's joint Bill of Complaint and the Bill of Complaint and Supplemental Bill of Complaint referred to therein and made a part hereof, hereby refers to and adopts all the statements, allegations, averments and denials made by this defendant in its "Answer" filed herein on March 9, 1916, to the plaintiff's Bill of Complaint, and its "Petition to Dis-



solve Injunction and Supplemental Answer, Counterclaim and Cross-Bill" filed herein on October 11, 1916, together with all the exhibits attached thereto and filed therewith, and the "Amended Answer to Bill of Complaint and Answer to the Supplemental Bill of 835 Complaint" by The Wyandotte County Gas Company, filed herein of even date herewith, and makes the same a part hereof as fully and completely as if written at full length herein.

10. Further answering said defendant's joint Bill of Complaint or "Separate Answer of Kansas Natural Gas Company," this defendant states:

(1) That it admits that the defendant, Kansas Natural Gas Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is a citizen of the State of Delaware and is authorized to do business in the State of Oklahoma, as alleged in paragraph 1 of said "Separate Answer."

(2) That it admits, denies and pleads to the Bill of Complaint of plaintiffs adopted by the defendant Kansas Natural Gas Company, as shown by its "Answer" and its "Petition to Dissolve Injunction, and Supplemental Answer, Counterclaim and Cross-Bill" and its "Amended Answer to Bill of Complaint and Answer to the Supplemental Bill of Complaint" above referred to; and admits that the matter and amount in controversy herein exceeds, exclusive of interests and costs, the sum and value of \$3,000.00, as alleged in paragraph 2 of said "Separate Answer."

(3) Defendant admits the averments of paragraphs 3, 4 and 5 of said "Separate Answer," but states that they are immaterial as to this defendant.

(4) Answering paragraph 6 of said "Separate Answer," defendant admits that on December 17, 1914, the Kansas Natural Gas Company joined with its several creditors and stockholders in executing a certain Stipulation, but denies that it was a "Creditors' Agreement"; admits that "Exhibit A" attached to the original Bill of Complaint is a true and correct copy thereof except the designation "Creditors' Agreement" on the cover thereof, which 836 does not appear on the original instrument on file; admits that at the time of entering into said Stipulation the bonds of said defendant, Kansas Natural Gas Company, secured by trust deeds were in default and that said trust deeds were subject to foreclosure and were in the process of foreclosure; admits that certain bonds of the Marnet Mining Company were in default, and that the trust deeds securing the same were subject to foreclosure; admits that certain of the bonds of The Kansas City Pipe Line Company were in default, and the trust deeds securing said bonds were subject to foreclosure, but denies that one of the purposes of said Stipulation was any advantage or benefit to said defendant, Kansas Natural Gas Company, and denies that the purpose of said Stipulation was to procure to said Kansas Natural Gas Company an extension of the time for the payment of said bonds of said defendant and the bonds of the Marnet mining Company and of The Kansas City Pipe Line Company; and denies that said Stipulation was intended to prevent the filing of foreclosure suits for foreclosing said trust deeds; and denies that

said Stipulation was intended to stay the prosecution of the said equity suits No. 1,351 and No. 1-N pending in this court for the foreclosure of mortgages on said defendant's property; but this defendant avers that the purposes of said Stipulation were to provide for the distribution of funds on hand and accruing during the receivership and to improve and continue the service and supply of natural gas to this defendant and others similarly situated and the public, as will appear from an examination of said Stipulation.

(5) Defendant denies that said Stipulation provided for the extension of the time for the payment of all said bonds, including those in process of foreclosure in said equity suits over a  
837 period of six years from January 1, 1915, and denies that it provided for the payment and retirement of one-sixth of each of said first mortgage bonds each year, as alleged in paragraph 6 of said Separate Answer; admits that said Stipulation contained the provision quoted in said paragraph; admits that "it is necessary in order to provide funds with which to meet the maturing obligations of the said several creditors of Kansas Natural Gas Company and comply with the terms of said (so-called) Creditors' Agreement for the payment of the same within the six-year period, that additional gas supply be provided sufficient to carry on said business during the six-year period"; and admits that "it is necessary in order to procure said gas supply to make extensions of pipe lines to new gas fields and to new gas wells and to construct and equip compressor stations;" admits that "large sums of money will be required to procure such additional gas supply greatly in excess of the sums of money provided in the said (so-called) Creditors' Agreement;" admits that "unless said extensions are made and funds provided for meeting the terms of said (so-called) Creditors' Agreement, to-wit, the payment of one-sixth of the first mortgage bonds of Kansas Natural Gas Company, The Kansas City Pipe Line Company and Marnet Mining Company each year, said (so-called) Creditors' Agreement will become forfeited and void and the parties thereto released from the obligations and terms thereof;" and admits that "they will be put in statu quo and permitted to prosecute said equity suits, and to institute actions to foreclose their respective claims;" and admits that "the property of said defendant may thereby be wasted and sacrificed by forced sale;" but denies that "the usefulness  
and utility of the pipe line system operated by the plaintiff  
838 as Receiver will be destroyed by separate or joint foreclosure and sale;" and admits that the usefulness and utility of said pipe line system will be destroyed by the failure of said defendant or some other person to procure gas supply sufficient to operate the same. But defendant, The Wyandotte County Gas Company, states that all said averments are immaterial as to this defendant for the reason that the price it is required to pay to the defendant, Kansas Natural Gas Company, for its supply of gas is fixed and determined by said contract of February 1, 1906, referred to and made a part hereof.

(6) Defendant avers that it is without knowledge of the facts

alleged in paragraph 7 of said joint Bill or Separate Answer of the defendant Kansas Natural Gas Company and leaves defendant to its proofs, but states that the same are immaterial as to this defendant for the reason that the price and rate it is required to pay for gas furnished by said defendant and its Receiver to this defendant is fixed, determined and measured by said contract.

(7) Defendant avers that it is without knowledge of the facts alleged in paragraph 8 of said joint Bill or Separate Answer and leaves defendant to its proofs, but states that the same are immaterial as to this defendant, except that defendant denies that said defendant Kansas Natural Gas Company is being deprived of its property without compensation and without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States in so far as the rates and prices paid for said gas by this defendant is concerned for the reason that said rates and prices are fixed, determined and measured by said contract between this defendant and the said defendant Kansas Natural Gas Company, as aforesaid.

(8) Defendant is without knowledge of the facts alleged in paragraphs 9, 10 and 11 of said joint Bill or Separate Answer and leaves defendant to its proofs, but states that said averments are immaterial as to this defendant for the reason that if said defendant Kansas Natural Gas Company is engaged in interstate commerce, the rates and prices which this defendant is required to pay to said defendant Kansas Natural Gas Company for the gas furnished by it to this defendant are fixed, determined and measured by said contract, as aforesaid.

Wherefore, the premises considered, defendant The Wyandotte County Gas Company moves and prays this honorable court that the defendants Kansas Natural Gas Company take nothing by its separate answer or joint bill of complaint filed herein; that the relief therein demanded be denied; that said Separate Answer or joint Bill be dismissed; that this defendant have and recover of and from the defendant Kansas Natural Gas Company a decree for the specific performance of said supply-contract as prayed for in its original Answer and Counterclaim filed herein on March 9, 1916, and such other and further relief as to this honorable court may seem equitable and just, and for its costs herein expended.

THE WYANDOTTE COUNTY GAS  
COMPANY,

By J. W. DANA,  
C. E. SMALL,

*Solicitors.*

840 STATE OF MISSOURI,

*County of Jackson, ss:*

E. L. Brundrett, being first duly sworn, deposes and says that he is the President of The Wyandotte County Gas Company; that he has read and knows the contents of the foregoing pleading and that the statements, allegations, averments and denials therein made and

contained are true, except such as are made on information and belief, and as to such affiant believes them to be true. And further affiant saith not,

E. L. BRUNDRETT.

Subscribed in my presence and sworn to before me this 16th day of October, 1916,

[SEAL.]

WILLIAM SHELDON MCCARTHY,  
*Notary Public Within and for Jackson County, Mo.*

My commission expires January 16, 1918.

Filed in the District Court on Oct. 18, 1916. Morton Albaugh,  
Clerk.

841      In the District Court of the United States for the District of  
Kansas, First Division.

No. 1351.      Equity.

JOHN L. MCKINNEY et al., Plaintiffs,

VS.

THE KANSAS NATURAL GAS CO., Defendant.

No. 1-N.      Equity.

THE FIDELITY TITLE & TRUST COMPANY, Plaintiff,

VS.

THE KANSAS NATURAL GAS CO. and THE DELAWARE TRUST CO.,  
Defendants.

No. 136-N.      Equity.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Co.,  
Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Report and Application of John M. Landon, Receiver, for Instruc-  
tions with Reference to Supply Contracts,*

Comes now John M. Landon, Receiver of Kansas Natural Gas  
Company, and reports to the court:

842      That on the 16th day of October, 1916, he made a report  
and application to the District Court of Montgomery County,  
Kansas, in the cause wherein he was appointed Receiver of said court,

a copy of which is hereto attached, marked Exhibit No. 1, and made a part hereof.

That on the 17th day of October, 1916, the said District Court of Montgomery County, Kansas, made an order on said report and application, a copy of which is hereto attached, marked Exhibit No. 2, and made a part hereof. That said court directed your Receiver to present said order to this Honorable Court and ask this Court to make such order or orders as will effectuate the law applicable to the Kansas Natural Gas Company in the states of Missouri and Oklahoma, and thus bring the same in operative harmony with the property of said corporation in Kansas, to the end that the public may be served and the property preserved.

The Receiver makes reference to the matters and things set out in the bill of complaint and supplemental bill of complaint in Equity Cause No. 136-N in this court, both of which are made a part of this application.

Wherefore, this Receiver prays the court to make such order or orders as will enable him to secure compensatory rates during the process of rate making and thereafter, and obtain the benefit and protection of the decree of this court of June 3, 1916, which was made effective on August 1, 1916, by giving of the bond for \$750,000.00, required by the court in this cause, and thereby conserve the property of Kansas Natural Gas Company in the hands of your receiver, and enable him to give adequate service to the public.

JOHN M. LANDON,  
*Receiver for Kansas Natural Gas Co.*

843 STATE OF KANSAS,  
*Montgomery County, ss:*

John M. Landon, being by me duly sworn, upon his oath says that he is the Receiver above named; that he has read the foregoing report and application and knows the contents thereof, and that the matters and things therein stated are true.

JOHN M. LANDON.

Subscribed and sworn to before me this 17th day of October, 1916.

[L. S.]

W. R. HOBBS,  
*Clerk District Court.*

In the District Court of Montgomery County, Kansas.

No. 13476.

STATE OF KANSAS, Plaintiff,

VS.

THE INDEPENDENCE GAS COMPANY et al., Defendants.

*Report and Application of the Receiver for Instructions in Reference to Supply Contracts.*

Comes now John M. Landon, and pursuant to the direction of the court heretofore made, reports to the court the following:

That he filed his bill of complaint in the United States District Court for the District of Kansas, First Division, against the Public Utilities Commission of the State of Kansas and others, as heretofore reported to this court.

That in said suit, No. 136-N, the United States District Court for the District of Kansas, First Division, granted a preliminary injunction, as heretofore reported to this court.

That your Receiver, on October 11, 1916, filed a supplemental bill in such cause, No. 136-N, a copy of which is filed herewith, marked Exhibit No. 1, and made a part hereof by reference. That said cause comes on for final hearing on October 19, 1916, at Kansas City, Kansas. That at such hearing there will be submitted the question of the validity of the supply contracts between The Kansas Natural Gas Company and the various distributing companies, and  
845 the question of whether or not your Receiver by his acts has adopted the same.

That your Receiver has been unable to collect a compensatory rate from some of the distributing companies since the decree of June 3, 1916, became effective because said distributing companies claim that the rates provided in the city ordinances and supply contracts are binding on your Receiver. That the question of whether said ordinances and supply contracts are valid and binding on your Receiver, is directly involved in the establishment of rates that can be charged by your Receiver. The rates cannot be definitely established until the validity of the contracts is first determined.

That the Federal Court in its decree of June 3, 1916, reserved the question of the validity of these contracts as not being necessary to the determination of the constitutionality of the 28-cent rate established by the Public Utilities Commission. That if it is not necessary for the said court in the final hearing to pass upon the validity of these contracts in order to determine whether the 28-cent rate should be enjoined, yet it will be necessary to determine the validity of said supply contracts in order to determine whether your Receiver shall be permitted during the process of rate making and thereafter

to collect rates that will produce a fair return on the property employed in the service. That said court found that your Receiver was entitled to receive two-thirds of an average rate of 32 cents. That if the supply contracts with the Wyandotte County Gas Company and the Kansas City Gas Company are held to be binding on your Receiver, he will receive but 62½ per cent of a 30-cent rate in said two Kansas Citys. That said rate will not only produce no profit on the interstate business in which your Receiver is engaged in  
 846 said two Kansas Citys, but it will compel your Receiver to transport and sell natural gas in said two Kansas Citys at a loss.

That he will be compelled, in order to obtain two-thirds of an average rate of 32 cents over the entire system, to charge rates in other cities in excess of the rates provided in the ordinances and supply contracts in such other cities. That the rates charged in said other cities in Kansas and Missouri will be higher than said cities ought in right to pay, considered by themselves.

That if said supply contracts in said two Kansas Citys are not binding on your Receiver, then the sale of natural gas in said cities at 30 cents per thousand cubic feet inhibits your Receiver from selling natural gas at a profit and is a substantial burden on and an undue interference with the interstate commerce business in which your Receiver is engaged and will depreciate and destroy the property in the custody of your Receiver.

That your Receiver is desirous of presenting to said United States District Court for the District of Kansas, in an amendment to said supplemental bill, the determination of this court in regard to said contracts.

Wherefore, your Receiver respectfully prays this court to inform your Receiver of its determination in these matters.

JOHN M. LANDON,  
*As Receiver of The Kansas Natural Gas Company,*  
 By JOHN H. ATWOOD,  
 ROBERT STONE,  
 CHESTER I. LONG,  
*His Attorneys.*

847 STATE OF KANSAS,  
*Montgomery County, ss:*

John M. Landon, being first duly sworn, deposes and says:

That he is the John M. Landon making the foregoing report and application; that he has read the same, knows the contents thereof, and that the statements and averments therein contained are true.

JOHN M. LANDON.

Subscribed and sworn to before me this 16th day of October,  
 A. D. 1916.  
 [L. S.]

W. R. HOBBS,  
*Clerk District Court.*

Filed Oct. 16, 1916. W. R. Hobbs, Clerk.



In the District Court of Montgomery County, Kansas.

No. 13476.

STATE OF KANSAS, Plaintiff,

vs.

THE INDEPENDENCE GAS COMPANY et al., Defendants.

*Findings of Fact, Conclusions of Law and Order on the Validity and Adoption by the Receiver of the Supply Contracts Between the Kansas Natural Gas Company and the Various Distributing Companies.*

Now on this 16th day of October, A. D. 1916, this cause comes on for hearing on the application of John M. Landon, as Receiver of the Kansas Natural Gas Company, for instructions regarding the supply contracts between the Kansas Natural Gas Company and the various distributing companies, whether the Receiver has by his acts adopted said contracts, and the motions of Wyandotte County Gas Company, the Kansas City Pipe Line Company, the Kansas Natural Gas Company, and the State of Kansas. And the court, after hearing the evidence and the argument of counsel, and being fully advised in the premises, makes the following findings, reserving for future determination the other questions submitted:

1. The Kansas Natural Gas Company, prior to April 30, 1912, had supply contracts with the following distributing companies to-wit:

849 Elk City Oil & Gas Company,	Elk City, Kansas.
Coffeyville Gas & Fuel Co.,.....	Coffeyville, Kansas.
Liberty Gas Company,.....	Liberty, Kansas.
	{ Altamont, Kan.
	{ Oswego, Kan.
American Gas Company,.....	{ Columbus, Kan.
	{ Scanmon, Kan.
	{ Galena & Empire, Kan.
	{ Cherokee, Kan.
Weir City Gas Company,.....	Weir City, Kan.
Home Light, Heat & Power Co., Kan-	
as Gas & Electric Co., lessee,.....	Pittsburg, Kan.
Parsons Natural Gas Co.,.....	Parsons, Kan.
O. A. Evans & Co. (Thayer Gas Plant),	Thayer, Kan.

	Colony, Kan.
	Welda, Kan.
	Richmond, Kan.
	Princeton, Kan.
	Baldwin, Kan.
Union Gas & Traction Company.....	Wellsville & Le Loup, Kan.
	Edgerton, Kan.
	Gardner, Kan.
	Lenexa, Kan.
	Merriam & Shawnee, Kan.
Ottawa Gas & Electric Co.,.....	Ottawa, Kan.
Citizens Light, Heat & Power Co.,....	Lawrence, Kan.
Consumers Light, Heat & Power Co.,..	Topeka, Kan.
Ft. Scott Gas & Electric Co.,.....	Ft. Scott, Kan.
Tonganoxie Gas & Electric Co.,.....	Tonganoxie, Kan.
Leavenworth Light, Heat & Power Co.,	Leavenworth, Kan.
Atchison Ry., Light & Power Co.,....	Atchison, Kan.
Wyandotte County Gas Co.,.....	Kansas City, Kan.
Olathe Gas Company,.....	Olathe, Kan.
Kansas City Gas Company,.....	Kansas City, Mo.
St. Joseph Gas Company,.....	St. Joseph, Mo.
Weston Gas Company,.....	Weston, Mo.
850 Fort Scott & Nevada Light, Heat, Water & Power Company,	Moran, Kan.
	Bronson, Kan.
	Nevada, Mo.
	Deerfield, Mo.
Oronogo Gas Company,.....	Oronogo, Mo.
Carl Junction Gas Company,.....	Carl Junction, Mo.
Joplin Gas Company,.....	Joplin, Mo.

2. Certain of said contracts were declared illegal by the Supreme Court of Kansas on April 30, 1912, and Kansas Natural was enjoined from operating under them. (See Exhibit "A" hereto attached.) Except in the case of the Leavenworth Company, no new contracts were ever executed with the distributing companies. When the Receivers were appointed by the United States Court for Kansas Natural on October 9, 1912, there were no valid contracts with the distributing companies except with Leavenworth. This court on February 15, 1913, found all the contracts with the distributing companies to be illegal, and there appears to be no reason for changing its findings in that respect. (See pages 12, 13 and 24 of said findings as printed.) Neither the Receivers of this court, nor of the United States Court, appointed for Kansas Natural, have ever adopted any of said contracts, nor have any of said Receivers operated under them, but have continued to transport gas to said distributing companies under a method of dealing similar to that employed by the Kansas Natural. Such arrangement was temporary and not intended to be permanent or binding upon the said Receiver. In the distribution of natural gas through said distribut-

ing companies, the Receiver of this court, and of the said United States Court, treated the supply contracts the same as they did the lease of the Kansas City Pipe Line Company, and in Kansas 851 City Pipe Line Company v. Fidelity Title & Trust Company (217 Fed. 187, l. c. 195) the United States Circuit Court of Appeals held that this Receiver had not by his method of conducting the business adopted the lease-contract of the Kansas Natural with the Pipe Line Company.

3. That all of said distributing contracts contain provisions substantially as follows:

"That whereas the party of the first part is the owner of a large acreage of gas leases with a number of gas wells drilled thereon in the gas belt of Kansas, and desires to find a market for its product.  
\* \* \*

Now, therefore, this agreement witnesseth: That the party of the first part agrees to lay and complete \* \* \* a pipe line for conveying natural gas from the gas fields of Kansas to a point at the city limits of the city of \* \* \*.

However, as the production of gas from the wells, and the conveying of it over long distances, is subject to accidents, interruptions and failures, the party of the first part does not, by this contract, undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such a supply for such a period of time as the wells and pipe lines supplying gas to the parties of the second part are capable of supplying, and in case of its inability to fully supply all of the cities and towns with which it is connected, the gas supplied under this contract shall, at all times, be a pro rata share of the total deliveries of gas. And it is expressly understood and agreed by the parties of the second part and the party of the first part, that the party of the first part shall not be liable for any loss, damage or injury to the parties of the second part that may result directly or indirectly from such shortages or interruptions; but said party 852 of the first part agrees to use diligence to supply the said parties of the second part with a constant and adequate supply of merchantable gas for all consumers \* \* \*."

At the time these contracts were entered into and the franchises granted, it was a matter of common knowledge that the natural gas was to be transported from the gas field in and north of Montgomery county, Kansas. Since the execution of said contracts the Kansas Natural Gas Company and its Receiver have year by year been obliged to extend their pipe lines farther and farther south to secure an additional supply of gas, the production by the Receiver in Kansas having diminished to less than 5 per cent of all the gas furnished by him. The securing of natural gas in Oklahoma at the points where the Receiver is now securing the bulk of the natural gas supplied was not in contemplation of the parties at the time the contracts were made. These supply contracts are improvident, wasteful and destructive of the property under the control of the Receiver. It is no longer possible to furnish even an appreciable

supply of gas from the wells of the Kansas Natural Gas Company or those under its control. It was the intention of the parties under the foregoing provisions that the supply mentioned under such contract was to be from the "wells and pipe lines" of the Kansas Natural in Kansas, and when the time came that the supply of gas did not come from the wells of the Kansas Natural, then the happening of the event mentioned in the above condition of the contract occurred and the contract by its own terms ceased to be binding upon the parties thereto.

853 4. The contracts with the Wyandotte County Gas Company and the Kansas City Gas Company are almost identical in terms. These contracts were originally made with the Kansas City Pipe Line Company. The contract with the Wyandotte County Gas Company is dated February 1, 1906, while that with the Kansas City Gas Company is dated December 3, 1906, the latter contract supplanting the contract of November 17, 1906, between the same parties. Both of these contracts contain the provision mentioned in Finding No. 3, and also contain the following provision:

"So long as the party of the first part is able to supply the same, the party of the second part agrees to buy from the party of the first part all the gas it may need to fully supply the demand for domestic consumption in the said City of Kansas City, Kansas, or elsewhere in Wyandotte County, and to pay to the party of the first part for the natural gas it shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of its gross receipts from the sale of such natural gas in said City of Kansas City, or elsewhere in Wyandotte County, and thereafter a sum equal to sixty-two and one-half per cent of such gross receipts. The party of the second part makes no agreement with the party of the first part respecting the rates at which it shall sell natural gas to any consumers in Kansas City, Kansas, or elsewhere in Wyandotte County, but expressly reserves to itself the right to charge its consumers for natural gas any rates not exceeding those mentioned in said ordinance which it may agree upon with such consumers; but if it shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than

854 fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligations to furnish the gas so sold at such lower prices, and the party of the second part shall be at liberty to obtain the same from such other source as it may find available."

The contract with the Kansas City Gas Company substitutes the words "Kansas City, Missouri," for "Kansas City, Kansas," and "Jackson County" for "Wyandotte County." The further exclusive provision was inserted in the contract:

"It is agreed between the parties hereto that if at any time during the period of said ordinance while the party of the second part is buy-

ing from the party of the first part all the natural gas it is distributing and selling in the said City of Kansas City, Kansas, and elsewhere in Wyandotte County, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said city of Kansas City, Kansas, or any of its inhabitants, and any city, town or village, or their inhabitants elsewhere in Wyandotte County, with such gas, otherwise than under this agreement, then, and in any such case, the provision contained in Section No. 2 hereof in the following words: 'but if it shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty  
855 or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices,' shall at once become inoperative and cease to have any effect, but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the party of the second part natural gas to fully supply the demand for all purposes of consumption in said City of Kansas City, Kansas, and elsewhere in Wyandotte County, for sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part from the sale of natural gas in said City of Kansas City, Kansas, and elsewhere in Wyandotte County, at any prices for which the said party of the second part may choose to sell the same."

A like provision was inserted in the contract with the predecessors of the Kansas City Gas Company. Both of these distributing contracts containing exclusive provisions, are violative of the statutes of the State of Kansas and the United States and against public policy and therefore void.

5. The obligations of these two contracts were assumed by the Kansas Natural under the lease of January 1, 1908, between the Kansas City Pipe Line Company and the Kansas Natural, the pertinent terms of said lease being as follows:

"The lessee agrees that if the gas wells hereby demised situated in the territory of the Lessor do not furnish a sufficient volume of gas, or if the pipe line of the Lessor shall not have a delivery capacity sufficient to supply the demands for gas in the cities of Kansas City,

Kansas, and Kansas City, Missouri, it, the Lessee, will supplement said gas supply from its own wells up to an amount equal  
856 to fifty (50) per cent of the gas which by the use of due diligence in connecting existing wells and drilling new ones, it may be able to produce from the territory now or hereafter controlled by it; and will construct at its own cost and expense, or, so far as any of the bonds of the Lessor in this lease referred to may be available for the purpose, at the cost and expense of the Lessor, the additional pipe lines necessary for the delivery of gas to supply such demands, whether from the Lessor's or the Lessee's territory. Provided, however, that if the expectation of continuance of the supply of gas shall

not be sufficient to warrant the laying of an additional pipe line at any time, the Lessee shall not be required to do so, whatever the demand for gas in said cities; Provided, further, that it is the intent of the parties that the provisions of this clause shall not be so construed as to in effect require the Lessee to lay a line for manufacturing purposes mainly or only."

It appears from the foregoing that the Kansas Natural Gas Company only assumed to furnish gas so long as there was a supply available in the territory contiguous to the line of the Kansas City Pipe Line Company. There is now no natural gas available in appreciable quantities in such territory. By the terms of the lease with Pipe Line Company, the Kansas Natural agreed to supplement the supply of the gas from the gas wells situated in the territory of the lessor by natural gas produced from the wells drilled by Kansas Natural in territory controlled by it. The Kansas Natural has done so. The Receiver now, however, is producing no appreciable amount of gas from said territory, but the natural gas now furnished by him is nearly all purchased in Oklahoma at far distant points from producing  
857 companies over which the Receiver has no control. Neither the Receiver nor the Kansas Natural is now able to furnish any appreciable supply of gas from either the wells situated in the territory of the Pipe Line Company or wells in territory controlled by the Kansas Natural.

6. The Kansas Supreme Court in the case of *State v. Wyandotte County Gas Company*, 88 Kan. 165, and the United States Supreme Court in *Wyandotte County Gas Company v. State*, 231 U. S. 622, decided that the City of Kansas City, Kansas, never had power to make the contract with the Wyandotte County Gas Company fixing rates, and that the ordinance passed by the City of Kansas City, Kansas, attempting to make such contract is void. Under these decisions the supply contract is invalid, the consideration having failed.

7. The Kansas Supreme Court in the case of *State ex rel. v. Litchfield*, 97 Kan. 592, decided that a distributing company, which is an agent of the Kansas Natural, cannot rely upon the franchise ordinance made for the purpose of fixing rates, it having been abrogated by the Public Utilities Act of Kansas, in so far as the question of rates is concerned. Since these supply contracts are all based upon the franchise ordinances (which are in general made a part of the supply contracts) and the consideration for the delivery of gas by the Kansas Natural is the collection by the distributing companies of the maximum rates prescribed in such ordinances in the respective cities, and such ordinances are now abrogated and the rates prescribed therein can no longer be collected, and have not been collected by the distributing companies for the several years last past, and since they have not made settlement with the Receiver on the basis of the franchise rates, these supply contracts are not binding on the Receiver.

1. That neither the Receiver of this Court, nor the Receivers of the United States Court have by their acts or otherwise adopted any of the supply contracts with the various distributing companies.



2. That the supply contracts with the distributing companies, whose plants are located within the State of Kansas, are invalid, illegal and void, being in violation of the laws of this state and of the United States, and are not binding on the Receiver.

3. That the supply contracts with the distributing companies, whose plants are located in the State of Missouri, are invalid, illegal and void, being in violation of the laws of the State of Missouri and of the United States, and are not binding on the Receiver.

4. That the conditions mentioned in the various supply contracts upon the happening of which the contracts were to become inoperative and void have long since occurred, and the Receiver is unable to furnish the distributing companies with gas under the terms of said supply contracts.

5. That the said supply contracts are improvident, wasteful and destructive of the estate of the Kansas Natural Gas Company and should be disavowed.

*Order.*

It is therefore considered, adjudged and decreed that none of the distributing contracts aforesaid are binding upon, or effective against, said Receiver, and that he should not, and is hereby forbidden to, deliver natural gas to any of said distributing companies

under the distributing contracts formerly existing between the  
859 Kansas Natural Gas Company and said distributing companies, respectively; and he is hereby ordered to deliver natural gas to such of said distributing companies as will receive the same at the rates and prices, and on the terms named in the schedule of rates and prices heretofore promulgated by said Receiver to said distributing companies, respectively; and the acts of said Receiver in promulgating said schedules are hereby approved.

And this Court, recognizing that its power does not extend beyond the State of Kansas, hereby directs said Receiver to present to the United States District Court for the District of Kansas, First Division, the foregoing findings of fact and conclusions of law and this order, and to pray said Federal Court for such orders as will effectuate the law applicable to the Kansas Natural property in Missouri and Oklahoma, and thus bring the same in operative harmony with the Kansas Natural property in Kansas, to the end that the public may be served and said property preserved.

THOS. J. FLANNELLY, *Judge.*



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## EXHIBIT A.

In the Supreme Court of the State of Kansas.

No. 17977.

THE STATE OF KANSAS on the Relation of John S. Dawson, Attorney-General of the State of Kansas, Plaintiff,

VS.

THE KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

*Petition.*

Now comes this plaintiff, The State of Kansas, on the relation of John S. Dawson, attorney-general of the State of Kansas, and alleges:

That the said John S. Dawson is the duly elected, qualified and acting attorney-general of the State of Kansas, and prosecutes this action in the name of, for, and on behalf of the State of Kansas.

That the said defendant, the Kansas Natural Gas Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and has been admitted to do business as a foreign corporation within the State of Kansas, under the laws of the State of Kansas, for the purpose of drilling for and producing oil and natural gas, and the transaction of the business of refining petroleum oil, and the transportation, sale and marketing of the refined products thereof; the piping and transportation of oil and natural gas within the State of Kansas; of any and all business and incidental to the advantageous conduct of the business of the Company.

That the said defendant, the Kansas Natural Gas Company, is a public utility, and is engaged in the conveyance of natural gas through pipe lines in and through the counties of Montgomery, Wilson, Neosho, Allen, Anderson, Bourbon, Franklin, Linn, Miami, Johnson, Douglas, Shawnee, Wyandotte, Leavenworth, Atchison and others, for the purpose of supplying and selling to the inhabitants of the said counties, and to the cities situated therein, and the inhabitants thereof, natural gas for heating and lighting, for domestic, manufacturing and all other purposes.

That the Elk City Gas & Oil Company is a corporation duly organized and existing under and by virtue of the laws of the State of Kansas.

That the American Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas.

That the Citizens Light, Heat & Power Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware.

That the Leavenworth Light, Heat & Power Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas.

That the Liberty Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas.

That the Olathe Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Virginia.

That the Parsons Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas.

862 That the Forest Oil Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania.

That the Consumers Light, Heat & Power Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has been admitted to do business as a foreign corporation within the State of Kansas, under the laws of the State of Kansas.

That the Central Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri.

That on divers days and times, from the first day of January, 1901, to the first day of January, 1909, the said defendant, the Kansas Natural Gas Company, did wrongfully and unlawfully make and enter into arrangements, contracts, agreements and combinations with John A. Lambing, Otto Germer, Joseph J. Heim, Arnold Kallman, Morris Cliggett, the said Elk City Gas & Oil Company, the said American Gas Company, the said Citizens Light, Heat & Power Company, the said Leavenworth Light, Heat & Power Company, the said Liberty Gas Company, the said Olathe Gas Company, the said Parsons Natural Gas Company, the said Forest Oil Company, the said Consumers Light, Heat & Power Company and the said Central Gas Company, and others, which arrangements, contracts, agreements and combinations were each made with a view to prevent, and which tend to and do prevent, full and free competition in the importation, transportation and sale of natural gas, an article imported into and produced and sold in the State of Kansas, and which arrangements, contracts, agreements and combinations were designed to, and tend to and do, advance and control the price and cost of natural gas

863 to the consumers thereof, which arrangements, agreements and combinations the said defendant, the Kansas Natural Gas Company, did, from the time of the making thereof to the present time, wrongfully and unlawfully attempt to carry out, and does carry out and act under, and the said defendant, the Kansas Natural Gas Company, did, on divers days and times, from the first day of January, 1901, to the first day of January, 1909, wrongfully and unlawfully make and enter into trusts and combinations, by contracting with the said persons and corporations hereinbefore named, to create and carry out restrictions in trade and commerce in natural gas, and to carry out restrictions in the full and free pursuit of the business of selling natural gas, and to prevent competition in the sale of natural gas, and to fix the standard and figure whereby the price of natural gas to the people of the State of Kansas, and to the consumers, thereof in the State of Kansas, should be controlled and established, and

the said defendant, the Kansas Natural Gas Company, with the said persons and corporations hereinbefore mentioned, by the said unlawful trusts and combinations made and entered by the said contracts, did carry out such restrictions in trade and commerce in natural gas, and did carry out such restrictions in the full and free pursuit of the business of selling natural gas, and did prevent competition in the sale of natural gas, and did fix a standard and figure whereby the price of natural gas to the public and to the consumers thereof in the State of Kansas was controlled and established, and the said defendant, the Kansas Natural Gas Company, did wrongfully and unlawfully make and enter into and execute and carry out a contract,

864 obligation and agreement with the said persons and corporations hereinbefore mentioned, and others by which contracts, obligations and agreements the said defendant, the Kansas Natural Gas Company, and each of the said persons and said corporations, did bind themselves not to sell natural gas below a common standard figure, and by which contracts, obligations and agreements the said defendant, the Kansas Natural Gas Company, and the said persons and corporations hereinbefore mentioned did establish and settle the price of natural gas between themselves and others to preclude a free and unrestricted competition among themselves and others in the sale of natural gas; and the said defendant, the Kansas Natural Gas Company, by carrying out, performing and executing said unlawful contracts, obligations and agreements with the said persons and corporations and others, did then and there wrongfully and unlawfully keep the price of natural gas at a fixed figure, and did establish and settle the price of natural gas to be sold by the said defendant, the Kansas Natural Gas Company, and by the said persons and corporations hereinbefore mentioned, and others, and did preclude the free and unrestricted competition among themselves and others in the sale of natural gas to the consumers thereof within the State of Kansas;

That continuously from the time of making each of said contracts to the present time, the said defendant, the Kansas Natural Gas Company, and each of the said several parties to the said several contracts, have operated under said contracts and carried the same into execution, and are now wrongfully and unlawfully operating under the said contracts, and are wrongfully and unlawfully selling natural gas to the consumers thereof in the State of Kansas, in accordance with and under the terms and at prices named and specified in the said several contracts.

865 That the said defendant, the Kansas Natural Gas Company, for the purpose of conducting its business as hereinbefore set out, has acquired, holds and owns both real and personal property within the State of Kansas, a particular description of which the said plaintiff is now unable to give.

Wherefore, said plaintiff prays that said defendant, the Kansas Natural Gas Company, be made to answer to the State of Kansas by what warrant it claims to have, use and enjoy the liberties, privileges and franchises by which it enters into the arrangements, contracts, agreements, combinations and trusts hereinbefore set out, and that

said defendant be ousted, prohibited and restrained from the exercise of any corporate privilege, liberty or franchise whatever, or any corporate function or power, in the State of Kansas, and that its officers, agents, employees and servants be ousted, prohibited and restrained from engaging in or transacting any business on behalf of said defendant in the State of Kansas.

And said plaintiff further prays, that all the liberties, franchises, powers and functions, and property, both real and personal, belonging to, claimed or held by the said defendant, be assumed unto the State of Kansas, under the direction of this Court, and that this Court do appoint a receiver for the purpose of taking possession of all the corporate privileges, liberties, franchises, powers, functions, and all the property, both real and personal, claimed, held or owned by the said defendant, or in which it has or claims an interest, to be by such receiver held and disposed of subject to the order of this Court, and that all such privileges, liberties, franchises, powers and functions and real or personal property shall be sold and disposed of under the order of this Court, that such disposition shall be made thereof and of the proceeds thereof as shall be just and proper to secure and save the rights of the said plaintiff and of the people of the State of Kansas and the consumers of natural gas therein, and the interests of all creditors and third persons guiltless of frauds, wrongs and usurpations herein charged against said defendant.

And said plaintiff further prays, that pending the determination of this action, the said defendant, the Kansas Natural Gas Company, its agents and employees, be by this Court ordered to not use any of the properties claimed, owned or held by the said defendant in the State of Kansas; that if the said defendant persists in the violation of the laws of the State of Kansas, a receiver be appointed forthwith, to take possession of all the corporate privileges, liberties, franchises, powers, functions and all the property, both real and personal, claimed, held or owned by the said defendant, and hold and operate the same subject to the orders of this Court.

And said plaintiff does further pray, that it do have such other and further relief from the court as may seem just and equitable.

(Signed)

JOHN S. DAWSON,

*Attorney General of the State of Kansas.*

JOHN MARSHALL,

*Of Counsel.*

STATE OF KANSAS,

*Shawnee County, ss:*

John Marshall on oath says that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true.

(Signed)

JOHN MARSHALL.

867       Subscribed and sworn to before me this 11th day of December, 1911.

[SEAL.]

E. H. HOGUELAND, *Notary.*

My commission expires October 21, 1913.

Endorsed: No. 17977. The State of Kansas ex rel., John S. Dawson v. The Kansas Natural Gas Company. Petition filed December 12, 1911. D. A. Valentine, clerk Supreme Court, John S. Dawson, John Marshall, Attorneys for Plaintiff.

868       In the Supreme Court of the State of Kansas.

No. 17977.

THE STATE OF KANSAS on the Relation of John S. Dawson, Attorney-General of the State of Kansas, Plaintiff,

VS.

THE KANSAS NATURAL GAS COMPANY, a Corporation, Defendant.

Now, on this 30th day of April, 1912, this cause comes on for final hearing, and comes said plaintiff by John S. Dawson, attorney-general of the State of Kansas, by John Marshall of counsel for said plaintiff, and comes said defendant by John J. Jones and Eugene Mackey, its attorneys, it appearing to the court that a stipulation has been signed by the parties of this action providing that judgment may be rendered in favor of said plaintiff and against said defendant, ousting, prohibiting and restraining said defendant from exercising the corporate power and franchise of making, entering into, creating, executing or carrying out any arrangement, contract, agreement or combination with any person, firm or corporation to prevent, or which tends to, or does prevent, full and free competition in the importation, transportation or sale of natural gas in the State of Kansas, or which is designed to, or tends to, or does advance or control the price or cost of natural gas to the consumers thereof in the State of Kansas, and ousting, prohibiting and restraining the said defendant from exercising the corporate power and franchise of

869       making, entering into, creating, carrying out or executing any contract, or agreement, with any person, firm or corporation, by which the said defendant does now or shall agree to hereafter furnish natural gas exclusively to any persons, firms or corporation for use, distribution or consumption within the State of Kansas, and ordering that said defendant refrain from proceeding further under the exclusive clauses of its contracts heretofore made or written with any person, firm or corporation, by which the said defendant agrees to furnish natural gas exclusively to such person, firm or corporation, or by which any person, firm or corporation agrees to purchase natural gas exclusively from said defendant, or by which

the said defendant does or undertakes to control or regulate the price at which any person, firm or corporation shall or may sell natural gas to any of the consumers thereof within the State of Kansas, and ordering that said defendant shall furnish natural gas at its pipe lines to any persons, firms or corporations within the State of Kansas on equal terms with any other person, firm or corporation in the same city or community, or to the successor, assignee or receiver or such person, firm or corporation within the State of Kansas, and that such gas shall also be furnished without discrimination as between such persons, firms or corporations, or the receivers thereof, but that nothing herein shall require the said defendant to furnish natural gas to any person, firm or corporation or receiver thereof, except at the pipe lines of the said defendant, and providing that said defendant shall pay the costs of this action, and the court being fully advised in the premises,

It is therefore by the court considered, ordered and adjudged that said defendant be ousted, prohibited and restrained from exercising the corporate power and franchise of making, entering into, creating, executing or carrying out any arrangement, contract, agreement or combination with any person, firm or corporation to prevent, or which tends to or does prevent, full and free competition in the importation, transportation or sale of natural gas in the State of Kansas, or which is designed to or tends to, or does advance or control the price or cost of natural gas to the consumers thereof in the State of Kansas, and that said defendant be ousted, prohibited and restrained from exercising the corporate power and franchise of making, entering into, creating, carrying out or executing any contract or agreement with any person, firm or corporation by which said defendant does now or shall agree hereafter to furnish natural gas exclusively to any person, firm or corporation for use, distribution or consumption within the State of Kansas.

It is by the court further ordered, that said defendant remake and rewrite all its contracts heretofore made or written by it, with any person, firm or corporation, by which the said defendant agrees to furnish natural gas exclusively to such person, firm or corporation, or by which any person, firm or corporation agrees to purchase natural gas exclusively from said defendant, or by which said defendant does or undertakes to control or regulate the price at which any person, firm or corporation shall or may sell natural gas to any of the consumers thereof within the state of Kansas, and that said defendant shall furnish natural gas at its pipe lines to any person, firm or corporation within the state of Kansas on equal terms with any person, firm or corporation in the same city or community, or to the successors, assigns or receiver of such person, firm or corporation within the state of Kansas, and that such gas shall be so furnished without discrimination as between such persons, firms, corporations, or the receivers thereof, but that nothing herein shall require said defendant to furnish natural gas to any person, firm or corporation or receiver thereof except at the pipe lines of the said defendant.

And it is further ordered, that said defendant pay the costs of this action, taxed at \$—.

JOHN S. DAWSON, *Attorney-General*;  
JOHN MARSHALL,  
*For Plaintiff.*  
EUGENE MACKEY,  
JOHN J. JONES,  
*For Defendant.*

Filed in the District Court on Oct. 18, 1916, in this and in Nos. 1-N and 1351 Equity. Morton Albaugh, Clerk.

872 In the District Court of the United States for the District of Kansas, First Division.

No. 136 N. Eq.

JOHN M. LONDON, as Receiver of The Kansas Natural Gas Company,  
Plaintiff,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Motion to Dismiss and Dissolve Injunction as to The Public Utilities Commission of the State of Kansas.*

Comes now the defendants the Public Utilities Commission of the State of Kansas, and H. L. Caster, attorney for the said Public Utilities Commission for the State of Kansas, and moves that the court dismiss the above entitled action as to these defendants and dissolve the temporary injunction heretofore issued herein for the following reasons, to-wit:

That heretofore the stockholders of the The Kansas Natural Gas Company, entered into an agreement, by the terms of which a stockholders' committee, composed of G. T. Braden, W. W. Splane, L. C. McKinney and C. R. Rigden, was appointed to look after the interests of the stockholders of said company, and providing for the deposit of the stock held by the various stockholders of said company under a voting trust, subject to the control of said stockholders' committee, and that, in pursuance and execution of said agreement, a large proportion of the outstanding stock of the said The Kansas Natural Gas Company was so deposited and said stockholders' committee procured the execution of an underwriters' agreement, which was entitled an "Application of the Kansas Natural Gas Company for Leave to Pay its Debts, for the Discharge of the Receiver  
873 in said Cause, and for other purposes."

That the said application — filed in the District Court of Montgomery County, Kansas, on the 20th day of September, 1916, and was filed at the instance and request, and by the direction, of



said stockholders' committee and as the result and in pursuance and execution of said stockholders' agreement.

That on or about the 26th day of October, 1916, the said stockholders' committee entered into an agreement with Henry L. Doherty & Company, by the terms of which not less than forty thousand shares of the stock of said The Kansas Natural Gas Company were to be sold to said Henry L. Doherty & Company, or to their nominees, a full, true and correct copy of said agreement is hereto attached, marked "Exhibit A" and made a part hereof. That in pursuance and execution of said agreement, there have been deposited, as plaintiff is advised and verily believes, more than ninety per cent of the shares of the capital stock of the said The Kansas Natural Gas Company, as required by said agreement, and the said Henry L. Doherty & Company has made the first payment thereon and now controls said stock, and that said agreement, under which said stockholders' committee was appointed, and said voting trust agreement, and said under-writers' agreement have been abandoned, and that said stockholders' committee and the stockholders represented by it have no longer control of said stock or the business of said Company.

Plaintiff further states that on the 4th day of November, 1916, said Henry L. Doherty & Company caused the Empire Gas & Pipe Line Company, its nominee, to make title to said stock under said agreement of October 26, 1916, and to file with the Public Utilities Commission of the State of Kansas an application for a certificate of convenience and necessity to do a public utility business in the state of Kansas, and that on the 20th day of November, 1916, such certificate was duly issued to said company by said Commission, and

874 on the same day there was issued by said Commission to said company a certificate authorizing said company to purchase and hold all or any part of the capital stock, bonds or other evidence or indebtedness of said The Kansas Natural Gas Company, and its subsidiaries.

That said certificates were issued because of agreements made by said The Empire Gas & Pipe Line Company, as follows:

That the case of John M. Landon, Receiver, v. The Public Utilities Commission of the State of Kansas et al., No. 136 N., pending in the United States District Court for the District of Kansas, First Division, be dismissed without prejudice at plaintiff's cost.

That all receivers appointed in the above entitled case be forthwith discharged.

That the above entitled case should be, with the consent of the plaintiff herein, dismissed at the cost of the defendant, The Kansas Natural Gas Company.

Plaintiff further states that said certificates were issued by said Public Utilities Commission upon the understanding that each of said agreements should be complied with by said Empire Gas & Pipe Line Company and said Henry L. Doherty & Company.

That The Attorney-General of the State of Kansas, in pursuance of said agreement, forthwith filed his motion to dismiss the suit of

the State of Kansas ex rel. v. The Kansas Natural Gas Company, pending in the District Court of Montgomery County, Kansas, and to discharge the receiver in said action, plaintiff in this suit, and that each and all of the creditors of the said Kansas Natural Gas Company are willing and ready to accept the amount due them, in accordance with said agreements, and that each and all and every part of the said agreements have been complied with by all the parties thereto except the said Empire Gas & Pipe Line Company, and that said Empire Gas & Pipe Line Company is now the real party in interest in this litigation, and has by virtue of the aforesaid agreements consented to the putting into operation of the rates fixed by the Public Utilities Commission for the State of Kansas on

875 December 15, 1915, which are complained of in this suit, and have agreed that the same are compensatory and should be the legal rates in effect for said company in said state, and that the further prosecution of this action as against these defendants is inequitable and will result only in the trial and determination of most questions and will not result in granting any equitable relief to the complainant, and that it is impossible for the complainant and the said Empire Gas & Pipe Line Company, now the real party in interest herein, to present any questions of a judicial nature to this court, but all the questions in regard to rate making by reason and virtue of said agreements have become of a legislative nature and cannot present any matters of judicial controversy in this action.

H. O. CASTER,

F. S. JACKSON,

*Attorneys for Defendants.*

Filed in the District Court on Dec. 6, 1916. Morton Albaugh, Clerk.

876 Exhibit A, being Agreement between Stockholders' Committee and Doherty & Company, dated 10/26 16, is omitted.

877 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

PUBLIC UTILITIES COMMISSION et al., Defendants.

*Decision.*

April 21, 1917.

877a In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.

878

*Opinion.*

This is a suit in equity brought by John M. Landon as Receiver of the Kansas Natural Gas Company against the Public Utilities Commission of the State of Kansas and numerous other defendants, praying for an injunction against said commission to prevent the enforcement of an order, commonly known as the 28 cent rate order, made by said Commission December 10th, 1915, establishing rates to be paid in numerous cities in Kansas for natural gas furnished by the plaintiff; also praying for various other relief partly against the above named defendant, partly against other defendants.

The application for a preliminary injunction was heard before an enlarged court of three judges, pursuant to Section 266 of the Judicial Code. A preliminary injunction was granted upon certain conditions. See 234 Fed. 152. The conditions were fulfilled. Thereafter the case was brought on for final hearing; evidence was introduced and submission had upon the issue as to the 28 cent  
879 rate, and questions directly involved therein; and the issue as to Interstate Commerce; the other issues being expressly reserved for future hearing.

A brief summary of the history of the Kansas Natural Gas Company is necessary to a proper understanding of the present case. The Company was organized under the laws of the State of Delaware in April, 1904, with a capital stock of 6,000,000 dollars. In July, 1905, it obtained a license to do business in the State of Kansas. The principal business of the corporation was the production and sale of natural gas, but it was authorized under its charter to purchase the stock, business and property of other corporations. Its first gas fields were located in the State of Kansas. Prior to 1912, the Company had by purchase and consolidation with other companies, largely increased its initial holdings. It had by means of various contracts undertaken to supply gas through distributing companies to more than 30 cities in the State of Kansas, as well as certain cities in the State of Missouri, including the Cities of St. Joseph and Kansas City, Missouri. These contracts were of various types, but generally speaking covered a considerable period of years, and provided for increases

in the rates at certain fixed dates. They provided further for a division of the price paid by the consumers between the distributing company and the Kansas Natural Gas Company, generally on a basis of one-third to the distributing company, and two-thirds to the Kansas Natural Gas Company.

For the purpose of completing its lines to Kansas City, Missouri, the Company had caused to be incorporated the Kansas City Pipe Line Company, and became owner of 50 per cent of the stock of said company, the other 50 per cent being owned by the United Gas Improvement Company. Shortly thereafter, in November, 1906, the Kansas City Pipe Line Company leased to the Kaw Gas Company (a subsidiary corporation of the Kansas Natural Gas Company), all of its property for ninety-nine years. In place of this lease a new lease was substituted between the Kansas City Pipe Line Company and the Kansas Natural Gas Company in January, 1908. For the purpose of extending its pipe lines into Oklahoma, the Kansas Natural Gas Company had caused the incorporation of the Marnett Mining Company, and through stock ownership controlled 880 said last named company. Two issues of bonds had been made by the Kansas Natural Gas Company: first mortgage series and second mortgage series; and one by the Kansas City Pipe Line Company and one by the Marnett Mining Company. The properties of the three mentioned companies were operated as a unit, and included a continuous pipe line, from the fields in Oklahoma to the two Kansas Cities, with other lines extending to various cities in Kansas and Missouri. The company, during the year 1912 was supplying natural gas to approximately 150,000 households, and selling for household and industrial uses upwards of 28 billion cubic feet of gas per annum.

The Kansas Natural Gas Company had, however, in acquiring its properties and extending its system, violated the Anti Trust Statute of the State of Kansas. And in January, 1912, suit was begun in the District Court of Montgomery County, Kansas, by the Attorney General of the State of Kansas against the Kansas Natural Gas Company, the Independence Gas Company, and the Consolidated Gas, Oil and Manufacturing Company; amongst other relief prayed for was the ousting of the defendants from the exercise of certain corporate powers within the State, and the appointment of receivers. The case was heard and resulted, so far as the Kansas Natural Gas Company was concerned, not in a complete ouster, but in the appointment of receivers, one of them being the plaintiff in the present suit, the order being filed February 17, 1913. Said receivers were to "manage the corporate property and business of the said defendant until the perversion and abuses of privileges by said defendant are corrected so as to protect the rights of all parties, especially all the gas consumers of the defendant company, and all parties interested in the property of the Kansas Natural Gas Company, whether as bond holders, trustees of bond holders, distributors of gas or otherwise."

Meanwhile, in October, 1912, a suit (No. 1351 Equity) was commenced in United States District Court for the District of Kansas

by John L. McKinney, a stockholder and a bondholder of the Kansas Natural Gas Company, alleging the insolvency of said company, and praying the appointment of receivers to take possession of and manage its property and assets. On October 9, 1912, Eugene Mackey,

Conway F. Holmes and George F. Sharritt were appointed  
881 receivers. They immediately took possession of the property and began carrying on its business.

On February 3, 1913, another suit (No. 1-N Equity) was commenced in the United States District Court for the District of Kansas by the Fidelity Title and Trust Company, trustee under the first mortgage of the Kansas Natural Gas Company, to foreclose said mortgage; and on the same date the receivership theretofore existing in the McKinney suit was extended to the Trust Company suit, and the same persons were appointed receivers in the latter suit.

Immediately after the appointment of the receivers in the State Court, and acting under the suggestion of that court, the Attorney General of the State of Kansas and the receivers appeared in the Federal Court and urged the prior jurisdiction of the State Court, and prayed the Federal Court for an order directing its receivers to turn the property of the Kansas Natural Gas Company over to the receivers appointed by the State Court. Litigation followed which finally resulted in all of the property of the Kansas Natural Gas Company, whether located in the State of Kansas, Missouri or Oklahoma, being turned over by the Federal Court to the two receivers of the State Court, for the purpose of managing the property and carrying out of the decree of the State Court in the Anti Trust suit above mentioned. The history of this litigation may be found in 206 Fed. 772; 209 Fed. 300, and 217 Fed. 187. In the last mentioned case the Court in its opinion said: "The Court below (United States District Court for the District of Kansas) has the right to retain the foreclosure suit and await the progress and disposition of the action in the State Court, with power to make such orders and decrees as future exigencies may require."

On January 9, 1915, the United States District Court for the District of Kansas made an order appointing John M. Landon, the present plaintiff, ancillary receiver of the Federal Court for the properties located in Missouri and Oklahoma. At the present time John M. Landon is the sole receiver of the State Court, and is ancillary receiver of the Federal Court, and George F. Sharritt is receiver under the Federal Court in the McKinney and Fidelity Trust Company  
suits, the other receivers having either died or resigned.

882 By Chapter 238 of the laws of 1911 of the State of Kansas there was established the Public Utilities Commission for the State of Kansas and with control over the Public Utilities and common carriers doing business in the State. Included under the term "Public Utility" were companies operating plants for the conveyance of oil and gas through pipe lines, also the lessees and receivers thereof. By said act it was provided that the rates charged by public utilities should be published and filed with the Public Utilities Commission. It was further provided that said commission, either upon complaint of parties or upon its own initiative should have

power to investigate such rates, and fix, and order substituted therefor other rates if found necessary. It was further provided that unless the commission should otherwise order, it should be unlawful for any public utility to collect a greater rate than that fixed on the lowest schedule of rates for the same service on the first of January, 1911.

The Federal Court, shortly after the appointment of its receivers in 1912, established a schedule of rates to be charged by the receivers, but this schedule was shortly thereafter suspended by the same court.

In January, 1913, application by the Attorney General of Kansas was made to the Public Utilities Commission to cause an investigation to be made and to fix rates to be charged by the receivers of the Kansas Natural Gas Company. The receivers and numerous distributing companies appeared and asked for changes in the then existing rates. In July, 1913, the commission made its order denying any increases in rates, and approving and confirming the rates then in effect.

Upon a further hearing in July, 1913, the commission directed the receivers to make certain extensions of the pipe lines into the Oklahoma field, and thereupon the receivers applied to the Federal Court for directions as to their duties in respect to this order. Upon a hearing the receivers were directed not to comply with the order of the commission. See 219 Fed. 614. This application and order, it will be noticed, were made prior to the time when the Federal Court turned over to the receivers of the State Court all of the property of the Kansas Natural Gas Company. This was not completely effected until September, 1914.

883 In December, 1914, various of the parties before the court in District Court of Montgomery County in the suit brought by the State of Kansas (No. 13476), after consideration and investigation, entered into an agreement known as the creditors' agreement, covering certain phases of the financial management of the property of the Kansas Natural Gas Company, while the same should be in the hands of receivers and under the control of the State District Court.

This creditors' agreement took the form of a stipulation filed in the State District Court in case No. 13476. It provided among other things for the scaling down of the outstanding stock of the Kansas Natural Gas Company from 12,000,000 dollars to 6,000,000 dollars. It also provided for the scaling down of certain of the issues of bonds above mentioned. It recited that the opinion of experts after investigation was that the life of the gas field would be six years. It, therefore, provided for the payment of the several bond issues during such period. It provided payment out of earnings for extensions which would be necessary during such period, if the property should be operated at compensatory rates. It provided that application might be made, with the consent of the State Court, to the Public Utilities Commission or other public authority when deemed advisable by the State Court. It provided that creditors and lien holders should defer their rights of foreclosure or as-



section of liens during the above mentioned period, provided the agreement was being carried out, subject, however, to the order of the court. This agreement was consented to by the Kansas Natural Gas Company and its auxiliary companies, by the receivers, by the great majority of the bond holders of the several companies, and by the State of Kansas through its Attorney General.

In April and May, 1915, the receivers, by direction of the District Court of Montgomery County, filed a petition with the Public Utilities Commission requesting the commission to establish a schedule of joint rates for the distribution and sale of gas by the complainants and the respondent's distributing companies. The schedule proposed by the receivers represented a decided advance in rates from the 25 cent rate then in force and ranged 20, 25, 30, 35, 37, 40 and 45 cents, according to the location of the cities served, distance being one of the elements recognized. A large amount of testimony was taken, and the commission filed findings July 16, 1915, to the effect that the rate ought to be raised in all markets where the price was 25 cents per thousand cubic feet to the flat rate 28 cents. Included in the evidence before the commission at that time was the creditors' agreement, and the findings of the commission were based to some extent at least upon the estimates and figures found in the creditors' agreement. No order was, however, made by the commission at this time, and the reason given is stated by the commission itself as follows:

"It developed upon the hearing that more than half the natural gas supplied and marketed by complainants is sold in the State of Missouri. It is conveyed, by means of pipe lines passing through Kansas, to Joplin, Kansas City, St. Joseph and other cities in our sister State. It would be manifestly unfair to permit complainants to advance the price of gas to their Kansas patrons, unless a corresponding increase were made to consumers in Missouri. It is conceded that an advance in Kansas without a similar one in Missouri would be unavailing for the purposes contemplated by complainants, and they do not desire any advance in Kansas except as it may be simultaneous with a corresponding one in Missouri.

The Commission, therefore, awaits the pleasure and action of the rate-regulating body or bodies of Missouri having jurisdiction of the subject matter; and if, in that state proper and necessary orders be issued establishing a schedule of rates as herein outlined, an order, effective, if possible, simultaneously, will be issued by this Commission in accordance with the views herein expressed."

Shortly after this decision, the receivers filed in the District Court of Montgomery County an application for an injunction restraining the Public Utilities Commission from putting into effect the joint rate proposed in their findings of July 16, 1915. Service having been attempted to be made upon the commission and the members thereof, special appearance was made on their behalf, and a motion made to quash the summons and the service thereof. Said motion being overruled, a demurrer was interposed by the commission, also challenging the jurisdiction of the State District Court.



885 The demurrer was overruled, and the Utilities Commission elected to stand upon its demurrer. Thereupon testimony was introduced on behalf of the receivers, and on the 27th of August, 1915, the State District Court entered its findings to the effect that the 28 cent rate was unreasonably low, and not sufficient to carry out the requirements of the creditors' agreement; and authorized a 30 cent rate to be temporarily established. The Court also expressed the opinion that the receivers were engaged in interstate commerce; and furthermore entered an order enjoining the Public Utilities Commission from putting into effect the rates proposed by it in its findings of July 16, 1915. An appeal to the State Supreme Court was taken by the Utilities Commission from the order overruling the demurrer above mentioned. Meanwhile, on August 17, 1915, the Public Utilities Commission filed in the State Supreme Court an application for an alternative writ of mandamus against the Judge of the District Court of Montgomery County and the receivers of the Kansas Natural Gas Company, praying that said Judge be directed to vacate and set aside the order making the Public Utilities Commission a party defendant to the injunction suit; also to set aside the temporary restraining order; and also to dismiss the suit itself; and also that the receivers be compelled to perform their legal and public duty.

An answer was interposed by the receivers in the mandamus proceedings. These two matters, the appeal of the Public Utilities Commission from the order of the State District Court overruling their demurrer, and the mandamus proceedings brought by the Public Utilities Commission in the Supreme Court, were heard together in that court. On October 4th, 1915, the order of the District Court overruling the demurrer was reversed, the Supreme Court holding that no jurisdiction had been obtained over the commission. The writ of mandamus was denied, the court holding that inasmuch as the commission had made no order, a writ of mandamus could not properly issue. The court concluded its opinion as follows: "The demurrer of the Public Utilities Commission to the receivers' petition is sustained, and the injunction against the Commission is set aside. No writ of mandamus will issue at this time. The action in this court is dismissed as to Honorable Thomas J.

886 Flannelly, but is retained as to the defendants John M. Landon and R. S. Litchfield for such orders and judgments as may be hereafter made."

October 7, 1915, the receivers filed with the Public Utilities Commission a petition for rehearing. Further testimony was introduced and the entire matter was considered de novo. December 10, 1915, the Commission filed its findings and order; again finding that 28 cents, with certain exceptions, was a sufficient rate, and authorizing such a schedule to be filed. December 28, 1915, the receivers filed the authorized schedule which was approved on the same day, and thereafter, on December 29, 1915, the receivers by direction of the District Court of Montgomery County filed the bill of complaint in this court in the present suit, said suit being designated 136-Equity.

On the 3rd day of January, 1916, the Public Utilities Commission presented an application in the mandamus proceeding above referred to, asking the State Supreme Court for an injunction restraining the receivers from prosecuting the present suit, in the Federal Court. On January 7, 1916, the receivers filed a petition for removal of the mandamus proceedings from the State Supreme Court to the Federal Court. On the 3rd day of January, 1916, the Public Utilities Commission also filed a supplemental petition in the mandamus proceedings, asking that the receivers be compelled to perform their official duties and furnish their customers efficient and sufficient service.

On January 16, 1916, the State Supreme Court filed a decision denying the petition of the receivers for removal, denying the petition of the Public Utilities Commission for an injunction, and dismissing the mandamus proceedings.

The bill of complaint in the present suit, 136-N, alleges that it is dependent upon and ancillary to the suits above mentioned pending in this court, the McKinney suit No. 1351 and the Trust Company suit No. 1-N Equity.

At the hearing upon the application for a preliminary injunction before the enlarged court, the jurisdiction of the court was challenged by the Public Utilities Commission as well as by other defendants upon various grounds set forth at length either in their answers, or in separate motion papers. The Court held that it had jurisdiction; its opinion upon that question is found in Vol. 234 Fed. 152, 887 154. Upon the final hearing the jurisdiction of the court has again been challenged, largely upon the same grounds. So far as the grounds are the same, I do not deem it necessary to make any statement, except the reference to the prior decision already mentioned.

But motions to dismiss on the part of the Public Utilities Commission have also been made from time to time, during the final hearing and upon the final argument, on further grounds, some of them arising since the hearing on the application for the preliminary injunction. Among them are the following: "That subsequent to the order granting the preliminary injunction an order has been made by the State District Court having control of the receivers, instructing the receivers as to the rates to be charged by them; that this order changes the basis of the rate making, and so affects the present suit as to render it impracticable, if not impossible, for the court to proceed to a decision as to the character of the 28 cent rate. As has been already intimated upon the hearing it is my opinion that the order of the State District Court in question was not of the character attributed to it by counsel for the Commission. It was an order fixing rates to be charged by the receivers temporarily. By the preliminary injunction the rates fixed by the Commission were enjoined, and the rates fixed by the Statute of 1911, being the ones in force upon January 1st of that year, were also enjoined. It therefore became necessary for new rates to be temporarily fixed, so that the receivers might continue to carry on business. Upon application by the Receiver the court made the order above mentioned. That this course of procedure, suspending the alleged confiscatory rate during the period of investigation,

and fixing temporary new rates is proper, see *Love v. Railway Company*, 175 Fed. 321; *Telephone Company v. Utilities Commission*, 97 Kan. 136.

A further ground for dismissal is that subsequent to the granting of the preliminary injunction, the control of the stock and bonds of the Kansas National Gas Company changed hands, and that the new owners entered into certain agreements with the Utilities Commission, amongst others, that the suit in the State District Court in which receivers had been appointed should be dismissed; also that the present suit in this court should be dismissed. It appeared, however, upon the argument that the new owners of the stock and  
888 bonds of the Kansas Natural were not parties to the present suit, nor had application been made by them to be made parties, nor was application made by the Utilities Commission that said owners should be made parties.

It further appeared that there was a dispute as to what agreements had in fact been entered into between the new owners and the Utilities Commission. It appeared further that no order of dismissal had been entered by the State District Court. These facts were deemed sufficient for denying the motion to dismiss the present suit in this court.

Still another ground urged for dismissal was that the evidence showed that the relief really sought by the receivers was not judicial but administrative, and that they were seeking to be relieved from carrying out their obligations in respect to the character of the service to be rendered, fixed by certain franchise contracts, and that no relief should be granted in equity until the obligations under the franchise contracts were completely fulfilled. In reference to this contention it is to be observed that the extent of the obligations under the franchise contracts referred to is far from clear, and has not been judicially determined; in fact, a judicial determination thereof has been by some of the parties interested studiously avoided, and the Utilities Commission itself has made no order defining the extent of those obligations.

Furthermore, in my judgment, the extent of the service actually rendered by plaintiff is of so large and substantial a character that the failure in some degree to render full and adequate service, especially since this has not been definitely ascertained, ought not under the peculiar circumstances of the present case, to debar the plaintiff from seeking a determination as to whether the 28 cent rate is confiscatory. To this may be added, that it is claimed by the Utilities Commission that never since 1911 has the Kansas Natural Gas Company or its receivers rendered full and adequate service. Nevertheless this has not prevented the fixing of rates by the Commission for such service as has been rendered.

A further ground for dismissal is that the creditors' agreement above referred to, really provided for an arbitration as to rates by the Utilities Commission, and that this was binding and not  
889 subject to review. This contention, in my judgment, is hardly worthy of serious consideration. The most casual read-

ing of the creditors' agreement will show that it is not open to such a construction.

It is also urged on the part of the defendants that the bill should be dismissed for want of equity, because the plaintiffs have not charged for gas in Montgomery County the rate which they were authorized to charge by the order of the Commission, and that the plaintiff cannot be heard to complain of a confiscatory rate so long as they are not charging as high a rate as they are authorized to charge. It is further claimed that the plaintiffs deceived the Supreme Court of Kansas, and led that Court to believe that the rate fixed by the order of the commission of December 10, 1915, had been put into force and effect, when, as a matter of fact, this was not true, and that the State Supreme Court relinquished its jurisdiction of the mandamus case, being induced by the deception practiced upon it by the plaintiffs. Counsel for defendant commission claim that this state of affairs was called to the attention of the Federal District Court shortly after the present suit was filed, and again at the hearing for the preliminary injunction before the enlarged court, and still again upon the final hearing. If it be true that deception was practiced upon the State Supreme Court, and if that court was led by means of a fraud to relinquish its jurisdiction of the mandamus case, the proper place to make these facts known in the first instance would be in that court itself. Further, even after the present suit had been begun in this court the defendants might, (at any time before final submission upon the hearing for the preliminary injunction) by proper procedure under Section 266 of the Judicial Code have taken action in the State Court by mandamus or otherwise, and this court upon being advised of such action, would have held the present suit in abeyance; but no such course was pursued. Further, the record shows that the rates in question in Montgomery County were competitive rates, and it does not appear that gas could have been sold in that territory by the receiver at a rate higher than 20 cents, the rate then in force; nor does it appear that if the gas had been brought to Kansas City and sold at 28 cents there would have been any greater profit for the receiver than by selling it in Montgomery County at 20 cents. Finally, it appears that the rate in Montgomery County prescribed by the Commission in its order of December 10, 1915, was called to the attention of the State District Court shortly after the rates were promulgated, and the District Court upon application of certain cities in Montgomery County enjoined the receivers from collecting in those cities the rates authorized by the order of the commission of December 10, 1915. It will be presumed that the State District Court in charge of the receiver took the action above mentioned after due deliberation, and that it was duly authorized and for the best interests of all parties concerned, including the financial interests of the receiver.

Passing to the merits. Thousands of pages of testimony and hundreds of exhibits have been introduced, covering almost every possible question that could arise in a rate controversy. Questions involved in the valuation of the plant; questions as to the character and extent of the business, including the available supply of gas, and

the life of the gas fields; questions as to extensions; questions touching the cost of operation and maintenance; the rate of return proper to be allowed; and the amount of income necessary to meet requirements have all been covered with great fullness and particularity, both in the evidence and in the arguments of counsel.

It must be borne in mind, however, that this suit is not one for the fixing of a rate to be charged by the plaintiffs for natural gas, but it is a suit to determine whether the 28 cent rate already fixed by the commission is confiscatory. Bearing this in mind it becomes apparent that it is not necessary to discuss or determine many of the questions investigated before the commission and upon which evidence and argument have been offered in this suit. It will not be necessary to determine whether the commission adopted the best and most scientific method in fixing the 28 cent rate; if that rate is not confiscatory, the method by which it was determined is immaterial here. After determining the value of the plant for rate-making purposes the commission allocated this value between the States of Missouri and Kansas on a certain percentage basis. The commission also adopted a flat rate as distinguished from a distance rate, to cover a great many cities in Kansas. The commission further divided 891 the valuation of the property into two parts, one covering that portion used for production purposes, and the other that portion used for transportation purposes. Without passing specifically upon the conclusions of the commission with respect to these several matters, it may be assumed for the purposes of the present discussion that they were justified, but mention of certain matters in connection with some of them will be made later. It will be necessary, however, to consider briefly certain of the matters passed upon by the commission, in fixing the 28 cent rate.

The value of the property is one of the important elements, and the evidence as to this varied widely, especially as to the value which should be amortized. The evidence shows that the appraisers appointed under the direction of this court in the fall of 1912, found the value of the physical property to be \$14,803,200; this did not include anything for intangibles, going value or working capital.

In 1913, Mr. Witt, engineer for the Commission, valued the property as of January 1, 1913, at \$10,275,046. This also omitted the above mentioned items.

Mr. Wyer, employed as an expert engineer by the receivers, fixed the value in 1912 at \$14,520,686, excluding the above mentioned items.

In 1915 Mr. Strickler, engineer for the Commission, valued the properties at \$8,994,811, excluding the same items; he also valued the properties at \$8,602,993, by further excluding the distributing plant at Independence, and the supply lines at Elk City, Independence and Joplin.

Later, Mr. Wyer made a reappraisal as of January 1, 1916, fixing the value at \$12,000,000 exclusive of the intangible, going value, working capital, and stock supplies; excluding also the Independence plant and the supply lines at Independence, Joplin and Elk City.

In July, 1915, the Commission found the value of the physical

property to be \$8,994,811, and estimated the salvage value as of December 31, 1920, at \$2,317,951, which would leave for amortization \$6,676,860. In August, 1915, the State District Court in reviewing the figures of the Commission, pointed out certain alleged errors on the part of the Commission in arriving at the salvage value, and estimated that value as of December 31, 1920, at 892 \$867,229, which would leave for amortization, \$8,127,584. Both of these valuations included the leasehold.

In December, 1915, the Commission fixed the valuation of the property used in transportation (which excluded leaseholds and certain other property) at \$7,083,605, amortizing the same on the basis of twelve years; going on the assumption that there would be no salvage at the end of that time. In reference to this matter, the Commission said:

"In providing for depreciation, nothing has been deducted for the salvage value of the property at the end of the estimated life, nor has anything been deducted for the warehouse stock assigned to the transportation branch of the business. In the computations it has been assumed that the entire plant, including the warehouse stock, will be wiped out at the end of the 20-year period. This, of course, is an assumption. At that time, it may still be a valuable going concern, or it may be junk."

It would seem that this method of procedure is open to criticism. It is hardly supposable that the property in question could be used and useful in transportation and distribution of gas up to a given date, and then overnight become junk.

Upon a careful consideration of all the evidence bearing upon this question of valuation, I have reached the conclusion that the present fair value of the physical property used in transportation is at least \$7,000,000.

Whether anything should be added to the value of the physical property for "going value" is not free from doubt. The term "going value" has been used in many of the reported cases, as covering a number of different matters, among them: good will; organization costs, such as legal expenses, taxes and interest during construction; the cost of attaching customers to a complete plant; loss during early lean years of the business. The expressions "enhanced value" and "development cost" are frequently found in the reported cases, and are helpful in elucidating what is meant by the "going value" for which an allowance has quite properly been made. It will serve no useful purpose to review the numerous cases on the subject; suffice it to say (1) it seems to be held by the weight of authority that

893 "good will" should not enter into the valuation of a public utility. (2) Overhead expenses during construction period and organization charges are not properly included in "going value," but are a constituent part of the cost of the plant. (3) The other two items mentioned, viz., cost of attaching customers and losses during early years are legitimate elements of "going value." "Going value" thus understood, might well be added to the physical valuation provided the evidence is sufficiently definite so that the amount



can be fixed with reasonable certainty; and in the absence of countervailing circumstances.

Mr. Wyer, a witness for the receiver, has estimated "going value" at \$2,000,000. Mr. Walker, witness for the Commission, has estimated it at \$535,000. It appears from the evidence that there was a deficit in the early years; it also appears that no dividends have been paid to the stockholders. But it also appears from the evidence that in the early history of the company, upward of \$3,000,000 of earnings, instead of being distributed as dividends, was reinvested in the company as capital.

Upon a consideration of all the evidence on the subject I have reached the conclusion that it is very doubtful whether any allowance for "going value" would be justified, and have therefore omitted the same.

Another important element to be considered is the supply of gas. The figures as to this matter which were used by the commission in December, 1915, in arriving at the 28 cent rate, were approximately the figures for the year 1914, namely, 25,671,445 thousand cubic feet. It was considered by the Commission that the receiver would be able to procure the same amount of gas for the year 1915, and thereafter, the same figures were adopted as a basis by the enlarged court in the hearing for the preliminary injunction. It is now claimed, however, that the evidence shows that the supply of gas obtainable is very much greater than the figures above mentioned. It is true that the evidence introduced upon the trial has shown the development of new fields having apparently large quantities of gas. Whether these fields will be fairly permanent, or come to a sudden end, no one can foretell. Few of the fields discovered are available

894 to the receiver by the expenditure of a reasonable amount of money; most are available only by the expenditure of a very large amount. The experience of the receiver in making an expenditure of nearly \$700,000 under the direction of this court, for the purpose of reaching new fields and increasing the supply, and the results obtained by him, lead to the conclusion that even the best informed men are liable to be sadly mistaken as to future supply. In October the receiver and Mr. Bartlett, who is connected with the Braden interests, both testified as to bright prospects for a very largely increased supply of gas to be obtained by the Kansas Natural Gas Company within the next 60 or 90 days. At the hearing in February these expectations had given way to certainty; but the certainty was that there would not be an increase, at least to any considerable extent, in spite of diligent efforts.

A consideration of all of the testimony, including the report of this last experience on the part of the receiver, has convinced me that the Commission sitting in December, 1915, and the court sitting in June, 1916, were both justified in taking the figures of 1914 as the maximum supply probably attainable except upon the expenditure of several times the amount of money they then considered necessary.

It is true that Mr. Doherty testified upon the final hearing that he had reasonable grounds for believing that he could furnish a supply



largely in excess of the figures of 1914. This expectation, however, was based upon the condition that from \$2,000,000 to \$2,500,000 should be expended at once in making the necessary extensions, and that further considerable expenditure thereafter would also be made.

One of two conclusions appears to be inevitable, either that the supply of 1914 will be the maximum upon the expenditure of such sums as this court in June, [1916] thought necessary; or, the alternate conclusion that to secure a substantially increased supply will necessitate a very large initial expenditure, followed by others of not inconsiderable amounts.

The life of the fields is also a very important element. This, like the element of supply, is also uncertain. The Commission, in December, 1915, in fixing the 28 cent rate, proceeded upon the assumption that the life of the fields would be twelve years. The experts upon whose opinion the creditors' agreement was based, estimated the life of the fields at six years in December, 1914. In July, 1915, the Commission acted upon the assumption that the life of the fields would be six years. The testimony of the experts at the final hearing seemed to be based partly upon known facts, and partly upon hopes. Mr. Bartlett, in October, 1916, testified that he thought there was gas enough to last five or six years, and that possibly the field might exist for ten years. His testimony was given at a time when he also testified that he as representing the Braden interests was expecting to furnish the receiver within the next thirty or sixty days 40,000,000 cubic feet per day. That he was badly mistaken in this latter estimate has been definitely demonstrated within a period of four months. Instead of furnishing 40,000,000 cubic feet a day, the average for the past three months has been less than 18 million.

Mr. York estimated the life of the field under present conditions of use at four or five years.

Mr. Doherty, a man commanding perhaps the fullest information as to gas matters in the Mid-Continent field, testified that he was reasonably certain of being able to furnish the Kansas Natural system a supply of gas very largely in excess of the figures of 1914 for at least two years; that he had hopes that it might continue for three years thereafter; and that it was not improbable that with further investigations in the Texas and Louisiana fields a supply might be available for even a longer period.

Taking all the evidence together and assuming the present conditions of unrestricted use as between different classes of consumers to continue, the most reasonable conclusion is that the life of the field cannot be fairly estimated at more than five years from the present time for a supply equal to that of 1914, and a fortiori not longer for a supply to any considerable extent greater.

As to the cost of gas to the receiver, the Commission in its investigation leading up to the 28 cent rate, concluded that 4 cents per thousand cubic feet would be sufficient. This court upon the hearing for the preliminary injunction under the evidence then before it, concluded that 6 cents should be allowed. Considerable additional evidence has been introduced touching the price paid

896 for gas in different localities in Kansas and Oklahoma. Mr. Bartlett testified that the price which the receiver would have to pay the Braden interests for gas purchased from them would probably be 7 cents, although it had not yet been definitely fixed. It appears that a royalty of 3 cents exists in the Osage field, where a considerable part of the supply is now obtained by the receiver. While there was evidence that at certain points gas was sold at the mouth of the well for as low as 2 and 3 cents, yet in most if not in all of these instances, the wells were not where they were available to the lines of the receiver. It is also in evidence that industrial plants are in active competition at many points with purchasers who are seeking to transport gas to consumers at a distance for domestic purposes, and that in some instances these industrial plants pay as high as 10 or 12 cents for their gas. Viewing the situation as a whole, and taking into consideration all of the evidence bearing upon the matter, the figure of 6 cents adopted by this court in June, 1916, does not, in my opinion, require to be lowered.

As to the rate of return upon investment the court upon the hearing for the preliminary injunction, held that eight per cent was not excessive, in view of the nature of the business, the risks, hazards, and prevailing rates in other similar lines of activity. I see no reason for departing from that conclusion, and need not repeat what was then said.

One additional observation may be made. It is conceded by all parties that continued extensions into fields outside of Kansas will be imperative. It has been held that the Public Utilities Commission has no power to order extensions outside the State. It therefore becomes necessary to attract capital to make these extensions. This can be done only upon the basis of a reasonable return in view of the character and risks of the business.

It is to be noted that the 28 cent rate fixed by the commission was a joint rate; that is, a rate covering both the compensation to the receiver and to the distributing companies, which joint rate was to be paid by the ultimate consumer. Under the contracts made by the Kansas Natural Gas Company with the various distributing companies, a division of the rate to be paid by the ultimate consumer was provided for, which division was generally two-thirds of the Kansas Natural Company and one-third to the distributing company, although, in a few instances this proportion was different; in the two Kansas Cities it was 62½ per cent to the Kansas Natural.

These contracts between the Kansas Natural and the various distributing companies were never adopted by the receivers appointed by the State Court, and the order of the Federal Court, appointing the original Federal Receivers, provided that these contracts should not become binding upon the receivers, except by the express order of the court. No such order has ever been made. The receivers, however, continued to distribute gas to the various distributing companies, and to collect therefor upon the ratio of the division of rates fixed by the contracts.

At the hearing before the Public Utilities Commission it was assumed that any joint rate fixed by the commission would be divided between the receiver and the distributing companies upon the same basis; namely, two-thirds and one-third. At the hearing before the enlarged court, upon the application for a preliminary injunction, the same assumption was made. When the case came on for final hearing, however, the attorneys for the Commission took the position that the assumption would no longer be acquiesced in by the Commission. This, of course, left the question open whether the receiver could reasonably expect to secure a greater percentage of the joint rate fixed by the Commission, than the two-thirds. It became necessary to determine this question because, even though it might be established that two-thirds of a 28 cent rate would be confiscatory to the receiver, it would not follow that five-sixths or seven-eighths would be confiscatory. In the absence of an assumption that two-thirds was all that could be obtained, evidence was required as a basis for a finding with regard to the matter. Accordingly, considerable evidence was introduced touching the financial status of the various distributing companies, the valuation of their plants, the character and extent of their business, their operating expenses and other allied matters. This evidence was introduced, not for the purpose of ascertaining with accuracy what would be a just and fair rate to be charged by the various distributing companies, but solely for the purpose of ascertaining whether there was any

898 reasonable grounds for holding that the receiver could obtain more than two-thirds of the 28 cent joint rate. This evidence was taken and the inquiry made on the basis of laying aside temporarily the contracts between the Kansas Natural Company and the distributing companies, and without undertaking to pass upon the validity of those contracts as between the original parties.

Without reviewing this evidence in regard to these various distributing companies, but after a full and careful consideration thereof, I am clearly of the opinion that there is no reasonable basis for holding that the receiver could obtain more than two-thirds of the 28 cent joint rate, in case that rate should be established.

The commission in its decision of December 10, 1915, presented a table showing its estimate of the requirements of the Receiver for the year 1915, and the estimated revenue under the 28 cent rate. The table follows:

899 Table No. 5.—Kansas Natural Gas Company.

*Statement of Estimated Revenue and Requirements for the Ensuing Year Based on 1914 Figures, Revised as Previously Explained, for the State of Kansas.*

Requirements.		Transportation.	Kansas.
25,671,445 M cubic feet gas at 4c.....		\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation.....		510,536.14	223,245.11
Receivership expenses .....		32,228.00	14,093.30
Uncollectible gas accounts .....		12,555.07	6,359.14
Taxes, Kansas City Pipe Line.....		32,288.27	16,860.51
Taxes, Marnet Mining Company.....		10,497.35	5,316.91
Maintaining organization, Marnet Mining Co.....		690.20	349.59
Total .....		\$1,626,652.83	\$780,269.57
Present value of transportation property, \$7,083,605.64; depreciation on basis of 12 years .....		590,300.00	268,468.44
Requirements exclusive of a return on property investment.....		2,216,952.83	1,048,738.01
*Return on present value.....	\$7,083,605.64		
Add for working capital.....	200,000.00		
Total .....		\$437,016.35	\$198,755.00
		\$2,653,969.18	\$1,247,493.01

\*The division of these items between Kansas and Missouri has been made on basis of use of property as shown in Table No. 1.

## Estimated Revenue.

Gas sales, 1914 .....	\$1,192,089.82
†Gas used in compressor stations (on basis of use) .....	31,737.70
Total .....	<u>\$1,223,827.52</u>
Estimated revenue from proposed increased rates .....	171,513.63
Total estimated revenue from Kansas .....	<u>\$1,395,341.15</u>
Deduct requirements as above .....	1,048,738.01
Estimated net revenue .....	<u>\$346,603.14</u>
Which is equal to a return of 10.46% on the present value \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,605.64, or total estimated revenue for Kansas .....	1,395,341.15
Less requirements including a 6% return .....	<u>1,247,493.01</u>
Surplus .....	<u>147,848.14</u>

†This item is placed here to balance an equal sum included in the expenditures. It is a bookkeeping entry solely.

900 The enlarged court in its opinion in granting the preliminary injunction, pointed out wherein it thought the foregoing table should be revised. It said:

"Turning now to the table of the commission quoted above the result is that, laying aside other considerations and conceding the substantial correctness of the commission's other findings for the purpose of the decision of this application for injunction, its estimates of the requirements of the company and of the receiver for the first and the succeeding five years of the life of the gas company as a going concern were too low by the following amounts:

On account of estimating twelve years instead of six years as the life of the going concern by . . . . .	\$590,300.00
On account of lack of allowance for extensions by . . .	247,916.00
On account of estimate of cost of gas at 4 cents per M cubic feet instead of 6 cents per M cubic feet by . .	513,428.90
On account of allowance of 6 per cent instead of 8 per cent interest . . . . .	145,672.10
Total . . . . .	<hr/> \$1,497,317.00

Upon the final hearing counsel for the commission has prepared a table which is found on page 99 of their brief, which is a revision of the table set forth in the decision of the commission based "upon the assumption that the receiver will provide for his consumers 30,000,000 M cubic feet instead of 18,000,000 thousand cubic feet of gas per annum. This table thus prepared by counsel is as follows:

901

	Transportation.	Kansas.
39,863,640 M cubic feet at 6c. (Kansas 50.06%), allowing for leakage and difference in pressure basis .....	\$2,391,817.80	\$1,197,343.98
Operating expenses and taxes assigned to transportation, (increased 66 2/3%) .....	850,859.53	372,606.30
Receivership expenses .....	32,228.00	14,093.30
Uncollectable gas accounts (increased 66 2/3%) .....	20,924.28	10,598.14
Taxes Kansas City Pipe Line .....	33,288.27	16,860.51
Taxes Marnet Mining Company .....	10,497.35	5,316.91
Maintaining organization, Marnet Mining Company .....	690.20	349.59
Total .....	\$3,340,305.43	\$1,616,622.73
Value of transportation property \$7,083,605.64 depreciation on basis of 12 years from December 31, 1914 .....	590,300.00	268,468.44
Add for extensions, \$1,000,000 to be amortized in 10 years, 45.48% to Kansas .....	100,000.00	45,480.00
Requirements exclusive of a return on property investment .....	\$4,030,605.45	\$1,930,571.17
Estimated revenue on basis of 1914 sales .....		\$1,395,341.15
Add for increase in business, 66 2/3% .....		930,134.28
New estimated revenue .....		\$2,325,475.53



Requirements as above .....	1,930,571.17
Estimated net revenue .....	\$394,904.36
Value of transportation property .....	\$7,083,605.64
Add for new capital .....	1,000,000.00
Add for working capital .....	200,000.00
Total .....	\$8,283,605.64
Kansas proportion 45.48 % .....	3,767,383.83

On which value estimated net revenue is an annual return of 10.48%.

On which value estimated net revenue is an annual return of 10.48 per cent.

For the purpose of summarizing the conclusions reached by me as heretofore stated and putting them in concrete form, in order to show wherein they differ from the conclusions reached by counsel for the commission, in the revised table above given, the table is again reproduced, embodying the changes necessary to make it conform to the foregoing conclusions.

	Transportation.	Kansas.
39,863,630 M cubic feet, at 6c. (Kansas 60.06%) allowing for leakage and difference in pressure basis .....	\$2,391,817.80	\$1,197,343.98
Operating expenses and taxes assigned to transportation (increased 66 2/3%) .....	850,859.53	372,060.30
Receivership expenses .....	32,928.00	14,093.30
Uncollectable gas accounts (increased 66 2/3%) .....	20,924.28	10,598.14
Taxes Kansas City Pipe Line .....	33,288.27	16,860.51
Taxes Marnet Mining Company .....	10,497.35	5,316.91
Maintaining organization, Marnet Mining Co. ....	630.20	349.59
Total .....	\$3,340,305.43	\$1,616,622.73
Value of transportation property less salvage \$7,000,000— \$1,050,000=\$5,950,000.		
Depreciation on basis of 5 years from April, 1917 .....	\$1,190,090	541,312
Add for extensions, 2,000,000 one-half to be amortized in 5 years, 45.48% to Kansas .....	900,000	90,960
Requirements exclusive of a return on property investment .....	4,760,305	2,248,794
Estimated revenue on basis of 1914 sales .....		\$1,395,341.15
Add for increase in business 66 2/3% .....		930,134.38
New estimated revenue .....		2,325,475.53

2,248,794

Requirements as above .....

76,681

Estimated net revenue .....

\$7,000,000

2,000,000

200,000

Value of transportation property .....

Add for new capital .....

Add for working capital .....

\$9,200,000

Total .....

\$4,184,160

Kansas proportion, 45.48% .....

On which value estimated net revenue is an annual return of 1.8%.

On which value estimated net revenue is an annual return of 1.8 per cent.

This falls short of producing 8 per cent on the investment by \$258,051. It falls short of producing 6 per cent on the investment by \$174,368.

In this re-revised table no allowance for going value has been included, for the reasons heretofore stated.

Furthermore no valuation is included for leaseholds. The commission made no allowance for these leaseholds in the valuation fixed by it for rate making, but it made an allowance of four cents per thousand cubic feet for whatever gas was obtained from wells covered by the leases.

It is claimed on the part of the plaintiff that this method of dealing with the leaseholds was not only unscientific, but also worked a great detriment to the plaintiff. It must, I think, be conceded, if all gas required by the receiver could be bought at the price of four cents per thousand cubic feet, that it might be fairly argued that the receiver should not make use of gas obtained from the leasehold upon a higher basis than four cents; but, if as the evidence shows, not only all the gas that could be purchased at 4 cents was needed, but also in addition thereto all the gas produced from the leaseholds, then it might or might not — fair and just to allow four cents for gas obtained from the leaseholds. If this last increment of gas from the leaseholds was needed to make up the supply, a reasonable return should be allowed for it, though this return exceeded the price paid for the rest of the gas. In other words, the leaseholds should logically be valued, and this value amortized, and the valuation added to the capital account upon which returns should be figured. In the present case if this were done and the valuation used which was placed upon the leaseholds by the expert of the commission, it will be found that the four cent allowance for gas from leaseholds was not equivalent to placing the valuation of the leaseholds in the capital account, and amortizing the same, and giving a fair return upon the capitalization. However, when, as in the foregoing table six cents is allowed as the cost price of gas to the receiver, and this is made also the basis of return for gas obtained from the leaseholds, the difference between the two foregoing methods of handling the leaseholds becomes of very little importance. For this reason it is not thought necessary to make a change in the table of the Commission in this respect.

Allowance has been made for salvage at the end of the five year period. Fifteen per cent on the present valuation of \$7,000,000 and 50 per cent on the extensions and additions immediately necessary.

The estimated cost of these immediate changes has been reduced by the value of new pipe recently bought by the receiver and not yet received, amounting to something over \$200,000. The balance of the amount recently expended by the receiver under order of court amounting to over \$400,000, though unsuccessful as an investment, must nevertheless be provided for either by being placed in capital account and amortized, or by being charged to maintenance, proper allowance to be made in either case for salvage. This would increase the deficit above shown.

It is further to be noted that in the foregoing re-revised table no allowance is included for extensions after the large initial one. This omission is not due to a conclusion that no such expenditure would be necessary. On the contrary, the testimony shows that it would be necessary; but from the evidence I am unable to deduce any definite figure as to amount. Whatever sum would

be necessary to be expended would of course increase the deficit to a still greater extent.

Extensions to new gas pools do not stand on the same footing as new branch lines of railway. The one is normally short-lived, the other is normally enduring. The former are usually necessary to maintain the present business, the latter are usually built for the purpose of getting new and additional business. Whether extensions on such a business as the natural gas business should be charged to capital account and amount (less estimated salvage at the end of the life of the field) be amortized, or whether they should be charged immediately to maintenance (subtracting, however, from each installment of investment an amount for estimated salvage), makes very little difference, provided a return is allowed on the capital actually invested during the time it is tied up. In the first instance, however, the feasibility of attracting capital into the extensions may be a determining factor as to how the account should be made up.

Finally the experience of the receiver for the year 1916 is instructive and valuable. During the first eight months of the year the 28 cent schedule was in force, the average return to the receiver on gas sold for domestic purposes was 18.27 cents. The total amount of gas sold during the year on the whole system for domestic consumption was 14,170,692 thousand cubic feet. Applying the above rate to this amount we have given an income of \$2,608,824. Income derived from sale of boiler gas, gas for engines, etc., gives \$523,700, a total income of \$3,132,524.

905 Against this were the following:

Gas purchased .....	\$1,203,547
Operating expenses .....	910,030
Depreciation or amortization, \$7,083,605 on six-year basis adopted by court in June, 1916 .....	1,180,600
8 per cent on investment of \$7,083,605 .....	582,698
Total necessary revenue .....	\$3,876,868
Total income above .....	3,132,524
Deficit. ....	\$744,344

In fairness, owing to the abnormally large expenditures for extensions, the figures for operating expenses, \$910,030, might well be reduced by \$300,000, thus approximating a normal year, leaving a deficit of \$444,344.

The foregoing findings and conclusions, though perhaps containing errors, have nevertheless been reached after the most careful consideration of the evidence and the arguments of counsel that I have been able to give. It is accordingly held that the 28 cent rate is not and will not be compensatory, but on the contrary that it is unreasonably low, and confiscatory, and violative of the Constitution of the United States.

## Interstate Commerce.

The question of interstate commerce remains to be considered. It is claimed by the plaintiff and by several of the defendants who ask for similar relief, that the transactions carried on by the receiver namely the transportation of gas from Oklahoma to Kansas or Missouri, or from Kansas to Missouri, and the sale thereof, at points of destination, constitute interstate commerce; and further that under the facts disclosed by the record the Public Utilities Commission of Kansas in fixing the 28 cent rate has attempted to directly regulate and control this interstate commerce, and has imposed a substantial burden thereon, and for these reasons the enforcement of its order should be enjoined.

On the other hand, counsel for the commission state their position thus:

906 "Our position is, however, that the receiver being a public utility under the laws of Kansas, and actually engaged in a domestic and local business within the State, and employing local franchise in the local sale and distribution of gas, thereby commingling its property with the general property of the state, is unquestionably engaged in intrastate commerce, and has unquestionably taken away from the transaction of importing gas into the State and the sale of the same to customers, all of the interstate features which might have existed had the company not employed local agencies for the sale of gas in said state."

It is further claimed on the part of the commission that the question in interstate commerce is *res adjudicata*, having been passed upon by the Supreme Court of the State of Kansas in the case of the State *ex rel. v. Flannelly*, 96 Kan. 372.

This contention on the part of the defendant that the question of interstate commerce is *res adjudicata* was presented to the enlarged court, and argued at length, upon the application for a preliminary injunction. That court in its opinion took occasion to discuss the matter, and reached the conclusion that the question was not *res adjudicata*. It is not necessary to repeat what was then said, but it will be sufficient simply to make reference thereto. See 234 Fed. 152.

It is earnestly contended, however, by counsel for the commission that sufficient consideration was not given by the court to the fact that the State Supreme Court of Kansas upon the first hearing in the mandamus matter, No. 21324, though denying the writ, nevertheless retained jurisdiction. The position of counsel for the commission seems to be that the retention of jurisdiction by the State Supreme Court involved necessarily a finding on the question of interstate commerce, and rendered that question *res adjudicata*.

There are at least two answers to this contention. First, the retention of jurisdiction by the State Supreme Court in the mandamus matter was not necessarily based upon such a finding as is now claimed, for there was in the mandamus proceeding another independent matter which did not necessarily involve the question of in-

907     terstate commerce, namely, the character of the service which the receiver should be compelled to furnish. The mandamus petition contained a distinct prayer for relief in regard to this latter matter. On the first hearing the court could grant no relief in respect to this matter for the same reason that it could grant no relief in regard to the rate matter, namely, that there was before it no order made by the commission. That the Supreme Court retained jurisdiction in the mandamus proceeding, partly at least on account of this matter of service is apparent from the opinion of the court rendered on the second hearing. At this time also it appeared that the commission had made no order in regard to the character of the service. The Supreme Court said:

“Since it is now conceded that the Public Utilities Commission has made no order requiring the defendants to furnish better or more efficient service the court would not be justified in granting the writ nor in longer retaining the proceeding.”

Second, there was in the mandamus proceeding no “final judgment” entered of such a character as would render any question in the proceedings *res adjudicata*, or which could be carried by the receiver to the Supreme Court for review.

See *Louisiana Nav. Co. v. Oyster Commission*, 226 U. S. 99.

*McLish v. Roff*, 141 U. S. 661.

Furthermore the Fidelity Title and Trust Company, trustee under the mortgage made by the Kansas Natural Gas Company, was not a party to the mandamus proceeding, and was not bound by the judgment entered therein; and it might in subsequent litigation to which it was a party, raise any of the questions involved in the mandamus proceeding. See

*Keokuk Western R. R. v. Missouri*, 152 U. S. 301.

*Old Colony Trust Co. v. Omaha*, 230 U. S. 100.

*Louisville Trust Co. v. Cincinnati*, 76 Fed. 296.

*Williamson v. City of Clay Center*, 237 Fed. 329.

The Trust Company is a party to the present suit, and has at all stages insisted that the business carried on by the receiver is interstate commerce, and not subject to the regulation or control of the Public Utilities Commission of Kansas.

908     It is also claimed by the defendant commission that the plaintiff is estopped, because the proposition of law contended for by him as to interstate commerce, and the authority of the defendant commission, have been settled in this suit. The case relied upon by counsel for the commission in support of this contention, is *McKinney v. Landon*, 209 Fed. 300. A careful reading of the decision in that case will show that the questions therein involved and decided were by no means identical with or decisive of the questions involved in the case at bar touching interstate commerce.

The questions in reference to this matter of interstate commerce arising in the present case are: (A) is the plaintiff in transacting the business of transporting and selling gas, engaged in interstate commerce? (B) If the business thus transacted is interstate com-



merce, is it nevertheless of such a local character that the State may impose regulations and burdens upon the same? (C) Is the fixing of the 28 cent rate at which gas may be sold, in fact imposing upon interstate commerce a burden or a regulation such as the State is not authorized to impose?

(A) In determining the question whether the transactions carried on by the receiver constitute interstate commerce, it will be helpful to have clearly in mind just what those transactions are. The Supreme Court of the State of Kansas in *State ex rel., Flannelly*, supra, has stated the matter as follows:

"The gas sold by the receivers is produced in both Kansas and Oklahoma. It is transported from the wells through pipe lines beginning in Oklahoma, entering the State of Kansas near Coffeyville, at which place gas is first distributed and sold to consumers. The remainder is transported north through pipe lines into which gas from wells in Kansas is conveyed, and the gas from Oklahoma and Kansas is then transported through the same pipe lines and through compressing stations to Independence and north and east throughout this state, and after supplying the consumers in this state, it is transported into the state of Missouri, where it is sold to other consumers. After the gas from this state is discharged into the pipe lines with the gas from Oklahoma, it is impossible to distinguish one from the other or to separate one from the other. About 85 per cent 909 of the gas sold is produced in Oklahoma, and 15 per cent is produced in Kansas. About 60 per cent of the gas sold is sold in Missouri and 40 per cent is sold in Kansas. The gas sold in Kansas is delivered to the consumers thereof, in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities, fixing the rates charged customers for gas. These distributing companies act as agents for the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Company, under the control of the receivers, into the pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers. The gas is consumed as fast as it is sold, and is consumed immediately after passing through the meter measuring the gas to consumers."

Since the decisions in *Haskell v. Kansas Natural Gas Co.*, 224 U. S. 217; *West v. Kansas Natural Gas Co.*, 221 U. S. 229 and *Haskell v. Cowhan* 187 Fed. 403 it can no longer be open to question that natural gas is a subject of interstate commerce. And it seems to have been admitted by the Supreme Court of Kansas in *State ex rel., Flannelly* supra, and also seems to be admitted by counsel for the commission on the case at bar, that transportation of natural gas by the receiver from Oklahoma into Kansas and thence into Missouri, or from Kansas into Missouri, is interstate commerce; but it is claimed that at some point before the gas reaches the final con-

sumer the transaction has ceased to be interstate commerce, and has lost its character as such. Just at what point this interstate commerce transaction loses its character as such, the Supreme Court of the State of Kansas and counsel for the commission are not in harmony. The State Supreme Court in the case above cited, adopted the original package idea, and attempted to apply it to the transaction in question. It said:

910 "The original package of gas is broken when the first gas is taken out of the pipe lines, and sold in this State. Thereafter the gas ceases to be an article of interstate commerce."

And again:

"Interstate commerce is at an end when the bulk of the imported gas is broken up for indiscriminate distribution to individual purchasers at retail sale."

Counsel for the commission, however, have repudiated the original package idea, and in their brief state:

"There is no original package where the transportation is conducted by means of a pipe line. Gas so conducted is not susceptible of delivery in original package."

The position of counsel for the commission appears to be that the transaction loses the character of interstate commerce when the gas passes from the pipe lines of the receiver to the lines of the local distributing companies. Nor do counsel for the commission appear to lay much stress on the fact that about six per cent of the gas distributed in Kansas originates in the same state. In their brief they state:

"We say simply that the character of this service cannot be destroyed or explained away by the fact that any amount, or indeed, all the amount of the gas distributed locally by the Kansas Natural Gas Company and its agents was obtained in other states than Kansas. Such service is still a local service not interstate in its character and is subject to local regulation."

Bearing in mind the character of the business actually carried on by the receiver and the contentions of the parties in reference to the same, let us examine some of the adjudicated cases:

Most of the cases which involve the question whether a particular transaction constitutes interstate commerce deal with three separate parties: A shipper, a carrier, and a consignee. The language used in the cases is usually framed in reference to that state of affairs. However, as will be noted later on, the existence of three such separate parties, is not essential to an interstate transaction.

911 The following propositions which have a bearing upon the instant case, seem to be well established:

(1) Interstate commerce begins when the goods are delivered to the carrier for transit from a point in one state to a point in another state, or are actually started on their ultimate passage.

Coe v. Errol, 116 U. S., 517, 525.

General Oil Co. v. Crain, 209 U. S., 211, 229.

T. & N. O. C. v. Sabine Co., 227 U. S., 111.

La. Ry. Comm. v. Ry., 229 U. S. 336.

Ill. Cent. Ry. Co. v. La. Ry. Comm., 236 U. S. 157.

McClusky v. Ry., 242 U. S.

(2) Interstate commerce ends when the shipment reaches its intended destination, and except where Congress has expressly otherwise provided, the protection afforded to an interstate shipment includes the right to sell by the person introducing the goods; at least, up to the time when they have become commingled with the general property of the state; and where the goods are introduced in the original packages; commingling does not take place until the original package is broken.

Brown v. Maryland, 12 Wheat., 419.  
 Am. Exp. Co., v. Iowa, 196 U. S. 133.  
 Savage v. Jones, 225 U. S. 501, 520.

(3) The intent and purpose of the party making the shipment have an important if not controlling bearing upon the question of where the interstate journey ends.

Swift & Co. v. United States, 196 U. S. 375.  
 So. Pac. Term. Co. v. Int. Com. Com., 219 U. S. 498.  
 Ohio Ry. Com. v. Worthington, 225 U. S. 101.  
 T. & N. O. R. Co. v. Sabine Co., 227 U. S. 111.  
 La. Ry. Com. v. Ry., 229 U. S. 335.  
 Ill. Cent. Ry. v. La. R. R. Com., 236 U. S. 157.  
 United States v. Ill. Cent. Ry., 230 Fed. 940.

(4) A change of carriers or plurality of carriers does not affect the status of the interstate shipment:

T. & N. O. R. Co. v. Sabine Co., 227 U. S. 111.  
 So. Covington Ry. v. Covington, 235 U. S. 537.  
 Atchison Ry. v. Harold, 241 U. S. 371.

912 (5) Change of ownership of the property during transit does not necessarily affect the status of the shipment.

Swift & Co. v. United States, 196 U. S. 375.  
 Gulf Ry. v. Texas, 204 U. S. 403.  
 Atchison Ry. v. Harold, 241 U. S. 371.

(6) Employment of an agent at the point of destination to effect delivery to the ultimate consignee does not destroy the character of the shipment.

Caldwell v. N. C., 187 U. S. 622.  
 Rearick v. Pennsylvania, 203 U. S. 507.  
 Stewart v. Mich., 232 U. S. 665.  
 Davis v. Va., 236 U. S. 697.  
 Grand Union Tea Co. v. Evans, 216 Fed. 791.

(7) The time and place at which the title to the goods passes as between the seller and buyer is not controlling upon the character of the shipment.

Norfolk Ry. v. Sims, 191 U. S. 441.  
 Penn. R. R. v. Coal Co., 238 U. S. 456, 468.  
 Penn. R. R. v. Sonman Co., 37 S. C. R. 46.

(8) The parties, shipper, carrier, and consignee may be three separate parties, or a less number.

Kelly v. Rhoads, 188 U. S. 1.

Rearick v. Penn., 203 U. S. 507.

Ohio R. R. Com. v. Worthington, 225 U. S. 101.

Stewart v. Michigan, 232 U. S. 665.

Oil Pipe Line Cases, 234 U. S. 548.

Kirmeyer v. Kansas, 236 U. S. 568.

City of Lee's Summit v. Jewell Co., 217 Fed. 965.

(9) Absence of a specific consignee at the time of shipment does not alter the character of the shipment.

Swift & Co. v. United States, 196 U. S. 375.

T. & New Orleans R. Co. v. Sabine Co., 227 U. S. 111.

Grand Union Tea Co. v. Evans, 216 Fed. 791.

(10) The exact destination need not be fixed at the time of the shipment provided the intent and purpose is to continue the journey beyond the limits of the state in which the journey begins.

Ohio R. R. Co. v. Worthington, 225 U. S. 101.

T. & N. O. R. Co. v. Sabine Co., 227 U. S. 111.

913      Reverting to the character of the business transacted by the receiver, it is to be noted:

(a) That the shipment is started on its journey from one state to another, (b) with the purpose that it shall be delivered to a consumer, (c) that it moves continuously from a point of shipment in one state to the consumer in another state, (d) that it is moved part of the way in the pipe lines of the receiver, and part of the way in the pipe lines of the distributing company; whether as agent of the receiver or as connecting carrier is immaterial. (e) The destination of the shipment is intended at the time of the shipment to be beyond the state, although the name of the particular consumer for any specific portion of the gas shipped is not known. (f) There is no stoppage in transportation. (g) The title to the gas remains in the receiver until delivery to the ultimate consumer.

In substance and effect there are continuing orders by the consumers to the receiver through the distributing company to supply them with gas from the Oklahoma fields. Such transactions have the character of interstate commerce at their inception, and this character continues until final delivery.

Crenshaw v. Arkansas, 227 U. S. 389 and cases cited.

Even though the shipment is started before a definite order for a specific amount is given, still, the continuous and usual course of business determines the character of the shipment.

Swift & Co. v. United States, 196 U. S. 375.

Grand Union Tea Company v. Evans, 216 Fed. 791.

Applying the foregoing principles to the facts in the case at bar, the conclusion follows that the transportation of gas carried on by

the receiver is interstate commerce, and that the character of the business inheres from the beginning of the journey in Oklahoma to the termination thereof at the burner tips in Kansas or Missouri.

(B) It is claimed, however, by the commission, as above noted, that though the business of transporting gas by the receiver from Oklahoma to Kansas and Missouri may be interstate commerce, in its inception, nevertheless, it loses that character by reason of the

914 local service in distributing the same in Kansas. This contention cannot be sustained. Local incidental service at the initial point of the journey does not prevent the interstate character from attaching to the shipment; nor does a similar incidental local service at the end of the journey destroy that character.

So. Pac. Term. Co. v. I. C. C., 219 U. S. 498.

United States v. Ill. Cent., 230 F. 940.

Penn. R. Co. v. Clark Co., 238 U. S. 456, 465-8.

So. Ry. v. Prescott, 240 U. S. 632.

Penn. Ry. Co. v. Sonman, 242 U. S.

Grand Union Tea Co. v. Evans, 216 F. 791.

City Lee Summit v. Jewel Co., 217 Fed. 965.

Nor is the business carried on by the receiver though interstate commerce in character, of such inherent local nature, that it is subject to the regulation and control that is sought to be imposed by the state in the instant case. It is not always easy to determine where the line must be drawn between that exertion of state power in reference to interstate commerce, which is allowable on the one hand, and that which is forbidden on the other.

In *Leisy v. Hardin*, 135 U. S. 100, the court said in its opinion on page 119:

"Where the subject is national in its character and admits and requires uniformity of regulation, affecting alike all the states such as transportation between the States, including the importation of goods from one State into another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed and the property imported has mingled with and become a part of the general property of the State, that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the

import until thus mingled."

915 It is true that property, though started as an interstate shipment, may, between the point of shipment and the point of ultimate destination cease to be the subject of interstate commerce, and become subject to state action. The length and the purpose of the interruption of the transit are to be considered in determining the question.

*Diamond Match Co. v. Ontonagon*, 188 U. S. 82.

*Gen. Oil Co. v. Crain*, 209 U. S. 211, 229.

Incidental stoppage is immaterial:

Kelly v. Rhoads, 188 U. S. 1.

Swift & Co. v. United States, 196 U. S. 375.

It is also true that though the shipment at its destination be unsold and still retain its character of interstate shipment, it may nevertheless be subject to certain State action; for example, taxation in connection with taxation of general property throughout the state.

Woodruff v. Parham, 8 Wall. 123.

Brown v. Houston, 114 U. S. 622.

Also to inspection. But this must not be of such a character as to unduly burden interstate commerce.

Minn. v. Barber, 136 U. S. 313.

Patapasco Co. v. Brd. of Agric., 171 U. S. 345, 356.

But state action is not permissible in certain other directions; for example, prohibition of the sale of the goods, except by express authority through congressional enactment.

Leisy v. Hardin, 135 U. S. 100.

Bowman v. Ry., 125 U. S. 465.

Lyng v. Michigan, 135 U. S. 161.

Even in the matter of taxation state action is not allowable which places taxation upon "the occupation of doing a business" interstate in character.

Le Loup v. Port of Mobile, 127 U. S. 640, 648.

Asher v. Texas, 128 U. S. 129.

The distinction between permissible and non-permissible state action lies in "the nature and operation of the particular exertion of state authority."

Am. Steele & Wire Co. v. Speed, 192 U. S. 500.

In the case of the State Freight Tax, 15 Wall. 232, the rule was announced in the following language:

916 "Whenever the subjects over which a power to regulate is asserted are in their nature national, or admit of one uniform system or plan of regulation, they may be justly said to be of such a nature as to require exclusive legislation by Congress. Surely, transportation of passengers or merchandise through a state or from one state to another, is of this nature.

In the case of South Covington Ry. Co. v. Covington, 235 U. S. 537, the court in passing upon a municipal ordinance governing and regulating street cars running between that city and Cincinnati, Ohio, said with reference to one of the sections making it unlawful for the company to permit to ride in its cars more than one third of the number of passengers over and above the number for which seats were provided therein, stated as follows:

"If Covington can regulate these matters, certainly Cincinnati can, and interstate business might be impeded by conflicting and



varying regulations in this respect, with which it might be impossible to comply. On one side of the river one set of regulations might be enforced and on the other side quite a different set, and both seeking to control a practically continuous movement of cars. As was said in *Hall v. De Cuir* 95 U. S. 485, 489, 'commerce cannot flourish in the midst of such embarrassments.' "

"We need not stop to consider whether Congress has undertaken to regulate such interstate transportation as this, for it is clearly within its power to do so, and absence of Federal regulation does not give the power to the State to make rules which so necessarily control the conduct of interstate commerce as do those just considered."

As to the character of the business of transportation of natural gas, the Circuit Court of Appeals of this circuit has spoken as follows in the case of *Haskell v. Cowham* 187 Fed. 403, 408.

"Interstate commerce in natural gas including therein its transportation among the states by pipe line is a subject national in its character and susceptible of regulation by uniform rules. The silence or inaction of Congress relative to such a subject is a conclusive indication that it intends that interstate commerce therein shall  
917 be free and any law or act of a state or its officers which prohibits it or substantially restrains its freedom is violative of the constitution and void. *Welton v. State of Missouri* 91 U. S. 275, 282, 23 L. Ed. 347; *Brown v. Houston* 114 U. S. 622, 631 5 Sup. Ct. 1091, 29 L. Ed. 257; *Walling v. Michigan*, 116 U. S. 446, 455, 456, 6 Sup. Ct. 454, 29 L. Ed. 691; *Case of the State freight tax* 15 Wall. 232, 21 L. Ed. 146."

This case was cited with approval in *West v. Kansas Natural Gas Company* 221, U. S. 229.

If anything further than the foregoing statement as to the character of the business actually carried on, and the application thereto of above cited authorities, were necessary in order to establish that the business carried on by the receiver is interstate in its character, and of such a nature as not to be properly susceptible of or subject to local state regulations such as the 28 cent rate order, we have the statement of the Public Utilities Commission itself in its opinion of July, 1915, which opinion concluded with the following language:

"It developed upon the hearing that more than half the natural gas supplied and marketed by complainants is sold in the State of Missouri. It is conveyed by means of pipe lines passing through Kansas City, St. Joseph and other cities in our sister state. It would be manifestly unfair to permit complainants to advance the price of gas to their Kansas patrons unless a corresponding increase were made to consumers in Missouri. It is conceded that an advance in Kansas without a similar one in Missouri would be unavailing for the purposes contemplated by complainants, and they do not desire any advance in Kansas except as it may be simultaneous with a corresponding one in Missouri."

"This Commission, therefore, awaits the pleasure and action of the rate-regulating body or bodies of Missouri having jurisdiction of the subject matter; and if in that State proper and necessary orders be issued establishing a schedule of rates as herein outlined, an order,



effective, if possible, simultaneously, will be issued by this Commission in accordance with the views herein expressed."

918 The same conclusion was apparently reached by the Supreme Court of the State of Kansas, in *ex rel. Flannelly* 96 Kansas, 372, when in its opinion the court said:

"The last question for our consideration concerns the legality of the rates, both those that are in existence at the present time and those named in the opinion of the commission. The commission finds that where the net price of gas to consumers is now 25 cents per thousand cubic feet, the rate should be increased to 28 cents. This, in effect, is a finding that the rates now in existence are not compensatory. It then became the duty of the commission to fix compensatory rates, taking into consideration the gas sold in Missouri, assuming that compensatory rates will be fixed in Missouri. However, we may say that obedience to law in making rates in Kansas cannot legally be made dependent on obedience to the same law in Missouri."

The State of Kansas itself has thus realized that the business carried on by the receiver is of such character that the fixing of rates thereon is not a merely local matter.

Furthermore, control over the supply of gas is not within the power of the commission. The supply is an important element, however, in the fixing of rates. This state of affairs militates strongly against a conclusion that the business is of such character as to be properly subject to state control in the matter of rates.

The case of *Manufacturers Heat & Light Company v. Ott*, 215 Fed. 940, relied upon by the defendant commission, must be disregarded if it conflicts with the decisions above cited, for these decisions are binding upon this court. It may, however, in my opinion, be distinguished by the fact that the great bulk of the business transactions considered in that case were concededly intrastate, and the portion claimed to be interstate of very minor importance; whereas in the instant case exactly the reverse of those facts is true.

It is true that about six per cent of the gas delivered by the receiver in Kansas is produced in Kansas, but this cannot alter the general situation.

Where a substantial part of a business is interstate commerce, the imposition of burdens and regulations thereon by state action cannot be justified by the fact that a portion of the business thus sought to be controlled and regulated is intrastate.

See

*Le Loup v. Port of Mobile*, 127 U. S., 640, 647.

*Norfolk Ry. v. Penn.* 136 U. S., 114-119.

*Crutcher v. Ky.* 141 U. S., 47, 59.

*Galveston Ry. v. Texas*, 210 U. S., 217, 228.

*W. U. Co., v. Kansas*, 216, U. S., 1.

*Williams v. Talladega*, 226 U. S., 404, 419.

It is claimed by the defendant commission that the inaction of Congress, in view of the character of the business, is an indication that it was intended that state action such as is involved in the instant case, might properly be exercised. Here again it is not always easy

to draw a hard and fast line between cases in which, in the absence of congressional action, the State may properly act, and those in which it may not act.

In the Minnesota Rate cases, 230 U. S., 352, the court in reference to this subject used the following language:

"The principle which determines this classification underlies the doctrine that the State cannot under any guise impose direct burdens upon interstate commerce. For this is but to hold that the states are not permitted directly to regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the national legislature constitutionally ordains."

Even in the absence of congressional action, the exercise of state authority over interstate commerce does not extend to the fixing of rates for the transportation of goods in such commerce. This doctrine was announced before the establishment of the interstate commerce commission, and applies not merely to cases where that commission has jurisdiction in reference to rates, but also in the absence of such jurisdiction.

Wabash Ry. Co. v. Ill. 118 U. S. 557.

L. N. R. v. Eubank, 184 U. S. 27.

Ohio Ry. Comm. v. Worthington 225 U. S. 101.

In the case of Railroad Commission of Ohio v. Worthington 225 U. S. 101, the following language is used:

920 "It is not necessary to review the cases in this court which have settled beyond peradventure that the national government has exclusive authority to regulate interstate commerce under the Constitution of the United States; nor to do more than reaffirm the equally well settled proposition that over interstate commerce transportation rates the state has no jurisdiction and that an attempt to regulate such rates by the state or under its authority is void.

The conclusion reached therefore, is that the interstate commerce in which the receiver is engaged is not of a local nature; and is not, even in the absence of action by Congress subject to burdens or regulations imposed by state action, which are substantial rather than incidental in their nature.

(C) Is the fixing of the 28 cent rate by the Public Utilities Commission in the present controversy a burden or a regulation upon interstate commerce such as the state is not authorized to impose.

It is not necessary to review the many cases deciding what constitutes a burden upon or a regulation of interstate commerce. Reference may simply be made to the following amongst a great number.

State Freight Tax cases 15 Wall. 232.

Western U. Tel. Co. v. Kansas 216 U. S. 1.

International Text Book Co., v. Pigg 217 U. S. 91.

Bucks Stove Co. v. Vickers, 226 U. S. 205.

Minn. Rate cases 230 U. S. 352.

Sioux Remedy Co. v. Cope. 235 U. S. 197.

It appears from the evidence in the case that gas transported by the receiver from Oklahoma costs at the initial point five to seven cents per thousand cubic feet. The difference between this cost price and the selling price to the consumer is largely, if not wholly, made up of the cost of transportation. It would seem to require no argument to establish that any states or order fixing the price at which gas may be sold to the ultimate consumer is, under the circumstances disclosed by the present record, in fact, a fixing of rates for the transportation of the gas. If this be the case, then under the authorities heretofore cited, state action fixing such rates is not authorized. It being a direct burden upon and a direct attempt to regulate interstate commerce.

921 It is true the cases cited involved rates by common carriers, but as already noted, interstate commerce is equally protected whether engaged in by a common carrier or by individuals.

That the 28 cent rate is in reality a transportation rate and so intended by the commission is also shown by the method adopted by the commission in fixing the rate, viz: First, dividing the property used by the receiver in his business into two parts, that used in production, and that used in transportation, and then using the valuation of the latter only as a basis for fixing the rate.

In its opinion upon the preliminary injunction the enlarged court used the following language:

"That the enforcement by a state through its officers of any legislative act preventing interstate commerce in this article of interstate commerce, either by a direct prohibition of such commerce in this article by state law, or by an inhibition of a sale of the article in the state at any rate price whatever, or at any price above a price so low that the laws of trade made it impossible to purchase or procure it in another state and to sell and deliver it in the prohibiting state at that price with profit, substantially burdens and unduly interferes with interstate commerce, in violation of the commerce clause of the Constitution of the United States."

To the foregoing statement may be added, perhaps as a corollary, that whenever a state under the guise of fixing prices at which an article of interstate commerce brought into the state may be sold by the introducer upon its arrival at destination, in reality thereby necessarily fixes or regulates the rate of transportation of such article from its initial point to the point of destination, such action by the state in fixing the sale price is an attempt to directly burden and regulate interstate commerce, and is, therefore, unauthorized.

When tested by either or both of the last stated principles, the 28 cent rate order of the Public Utilities Commission of Kansas, dated December 10, 1915, made under an assumed authority from the state, is found to be an attempt to directly and unduly burden and regulate interstate commerce, and is therefore, unauthorized.

922 This does not necessarily mean that the receiver or the company after the receivership can fix rates at their discretion. There still remain remedies for unreasonable rates.

See *Covington Bridge Co. v. Ky.* 154 U. S., 204, 222.

To sum up the foregoing, it is held:

First, that the rates in force on January 1, 1911, under the laws of Kansas 1911, Chapter 238, Section 30, for the sale and delivery of natural gas by the receiver of the Kansas Natural Gas Company to consumers in Kansas, either directly or through intermediaries, were on December 10, 1915, and still are noncompensatory, unreasonably low, confiscatory, and violative of the Constitution of the United States.

Second, that the new rates fixed by the Public Utilities Commission of Kansas by its order of December 10, 1915, known as the 28 cent rate order, for the sale and delivery of natural gas by the receiver of the Kansas Natural Gas Company, either directly or through intermediaries were on said date and still are non-compensatory, unreasonably low, confiscatory and violative of the Constitution of the United States.

Third, that Section 30, Chapter 238, Laws of Kansas, 1911, in so far as it attempted to fix rates for the sale and delivery of natural gas, by the receiver of the Kansas Natural Gas Company, to consumers in Kansas, either directly or through intermediaries, was an attempt directly and unduly to burden and regulate interstate commerce, and therefore, unauthorized and void.

Fourth, that the so-called 28 cent rate order by the Public Utilities Commission of Kansas, dated December 10, 1915, made under an assumed authority from the state, is an attempt to directly and unduly burden and regulate interstate commerce and is, therefore, unauthorized and void.

Plaintiff is entitled to have the preliminary injunction heretofore granted made permanent.

The court expressly reserves jurisdiction over the parties to the suit and over the other issues involved therein until further order is made in reference thereto.

923 A decree may be prepared in accordance with the foregoing decision.

WILBUR F. BOOTH, *Judge*.

Filed in the District Court on April 21, 1917. Morton Albaugh, clerk.

924 In the District Court of United States, District of Kansas,  
First Division.

In Equity.

No. 136-N.

JOHN M. LONDON, as Receiver of the Kansas Natural Gas Co.,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Decree.*

Against Public Utilities Commission of Kansas, et al.

924½ In the District Court of United States, District of Kansas,  
First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Decree.*

This cause came on to be further heard at this term and was argued by counsel. And thereupon, upon consideration thereof it was

Ordered, adjudged and decreed as follows:—namely:

First. That the rates in force on January 1, 1911, under the laws of Kansas, 1911, Chapter 238, Section 30, for the sale and delivery of natural gas by the receiver of the Kansas Natural Gas Company to consumers in Kansas, either directly or through intermediaries, that is to say, to consumers at the following places and the cents below named:

Independence .....	\$.20	Baldwin .....	.25
Elk City .....	.25	Lawrence .....	.25
Coffeyville .....	.20	Topeka .....	.25
Liberty .....	.25	Tonganoxie .....	.25
Altamont .....	.25	Leavenworth .....	.25
Oswego .....	.25	Atchison .....	.25
Columbus .....	.25	Wellsville and LeLoup...	.25
925 Scammon .....	.25	Edgerton .....	.25
Weir City .....	.25	Gardner .....	.25
Galena and Empire .....	.25	Lenexa .....	.25
Cherokee .....	.25	Merriam and Shawnee...	.25
Pittsburg .....	.25	Kansas City .....	.25
Parsons .....	.25	Olathe .....	.25
Colony .....	.25	Ft. Scott .....	.30
Welda .....	.25	Moran .....	.30
Richmond .....	.25	Bronson .....	.30
Princeton .....	.25	Caney (Not now supplied)	—
Ottawa .....	.25		

were on December 10, 1915, and thereafter and still are non-compensatory, unreasonably low, confiscatory and violative of the

first clause of the Fourteenth Amendment to the Constitution of the United States.

Second. That the new rates fixed by the Public Utilities Commission of the State of Kansas by its order of December 10, 1915, known as the "twenty-eight cent rate" order for the sale and delivery directly or through intermediaries, of natural gas by the Receiver of the Kansas Natural Gas Company to consumers in Kansas, that is to say, for domestic gas in Montgomery County, 23 cents per thousand cubic feet except at Elk City, where the present rate of 25 cents is to remain; boiler gas in said county 10 cents per thousand cubic feet. In all other counties or cities, except those supplied by the Gunn pipe line 28 cents per thousand cubic feet; in the cities supplied by the Gunn pipe line, the present rate of 30 cents per thousand cubic feet; and on all boiler gas, except in Montgomery County, 12½ cents per thousand cubic feet," were on said date and still are, non-compensatory, unreasonably low, confiscatory, and violative of the First Clause of the Fourteenth Amendment to the Constitution of the United States.

Third. (a) That the great bulk of the business transacted by the Receiver of the Kansas Natural Gas Company is interstate commerce of a national character, and not of a local nature.

(b) That Section 30, Chapter 238, Laws of Kansas, 1911, in so far as it attempts to fix rates for the sale and delivery of natural gas by the Receiver of the Kansas Natural Gas Company, either directly or through intermediaries, to consumers in Kansas, was and still is an attempt directly and unduly to burden and regulate interstate commerce, and therefore, unauthorized and void; and

(c) That the so-called twenty-eight cent rate order issued by the Public Utilities Commission of Kansas, dated December 10, 1915, made under assumed authority from the State of Kansas, is an attempt to directly and unduly burden and regulate interstate commerce and is unauthorized and void.

Fourth. That the preliminary injunction heretofore granted herein, was proper and providently issued.

Fifth. That because the rates above specified are non-compensatory, unreasonably low, confiscatory, and violative of the first clause of the 14th Amendment to the Constitution of the United States, and

Because Section 30, Chapter 238, Laws of Kansas, 1911, insofar as it attempts to fix rates for the sale and delivery of natural gas by the Receiver of the Kansas Natural Gas Company either directly or through intermediaries to consumers in Kansas; and the so-called 28-cent rate order issued by the Public Utilities Commission of Kansas, dated December 10, 1915, are each of them an attempt to directly and unduly burden and regulate interstate commerce; the plaintiff and the cross-complainants, Kansas Natural Gas Company, George F. Sharitt as Receiver of the Kansas Natural Gas Company, and the Fidelity Title & Trust Company and L. G. Treleven as receiver of the Consumers Light, Heat & Power Company, The Wyandotte County Gas Company, and other defendants seeking the same



relief, and each of them are entitled to have the preliminary injunction heretofore granted made permanent.

Sixth. That the Public Utilities Commission of the State of Kansas, Joseph L. Bristow, C. F. Foley, and John M. Kinkel as members of said Public Utilities Commission of Kansas, H. O. Caster, as Attorney of said Public Utilities Commission of Kansas, S. M. Brewster as Attorney General of the State of Kansas, and all other parties to this suit, and all the agents, attorneys, servants and employees of each and all of them, are hereby perpetually enjoined and prohibited from putting into force or maintaining in effect, or attempting to put in force and maintain in effect, by legal proceedings or otherwise, against John M. Landon as Receiver of the Kansas Natural Gas Company, Kansas Natural Gas Company, or George

F. Sharitt, Receiver thereof, or the Fidelity Title & Trust  
928 Company, or L. G. Treleaven, as Receiver of the Consumers

Light, Heat & Power Company, The Wyandotte County Gas Company, or other parties hereto seeking the same relief as plaintiff, the rates prescribed in the Commission's order of December 10, 1915, or the rates in force on January 1, 1911, prescribed by Section 30, Chapter 238 of the Laws of Kansas, 1911, or any other rates hereafter prescribed by said Public Utilities Commission of Kansas or the state of Kansas, for the sale or distribution of natural gas transported from the State of Oklahoma to consumers within the State of Kansas, and from enforcing or causing the enforcement of by legal proceedings or otherwise, against the plaintiff, The Kansas Natural Gas Company, George F. Sharitt, Receiver, or the Fidelity Title & Trust Company or L. G. Treleaven as receiver of the Consumers Light, Heat & Power Company, The Wyandotte County Gas Company, or other parties hereto seeking the same relief as plaintiff, or their agents, attorneys, servants or employees, any penal provisions of Section 28, Chapter 238 of the Laws of Kansas, 1911, or any laws of the State of Kansas on account of the failure or refusal by them or either of them to put into force or maintain in effect such rates or any of them.

Seventh. That this court reserves jurisdiction to make upon proper showing, any or all of the other defendants herein, at any time during the pendency of this suit, subject to the terms of the permanent injunction hereby granted.

Eighth. That the plaintiff, and the Fidelity Title & Trust Company, recover from the defendants, the Public Utilities Commission of Kansas, Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as members of said Public Utilities Commission of Kansas, H. O. Caster, as attorney of said Public Utilities Commission of

929 Kansas, S. M. Brewster as attorney general of the state of  
Kansas, their costs herein expended, including the cost of final record, taxed at \$— but that the clerk's costs and charges against plaintiff be paid in the first instance by plaintiff.

Ninth. That this court reserves jurisdiction over all the parties to the suit and over the other issues involved herein until further order is made in reference thereto.



Nothing contained in this decree, nor in the opinion upon which it is based, shall be construed as determining the rights of any of the Missouri defendants, touching the question of interstate commerce, or the status of the Distributing Companies' contracts in Kansas or Missouri.

WILBUR F. BOOTH, *Judge*.

July 5, 1917.

Filed in the District Court on July 5, 1917. Morton Albaugh, Clerk.

930

*Assignment of Errors*

On Behalf of the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel, and C. F. Foley, Members of the Public Utilities Commission for the State of Kansas, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas.

And now come Joseph L. Bristow, John M. Kinkel and C. F. Foley, commissioners of the Public Utilities Commission for the state of Kansas, for the Public Utilities Commission for the state of Kansas, and H. O. Caster, attorney for said Commission, appellants, and make and file this their assignment of errors in their appeal herein:

I.

The district court of the United States for the district of Kansas erred in refusing to dismiss the bill of complaint in this action in said court for the reason that said court had no jurisdiction of said case.

II.

The said district court erred in refusing to direct the dismissal of said complaint for the reason that it appeared from said complaint and upon the record therein that a suit in which all of the matters sought to be drawn in controversy by said complaint were involved was pending in the supreme court of the state of Kansas at the time of the filing of said bill of complaint by the complainants therein, and that complainants had not and did not fully pursue the  
931 remedies available to them in said suit in the supreme court of the state of Kansas before filing the bill of complaint in the district court of the United States, and that the bill of complaint was defective and void for want of equity for said reasons.

III.

That the United States district court for the district of Kansas erred in not giving judgment for these defendants in the court below, now appellants, for the reasons mentioned in the foregoing as-

signment numbered II, upon the evidence adduced by the parties and the record in the final trial of said case.

#### IV.

That the United States district court for the district of Kansas erred in the *case* below in granting a temporary injunction in said cause as against these defendants, now appellants, on the ground that the rate fixed by the Public Utilities Commission for the state of Kansas for the distribution of gas by the complainant receiver to its patrons in the cities, towns, or other places in the state of Kansas was confiscatory and in violation of the constitution of the United States, in that the observing and putting into effect of said rate for the distribution of natural gas would amount to the taking of the property of the complainant receiver and the estate under his charge and control without due process of law and without compensation.

#### V.

The United States district court for the district of Kansas erred in the court below in giving judgment in favor of the complainants, now appellees, and against the appellants, in the final trial of said cause upon the evidence adduced and the record, for the reason given by the court that the rates fixed by the Public Utilities Commission for the state of Kansas for the distribution of natural gas to the patrons of the complainant receiver in the cities, towns and other places in the state of Kansas were confiscatory and in violation of the constitution of the United States, and that the putting into effect of said rates would amount to the taking of the property of the said complainant receiver without due process of law or compensation, in violation of the constitution of the United States, and that  
932 said rates were unreasonable and arbitrary and were unreasonably and arbitrarily fixed by the appellant Commission in violation of law and the constitution of the United States when judgment should have been rendered in favor of these appellants.

#### VI.

That the said United States district court for the district of Kansas erred in the court below in holding that the sale and distribution of gas in the manner in which the complainant receiver was engaged therein within the state of Kansas constituted interstate commerce and the engagement therein by the complainant receiver in the transactions involved in said case, and that the acts and conduct of said receiver involved in the transportation and sale of said natural gas to his patrons in the towns and cities of the state of Kansas and in other places therein constituted interstate commerce, and that the said business of transporting and selling natural gas to his patrons in the state of Kansas was not subject to the control of the Public Utilities Commission for the state of Kansas within and under the local laws of the state of Kansas.

## VII.

That the United States district court for the district of Kansas erred in determining that the rates prescribed by the Public Utilities Commission for the state of Kansas for the distribution of natural gas to the patrons of the complainant receiver were arbitrary, unreasonable and confiscatory and in violation of the constitution of the United States, as aforesaid, in that, in addition to other errors herein complained of, the court erroneously held that the cost and price of gas to the complainant receiver, delivered by vendors of the same to him at his pipe lines in Oklahoma and Kansas, was six cents per 1,000 cubic feet of gas, so delivered, whereas such findings were not supported by the evidence.

## VIII.

The said United States district court for the district of Kansas, in the case below, erred in holding in the final trial of said cause, for the purpose of amortizing the value of the property of the complainant receiver and hence determining the validity of the rates prescribed by the Public Utilities Commission for the state of Kansas for the transportation, delivery and distribution of gas by  
933 the complainant receiver, as aforesaid, that the probable life of the property of the complainant receiver then in his control was of the probable duration of five years, when in truth and in fact the value of said property and the just and legal amortization thereof for the purpose of fixing a return thereon should have been determined by the actual physical value and condition of said property, and the findings of the court were not sustained by the evidence adduced in said cause and the record therein.

## IX.

The United States district court for the district of Kansas erred in refusing to dismiss the complaint of the complainants in the case below in so far as the question of interstate commerce was involved and material and in refusing to consider said question and to determine said cause against complainants on the questions involved as to interstate commerce, for the reason that said questions of interstate commerce had been fully determined in cases previously brought and prosecuted between the same parties, who were parties to the case below, and because said question of interstate commerce and all the facts and circumstances relating thereto, as it appeared from the evidence adduced in said cause and the record therein, had become res adjudicata.

## X.

That the United States district court for the district of Kansas erred in holding the rates prescribed by the Public Utilities Commis-

sion for the state of Kansas for the sale and distribution of gas by the complainant receiver within the state of Kansas to be arbitrary, unreasonable, confiscatory and in violation of the constitution of the United States, as aforesaid, in addition to the other errors complained of herein, in that said court held and considered the cost of making extensions to the property owned by and in control of the complainant receiver for the purpose of improving the supply of gas to be chargeable as operating expenses in the maintenance of said property, whereas such expenses and cost of extensions of the pipe lines of the complainant receiver and other permanent improvements were properly and legally chargeable to the capital account of the said property and should not have been charged in the estimates made by the said court as against said property and its patrons as operating expenses.

934

## XI.

That the United States district court for the district of Kansas erred in the case below in that it appeared from the evidence adduced by the parties in said case and the record therein that the rates in controversy in said suit and complained of by the complainant receiver were voluntarily put into effect by said receiver, and that the receiver did not exact from his patrons within the state of Kansas as high a rate for the transportation and distribution of natural gas to them as he was entitled to charge for such services, and that for said reason the said complainant receiver should not have been permitted by the court in the case below to have contended that said rates were arbitrary, unreasonable, or confiscatory, or in violation of the constitution of the United States, and that the evidence in said case showed that said rates were reasonable, legal, and were not confiscatory or unconstitutional, but were fair and just to said complainant receiver and his patrons throughout the state of Kansas.

F. S. JACKSON,

H. O. CASTER,

*Attorneys for the Appellants.*

Kansas State Capitol, Topeka, Kan.

Filed in the district court July 5, 1917. Morton Albaugh, Clerk.

*Bond of the Public Utilities Commission on Appeal.*

(Bond No. 615,329.)

Know All Men by These Presents: That the Public Utilities Commission for the state of Kansas and the Fidelity and Casualty Company of New York *is* held and firmly bound unto John M. Landon, receiver of the Kansas Natural Gas Company, in the full and just sum of three thousand dollars to be paid to the said John M. Landon, his successors and assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and sev-

erally by these presents. Sealed with our seal- and dated this 26th day of May, A. D. 1917.

935       Whereas, Lately, and on the 21st day of April A. D. 1917, in the district court of the United States for the district of Kansas, first division, in a suit pending in such court between John M. Landon, receiver of the Kansas Natural Gas Company, vs. the Public Utilities Commission for the state of Kansas, and Joseph L. Bristow, John M. Kinkel, and C. F. Foley, members of said Commission, and H. O. Caster, its attorney, et al., judgment was rendered against the defendants, and the said defendants, The Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, its attorney, *has* obtained an order of the said court allowing an appeal from the decision of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John M. Landon, the Kansas Natural Gas Company, George F. Sharitt, receiver of the Kansas Natural Gas Company, and the Fidelity Title and Trust Company, citing and admonishing them to be and appear in the supreme court of the United States, at the city of Washington, sixty days from and after the date of said citation:

Now the condition of the above obligation is such, that if the said The Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of said Commission, and H. O. Caster, its attorney, shall prosecute said appeal to effect, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

Signed and sealed by the Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of the said Commission.

By H. O. CASTER,

*Their Attorney, and*

H. O. CASTER,

[SEAL.]

THE FIDELITY AND CASUALTY  
COMPANY OF NEW YORK,

By BERYL R. JOHNSON,

*Its Agent.*

Foregoing bond and surety thereon approved.

WILBUR F. BOOTH, *Judge.*

Endorsed: No. 136-N. John M. Landon, Rec., Plff., vs. The Public Utilities Comm. State of Kansas, et al., Defts. Bond on appeal. Filed July 5th, 1917. Morton Albaugh, Clerk.

THE PUBLIC UTILITIES COMMISSION OF THE STATE  
OF KANSAS ET AL., APPELLANTS

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NAT-  
URAL GAS COMPANY, ET AL.  
FILED SEPTEMBER 12, 1917

KANSAS CITY, MISSOURI, THE PUBLIC SERVICE COM-  
MISSION OF THE STATE OF MISSOURI ET AL., APPEL-  
LEES

JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.  
FILED SEPTEMBER 12, 1917

KANSAS CITY GAS COMPANY, THE WYANDOTT COOKING  
GAS COMPANY, ET AL., APPELLEES

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AS  
RECEIVER, GEORGE F. SMITH, ENGINEER, AND FREDERICK  
TITLE AND TRUST COMPANY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS ET AL., APPELLANTS

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NAT-  
URAL GAS COMPANY, ET AL.  
FILED SEPTEMBER 12, 1917

APPEALS FROM THE DECISIONS OF THE PUBLIC SERVICE  
COMMISSION OF THE STATE OF KANSAS





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936 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N. In Equity.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS; Joseph L. Bristow, C. F. Foley and John M. Kinkle, as the Public Utilities Commission of the State of Kansas; H. O. Caster, as Attorney for the Public Utilities Commission of the State of Kansas; S. M. Brewster, as Attorney-general of the State of Kansas; John T. Baker, as Attorney-general of the State of Missouri; William G. Busby, as Counsel for the Public Service Commission of the State of Missouri; The Public Service Commission of the State of Missouri; John M. Atkinson, Edwin J. Bean, John Kenish, Howard B. Shaw and Eugene McQuillan, as the Public Service Commission of the State of Missouri; John F. Overfield, as Receiver of the Kansas City Pipe Line Company, Fidelity Title and Trust Company, a corporation; Fidelity Trust Company, a corporation; Delaware Trust Company, a corporation; Kansas City Pipe Line Company, a corporation; George F. Sharritt, as Receiver of the Kansas Natural Gas Company; Kansas Natural Gas Company; St. Joseph Gas Company; The Union Gas and Traction Company; The Atchison Railway, Light & Power Company; The Leavenworth Light, Heat and Power Company; The Tonganoxie Gas and Electric Company; The Citizens Light, Heat and Power Company; L. G. Treleaven, Receiver; The Consumers Light, Heat and Power Company; The Kansas City Gas Company; The Wyandotte County Gas Company; The Olathe Gas Company; The Ottawa Gas and Electric Company; O. A. Evans and Company; The Parsons Natural Gas Company; The Elk City Oil and Gas Company; The American Gas Company; The Home Light, Heat and Power Company; The Carl Junction Gas Company; The Oronogo Gas Company; The Joplin Gas Company; The Weir Gas Company; The Cities of St. Joseph, Missouri; Weston, Missouri; Atchison, Kansas; Leavenworth, Kansas; Tonganoxie, Kansas; Topeka, Kansas; Lawrence, Kansas; Baldwin, Kansas; Ottawa, Kansas; Kansas City, Missouri; Kansas City, Kansas; Merriam, Kansas; Shawnee, Kansas; Lenexa, Kansas; Olathe, Kansas; Gardner, Kansas; Edgerton, Kansas; Wellsville, Kansas; Princeton, Kansas; Scipio, Kansas; Richmond, Kansas; Welda, Kansas; Colony, Kansas; Bronson, Kansas; Moran, Kansas; Fort Scott, Kansas; Deerfield, Missouri; Nevada, Missouri; Thayer, Kansas; Parsons, Kansas; Elk City, Kansas; Independence, Kansas; Coffeyville, Kansas; Liberty, Kansas; Altamont, Kansas; Oswego, Kansas; Columbus, Kansas; Scammon, Kansas; Weir City, Kansas; Cherokee, Kansas; Galena, Kansas; Pittsburg, Kansas; Carl Junction, Missouri; Oronogo, Missouri; Joplin, Missouri, Defendants.



*Appeal and Allowance.*

The above-named defendants, the Public Utilities Commission for the state of Kansas; Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of the Public Utilities Commission for the state of Kansas; H. O. Caster, attorney for the Public Utilities Commission for the state of Kansas, S. M. Brewster, attorney-general of the state of Kansas, and the defendant cities in the state of Kansas, conceiving themselves aggrieved by the order entered on July 5, 1917, in the above-entitled proceedings, do hereby appeal from said order to the supreme court of the United States, and they, and each of them, pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the supreme court of the United States.

H. O. CASTER,

FRED S. JACKSON,

*Attorneys for the Defendants and Appellants  
The Public Utilities Commission for the  
State of Kansas; Joseph L. Bristow, John M.  
Kinkle, and C. F. Foley, Members of the  
Public Utilities Commission for the State of  
Kansas, and H. O. Caster, Attorney for the  
Public Utilities Commission for the State of  
Kansas.*

Foregoing petition granted and appeal allowed.

WILBUR F. BOOTH, *Judge.*

Filed in the district court July 5, 1917. Morton Albaugh,  
Clerk.

*Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

To John M. Landon, as Receiver of the Kansas Natural Gas Company, The Kansas Natural Gas Company, George F. Sharitt, as Receiver of the Kansas Natural Gas Company, The Fidelity Title and Trust Company, and to each of the above-named defendants, except The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of said Commission, and H. O. Caster, its Attorney:

You, and each of you, are hereby cited and admonished to be and appear at the supreme court of the United States, to be holden at Washington, on the 4th day of August, nineteen hundred and seventeen, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of Kansas, first division,

938 wherein the Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, its attorney, are appellants, and John M. Landon, as receiver of the Kansas Natural Gas Company, the Kansas Natural Gas Company, George F. Sharitt, as receiver of the Kansas Natural Gas Company, and The Fidelity Title and Trust Company, are respondents, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Edward Douglass White, chief justice of the United States, this 5th day of July, in the year of our Lord one thousand nine hundred and seventeen.

WILBUR F. BOOTH, *Judge.*

Filed in the district court July 5, 1917. Morton Albaugh, Clerk.

I hereby accept and acknowledge the service of the citation in case No. 136-N, in equity, in the district court of the United States, wherein John M. Landon, as receiver of the Kansas Natural Gas Company, is plaintiff, and the Public Utilities Commission of the state of Kansas et al., are defendants, having received a true copy thereof.

CHESTER I. LONG,  
JOHN H. ATWOOD,  
ROBERT STONE,  
*Attorneys for Plaintiff.*

T. S. SALATHIEL,  
*Attorney for Kansas Natural Gas Co.*

T. F. DORAN,  
*Attorney for L. G. Treleven, Receiver of  
Consumers Light, Heat & Power Co., of  
Topeka, Kan.*

CHAS. BLOOD SMITH,  
*Solicitor for Fidelity Title and Trust Co.,  
Trustee, and for George F. Sharitt, Re-  
ceiver.*

J. W. DANA,  
*Attorney for the Wyandotte County Gas Co.*

W. E. ZEIGLER,  
*Solicitor for The Coffeyville Gas & Fuel Co.*

CHARLES B. MITCHELL,  
*Solicitor for Parsons Natural Gas Company.*

CHAS. G. LOOMIS,  
*Attorney for Johnson County Gas Company.*

CHAS. G. LOOMIS,  
*Attorney for The Ottawa Gas and Electric  
Company.*

W. F. GUTHRIE,  
*Attorney for Olathe Gas Company.*  
EDWIN E. SAPP,  
*Attorney for American Gas Company.*  
939 W. P. WAGGENER,  
JAMES M. CHALLISS,  
*Attorneys for The Atchison Railway, Light  
& Power Company.*  
ANDERSON COUNTY GAS & HEAT COM-  
PANY, *Colony.*  
BALDWIN GAS COMPANY, *Baldwin.*  
RICHMOND & PRINCETON GAS COMPANY,  
*Richmond.*  
WELLSVILLE GAS COMPANY, *Wellsville.*  
EDGERTON GAS COMPANY, *Edgerton.*  
FORT SCOTT & NEVADA LIGHT, HEAT,  
WATER & POWER CO., *Fort Scott.*  
THAYER GAS COMPANY, *Thayer.*  
TONGANOXIE GAS & ELECTRIC COMPANY,  
*Tonganoxie.*  
LEAVENWORTH HEAT, LIGHT & POWER  
COMPANY, *Leavenworth.*  
JOHN F. OVERFIELD,  
*Receiver for Kansas City Pipe Line Com-  
pany.*

Filed in the District Court on July 5, 1917. Morton Albaugh,  
Clerk.

940 In the United States District Court for the District of Kansas.

No. 136-N.

JOHN M. LONDON and GEORGE F. SHARITT, Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF KANSAS et al., Defendants.

*Supplemental Answer of Kansas City Gas Company.*

Now comes the Kansas City Gas Company, and further answering  
the plaintiffs' bill of complaint and amended bill of complaint filed  
herein, states that the receivers of the Kansas Natural Gas Com-  
pany, George F. Sharitt, Conway F. Holmes and Eugene Mackey,  
receivers appointed by the above entitled court in the case of John L.  
McKinney, plaintiff, vs. Kansas Natural Gas Company et al., No.

1351-N, and the case of Fidelity Title & Trust Company vs. The Kansas Natural Gas Company et al., and the successors of said Sharitt, Holmes and Mackey, to-wit: John M. Landon and R. S. Litchfield, appointed receivers of the Kansas Natural Gas Company by the District Court of Montgomery County, Kansas, in the case of State of Kansas vs. Independence Gas Company and Kansas Natural Gas Company et al., No. 13,476, and John M. Landon, ancillary receiver of the Kansas Natural Gas Company appointed by the above entitled court in said case of John L. McKinney vs. Kansas Natural Gas Company et al., and said case of Fidelity Title & Trust Company vs. Kansas Natural Gas Company et al., and John M. Landon, re-appointed as acting receiver of said Kansas Natural Gas Company

941 by the above entitled court in said McKinney and Fidelity Title & Trust Company cases, have each and all, by their acts, conduct and course of business and by their performance and acquiescence in the performance of the supply-contracts dated November 17 and December 3, 1906, existing between the Kansas Natural Gas Company and the Kansas City Gas Company, accepted and adopted said contracts; and said receivers and their successors in possession, right, title and interest in and to the property of the Kansas Natural Gas Company are estopped and barred by their said acts, conduct and acquiescence from denying or controverting the binding force and effect of said contracts upon said receivers and their successors in possession, right, title and interest of the Kansas Natural Gas Company.

That the above entitled court has, by its orders in said case of John L. McKinney vs. Kansas Natural Gas Company and said case of Fidelity Title & Trust Company vs. Kansas Natural Gas Company et al., adopted said contracts.

That the District Court of Montgomery County, Kansas by its orders made and entered in said case of State of Kansas vs. The Independence Gas Company and Kansas Natural Gas Company et al., No. 13,476, has adopted said supply-contracts.

That the Kansas City Gas Company did, from the appointment of the above named receivers on October 9, 1912, to the present time, pay to said receivers on account of said contracts and in strict compliance with and performance thereof the sum of —.

That the order of the District Court of Montgomery County, Kansas, hereto attached by reference to report of receiver filed herein on October 18, 1916, and made a part hereof purporting to pass upon said contracts is void and of no effect, for the reason that the said court had never acquired jurisdiction over the Kansas  
942 City Gas Company and said company was not a party to said suit in which said pretended order was entered.

That the above named receivers of the Kansas Natural Gas Company have, during their operation of said properties and performance of said contracts and other similar contracts existing between the Kansas Natural Gas Company and other distributing companies and said receivers, earned sufficient funds to pay the entire operating costs of said Kansas Natural Gas Company and said receivers, together with large expenditures for capital account, and have in

addition thereto paid interest on the entire bonded indebtedness of the Kansas Natural Gas Company and have paid and discharged the principal of the bonded indebtedness of said company and its subsidiary companies in the total sum of —.

That during said receiverships and the distribution and sale of said gas under said supply-contracts by this defendant, and by reason of the failure and default of said receivers to furnish the supply of gas contemplated in said contracts or the supply of gas necessary to meet the demands of this defendant, this defendant has been unable to earn any return upon the reasonable value of its properties used in the distribution of said gas or anything for depreciation or amortization of said properties; and for the past two years has been unable to earn even operating costs.

Defendant further states that a large majority, exceeding eighty per cent, of all the stock and a large majority, exceeding eighty percent, of all the bonds of the Kansas Natural Gas Company and its subsidiary companies and a portion of the first mortgage bonds of said Kansas Natural Gas Company have been purchased and

943 acquired by one and the same party, to-wit: Henry L. Doherty & Company, a co-partnership consisting of Henry L. Doherty and Frank Frucauff, and are now held and owned by said party; that there are not to exceed \$350,000 of outstanding first mortgage bonds of the Kansas Natural Gas Company owned for which said Fidelity Title & Trust Company, trustee, commenced the above mentioned suit; that said Kansas Natural Gas Company's properties, including its subsidiaries covered by the mortgage securing said bonds, exceeds the value of seven million dollars; that by reason thereof it is not necessary to abrogate or disavow said supply-contracts in the interest of said bondholders.

That the mortgage securing said first mortgage bonds has been extended by agreement and stipulation of the creditors in what is known as the "Creditors' Agreement," and said foreclosure suit should no longer be maintained as the basis and ground for the above entitled dependent case.

That plaintiffs' claim of right to abrogate or disavow said supply-contracts is by reason of the premises wholly without equity, in violation of this defendant's rights and will work a great and irreparable injury and damage to this defendant.

Wherefore, this defendant prays that the plaintiff take nothing by its suit against this defendant and that said case be dismissed as to this defendant with its costs.

KANSAS CITY GAS COMPANY,  
By J. W. DANA, *Solicitor*.

944 STATE OF MISSOURI,  
*County of Jackson, ss:*

J. W. Dana, being first duly sworn, deposes and says that he is counsel for the Kansas City Gas Company; that he has read and knows the contents of the foregoing supplemental answer; that he is familiar with the affairs and concerns of said Company and the

matters and things therein alleged, and that the statements of fact therein made and contained are true; and further affiant saith not.

J. W. DANA.

Subscribed and sworn to before me this 11th day of July, 1917.

[SEAL.]

WILLIAM SHELDON McCARTHY,

*Notary Public.*

My Commission Expires Jan'y 16th, 1918.

Filed in the District Court on July 11, 1917.

MORTON ALBAUGH, *Clerk.*

945 In the District Court of the United States for the District of Kansas.

No. 136-N.

JOHN M. LANDON and GEORGE F. SHARITT, Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF KANSAS et al., Defendants.

*Supplemental Answer of the Wyandotte County Gas Company.*

Now comes The Wyandotte County Gas Company and hereby refers to the Supplemental Answer of the Kansas City Gas Company filed herein on the 11th day of July, 1917, and hereby adopts all the statements, allegations and averments in said Supplemental Answer made and contained as its Supplemental Answer to the Bill of Complaint and Supplemental Bill of Complaint of plaintiffs.

THE WYANDOTTE COUNTY GAS  
COMPANY.

By J. W. DANA, *Solicitor.*

Filed in the District Court on July 11, 1917.

MORTON ALBAUGH, *Clerk.*

946 United States District Court, District of Kansas, First Division:

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver, Plaintiff,

vs.

PUBLIC UTILITIES COMMISSION OF KANSAS et al., Defendants.

*Memorandum of Opinion.*

The further hearing of this case came up on the 30th day of July, 1917, at the Federal Building, Minneapolis, Minnesota, the respective parties being represented by their several attorneys.

The Court: I had supposed until this morning that there was to be simply an informal conference by the Receiver and his counsel in case 1351 Equity with reference to the question of the advisability of making a change in the rates for the coming winter and as to what those rates should be, but I am advised that the parties interested have been notified, and I think, wisely so, as the conference might well take a broader scope than what I had supposed it was to take, because the question is one in which a good many parties are interested. It is also a question upon which the court desires to get all the light possible before making any definite order.

It might very likely be of advantage if not to all, at least to some of you to know what decision has been reached upon the issues which were tried and submitted at Kansas City a few weeks ago in case 136-N Equity. I have not been able to prepare a written opinion for filing with regard to these issues but I have, 947 however, reached certain conclusions, and I think perhaps it would be just as well that I should state what these conclusions are at this time, and then, if I think it advisable, I will reduce them later to writing and have them filed. If this is the desire of the attorneys, I will follow this plan because I think it may have some bearing upon the discussion as to what rates the court may order, and also have some bearing as to the position the attorneys may take up on one side or the other and especially those representing Missouri defendants.

By a former decision which was filed in April and by a decree that was entered upon that decision, the issues in case No. 136-N so far as they related specially to the Missouri defendants and also the issue as to the status of the supply contracts were held open for taking further evidence and for further consideration.

The jurisdictional questions raised by the Missouri defendants do not require further discussion. They have been disposed of by the former decisions, viz: The decision of the enlarged court found in 234 Fed. 152, and the decision of this court filed April 21, 1917.

The principal issues in which the Missouri defendants are interested involve two main questions. First, whether the acts of the Missouri Commission and of the Missouri defendants or of certain of them have been of such a character as to call for an injunction against them on behalf of the Receiver. That question resolves itself into two subordinate questions. (a) Whether the business which is being carried on by the Receiver, viz: The transportation of natural gas from Oklahoma and sale thereof in Missouri constitutes interstate commerce; (b) Whether the acts of the Missouri Commission or any of them can be held to be acts which in effect 948 deprive the Receiver of the property of the company without due process of law. The second main question and one in which not only the Missouri defendants but also the Kansas defendants are interested, is the question as to the status of the supply contracts originally made by the Kansas Natural Gas Company or its predecessor with various distributing companies or their pre-



decessors. This question again is divisible into two subordinate questions; (a) As to the Status of the supply contracts as between the original parties or their assignees, and (b) the status of the supply contracts as to the receiver. The relief sought by the Receiver is:

First, by way of injunction against the defendants, and especially against the Missouri Commission, restraining them from interfering with the carrying on of the business of transportation and selling of natural gas from Oklahoma into Missouri. The claim of the plaintiff is that the business thus carried on is interstate commerce, and that the Missouri Commission and some of the other defendants have attempted to unduly and directly burden this interstate commerce and to place restrictions upon it; and further it is claimed that the acts of the Missouri Commission in effect take away the property of the Receiver without due process of law. Secondly, by way of injunction as against all of the defendants to prevent them or any of them from instituting any suits or proceedings or taking any steps without the consent of this court to enforce the provisions of the so-called supply contracts, which they claim, or which some of them claim, are still in force as against the Receiver; the Receiver claiming: (1) that these supply contracts were invalid in their inception; (2) that even if they were valid yet, nevertheless, by reason of the changed circumstances, and by reason of the provisions in the contracts themselves looking towards a change of circumstances, they are no longer binding upon the original parties to these contracts; (3) that even if the contracts were valid in their inception and still are existing valid contracts between the original parties, yet they are not at this time binding upon the receiver.

949 Similar relief is also sought by the Kansas Natural Gas Company and by several of the distributing companies. Several of the distributing companies and some of the cities take the position that these supply contracts are at present valid existing contracts upon the Receiver as well as upon the original parties. Others of the distributing companies take the position that while the contracts may be valid and existing between the original parties, yet they do not contend that they are binding upon the Receiver.

Now, as to the question of interstate commerce, I have gone over the record as well as I could within the time that I have been able to give to it, and in my judgment the facts upon which this issue stands in regard to the Missouri defendants are substantially the same as in the case against the Kansas defendants. The differences in them are not vital, and most of them in my judgment are immaterial. The question of storage has been presented and pressed with great earnestness, as being a very important factor to be taken into consideration in determining this question of interstate commerce. But to my mind the evidence shows that such storage as exists is merely incidental to the transportation of the gas, and in fact that it is a necessary incident to the proper and efficient transportation of the gas. Hence, this storage being merely incidental, it seems to me

that it does not change the character of the business from interstate commerce to intrastate commerce.

Kelly v. Rhoads, 188 U. S. 1.

Swift & Co. v. United States, 196 U. S. 211, 229.

Western Oil Co. v. Lipscomb U. S. Sup. Cr. June 4, 1917.

McFadden v. Ry. Co., 241 F. 562.

950        Arguments have been made and pressed with great earnestness which are in substance to the effect that the court erred in holding in the former decision that the business was interstate commerce; and that in fact the entire business transacted by the Receiver whether relating to the state of Kansas or to the state of Missouri is not interstate commerce. I have given to this matter all the attention which I have been able to give it, and also to the arguments of counsel upon this question. While I admit that there may be possible doubt as to the correctness of the conclusion reached, yet I do not see any reason at this time for reversing the decision as to the Kansas defendants; and I hold as to the Missouri defendants that the business transacted by the Receiver in transporting natural gas from Oklahoma and selling it in Missouri is interstate commerce.

It has been suggested by counsel that the situation presents a clash between the principle that a state may control public utilities doing business within its boundaries, and the principle that a state may not directly impose a burden on interstate commerce. If there is such a clash between these two principles, then I am clearly of the opinion that the decision must be in favor of the principle that the state may not directly burden or interfere with interstate commerce. That principle must prevail rather than the principle that the state under all circumstances must have the fullest control over a public utility doing business within its borders. Whether there is such a clash between these two principles is not necessary for me to determine at this time.

The Missouri Commission has made no orders fixing general rates for the sale of gas by the Receiver within the state of Missouri, as was the case in regard to the Kansas defendants. But the Missouri Commission has done certain specific acts; amongst others it has suspended schedules of rates which were agreed upon by the Receiver and the distributing companies and has threatened the dis-  
951        tributing companies with further action against them if they should undertake to enforce those rates. It has also taken the position through its counsel in open court that it would recognize no rates as valid unless those rates were first submitted to the Commission for its approval and approved by it. Not only that, it has taken jurisdiction over complaints by the distributing companies and in some instances I think by the cities as to rates, but instead of proceeding to hearing upon these complaints it has suspended the hearings from time to time without attempting to reach any definite conclusion. It has attempted by order made in August, 1916, to establish a new rate for natural gas in Kansas City, Missouri. In these various acts the defendant cities have severally participated. The result of all this is that the Receiver is seriously hampered in his

business, and the distributing companies are also seriously hampered in their business in attempting to put in a schedule of rates for the various cities in Missouri. In my judgment these acts on the part of the Missouri Commission constitute an attempt to directly interfere with and directly burden interstate commerce. I am likewise of the opinion that they also in effect constitute the taking of the property of the Receiver without due process of law.

Now, as to the second main question, namely the question of the supply contracts. These supply contracts were entered into by the original parties during the years from 1905 to 1908 or 1909 and perhaps later. As far as I have been able to examine them, they all contain one clause which is very similar, and I do not know but it is identical in its wording: "However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period  
952 named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient supply of merchantable gas for all consumers."

All the contracts which I have examined contain a provision similar to that quoted. They all contain, also, or at least those which I have examined contain certain provisions restrictive on the parties to the contract; restrictive as to the right of the parties furnishing the gas to furnish it to any other person or corporation doing business in the zone or district specified; and restrictive as against the distributing companies to prevent them from purchasing gas from any other person or corporation than the person named in the contract who is furnishing the gas, except under certain conditions.

In April, 1912, the Supreme Court of Kansas had occasion to review these contracts, and while there is a difference amongst counsel as to just what the judgment of that court was in its effect, I think it must be conceded by all that the Supreme Court of the State of Kansas took the view that there were certain clauses at least in these contracts that were contrary to the statutes of the State of Kansas, and also contrary to public policy. It may very well be doubted whether those same restrictive clauses were not also a violation of the statutes of the United States against trusts and monopolies.

State v. Kansas Natural Gas Co., No. 17977.

Montague & Co. v. Lowry, 193 U. S. 38.

953 With full knowledge of these facts the United States District Court of the State of Kansas made an order in October, 1912, touching these contracts, and the gist of that order was that

these contracts should not be binding upon the receiver except upon further express order of the court. The Circuit Court of Appeals for this Circuit in a decision in a case arising out of this general gas controversy upon a contract, not a supply contract, but a lease contract, also held that that contract was not binding upon the receiver and took occasion in its decision to refer to the above mentioned express order of the United States District Court of Kansas. *K. C. Pipe Line Co. v. Fidel. Co.*, 217 Fed. 187. On two separate occasions the District Court of Montgomery County, Kansas, has held that these supply contracts are not merely not binding upon the receiver but invalid in their inception, as being against the statutes of the State of Kansas, and being also against the statutes of the United States as well as against public policy.

There never has been any formal adoption by the receiver of these supply contracts. In such case it is not the law that a contract shall be binding upon the receiver until it is disavowed by him, but the law is that it is not binding upon the receiver until it is accepted by him; and while it is true that ordinarily the law requires the receiver to indicate within a reasonable time whether or not he will accept a contract, in this particular case the court relieved the receiver of any necessity for taking any action by expressly ordering that the contract should not be binding upon the receiver until the court by its order made it binding. It was not necessary for the receiver to take any action on his part. If the other parties to the contract wished to have these contracts made binding upon the receiver the court was open to them to make an application, and upon that application the court would have made such an order as was deemed necessary. No such action was ever taken and the order of the court made in

October, 1912, still stands that these contracts are not binding  
954 upon the Receiver until the further orders of the court may make them so.

Now, whether these contracts were originally valid or invalid, and whether they became *functus officio* even if they were valid in their inception, are questions that it is not necessary for the court to decide them at this time. The Kansas Natural Gas Company has in its pleadings prayed to have these contracts set aside as to it. I do not deem it advisable at this time to make any decision with regard to the validity of the contracts as between the original parties to them: Whether they are still valid, whether they have ceased to be valid or whether they were invalid in their inception. While I shall deny the prayer of the Kansas Natural Company at this time it will be without prejudice to any action on the part of that company that it may see fit to take, whether in the cases that are pending in this court No. 1351 Equity, or No. 1 Equity, or otherwise. If it should see fit to take proper action to determine the validity of these contracts this decision will not prejudice it from so doing.

The conclusions which I reach are: that the business transacted by the Receiver in Missouri is interstate commerce, that the supply contracts are not binding upon the Receiver; that the Missouri Commission should be enjoined, and that such of the other defendants as have done acts or made any threats towards commencing any suit

or proceedings, looking towards the enforcement of the supply contracts as against the receiver, should also be enjoined. A decree may be prepared accordingly.

WILBUR F. BOOTH, *Judge*.

Filed August 13, 1917. Morton Albaugh, Clerk.

955 In the District Court of United States, District of Kansas,  
First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Co.,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Decree.*

Against Public Service Commission of Missouri et al.

Filed August 3, 1917.

955½ In the District Court of United States, District of Kansas,  
First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Co.,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

956

*Decree.*

This cause came on to be further heard at this term and was argued by counsel and thereupon upon consideration thereof it was

Ordered, adudged and decreed as follows: viz:

First, That Frank W. McAllister, now the Attorney General of the State of Missouri, and Zach D. Patterson, General Counsel for the Public Service Commission of the State of Missouri, William G. Busby, David E. Blair, Noah W. Simpson, and Edward Flad, who,

with Edwin J. Bean, now constitute the Public Service Commission of the State of Missouri and in open court by agreement of their counsel, James D. Lindsay, and the plaintiff, no objection being made by any of the parties to this cause, were substituted as defendants; Frank W. McAllister in place of John T. Barker, who was Attorney General, Zach D. Patterson in place of William G. Busby who was counsel of the Public Service Commission; William G. Busby, 957 David E. Blair, Noah W. Simpson, Edward Flad in place of John M. Atkinson, John Kennish, Howard B. Shaw, and Eugene McQuillan, who, with Edwin J. Bean constituted the Public Service Commission of the State of Missouri at the time this cause was begun.

Second. That the business transacted by the plaintiff to-wit, the transportation of natural gas from Kansas and Oklahoma to Missouri, and the distribution and sale therein of said gas in said state by plaintiff and distributing companies above mentioned is interstate commerce of a national character and not of a local nature.

Third. That the following orders of the Public Service Commission of Missouri suspending rates and schedules for natural gas, to-wit the order of suspension of rates and charges of the Weston Gas & Light Company entered on the 18th day of September, 1916, in case No. 1083; the order suspending the rates and charges of the Joplin Gas Company, entered on the 17th day of August, 1916, in case No. 1055; the order entered on the 13th day of September, 1916, in case No. 1075 suspending the rates and charges of the Fort Scott & Nevada Light, Heat, Water & Power Company; the order suspending the rates of the Carl Junction Gas Company entered on August 17, 1916, in case No. 1057 and the subsequent orders made by said commission extending the periods of suspension; and the order made on the 10th day of August, 1916, in case No. 1050 establishing a new rate for natural gas in Kansas City, Missouri, effective November 19, 1916; and the threats made by said commission and the statements made in open court by counsel for the Commission that other similar orders will be entered whenever plaintiff or the distributing companies above mentioned shall attempt to establish new schedules of rates for the sale and distribution of natural gas in any of the cities in Missouri, are attempts directly and unduly to burden and regulate interstate commerce and are, therefore, unauthorized and void. 958

Fourth. That the Public Service Commission Act of the State of Missouri and particularly Section 69, subdivision 12, and Section 70 thereof authorizing said commission to suspend the enforcement of natural gas rate schedules filed with said commission, and defer the use of rates, charges, forms of contract and agreements for a period of 120 days beyond the time when such rates, charges, forms of contract and agreements would otherwise go into effect; and further authorizing said commission to extend the time of suspension for a further period of six months and further providing that no change shall be made in rates, charges, forms of contract on agreements established until after thirty days' notice to the commission and publication thereof for 30 days by order of the commission, together with the con-



struction placed upon said Public Service Commission Act by said Commission and the acts and proceedings of said Commission thereunder, as hereinbefore set forth, constitute the taking of the property of the plaintiff and the distributing companies above named without due process of law and without just compensation and deny to the plaintiff and said distributing companies the equal protection of the law, all in contravention of the Constitution of the United States.

Fifth. That the following described contracts heretofore existing between the Kansas Natural Gas Company or its predecessors and the defendant distributing companies or their predecessors are not binding upon the plaintiff, to-wit:

1. The contract dated November 17, 1906, between McGowan, Small & Morgan, grantees, predecessors of the Kansas City Gas Company, and the Kansas City Pipe Line Company which was assumed by the Kaw Gas Company, predecessors of the Kansas Natural Gas Company by lease dated November 19th, 1906, between said Kaw Gas Company and Kansas City Pipe Line Company; and the contract dated December 3rd, 1906, between said McGowan, Small & Morgan and said Kansas City Pipe Line Company which was assumed by said Kaw Gas Company by agreement dated December 5th, 1906, both of which contracts dated November 17, 1906, and December 3rd, respectively were further assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and the Kansas City Pipe Line Company.

2. Contract dated February 1st, 1906, between the Wyandotte Gas Company, predecessor of the Wyandotte County Gas Company, and the Kansas City Pipe Line Company which contract was assumed by the Kaw Gas company, predecessor of the Kansas Natural Gas Company, under the lease dated February 2, 1906, between said Kaw Gas Company and the Kansas City Pipe Line Company, and again assumed by said Kaw Gas Company under the lease dated November 19th, 1906, between said Kaw Gas Company and said Kansas City Pipe Line Company and which was again assumed by the Kansas Natural Gas Company under the lease dated January, 1908, between the Kansas Natural Gas Company and the Kansas City Pipe Line Company.

3. The contract between Kansas Natural Gas Company and Joseph J. Heim, dated January 5, 1906, and now held by the Receiver for the Consumers Light, Heat & Power Company.

4. The contract between the Kansas Natural Gas Company and John A. Lambing, dated March 10, 1905, and now held by the American Gas Company.

5. Contract between the Kansas Natural Gas Company and Joseph J. Heim and Arnold Kalman, dated January 1905, and now held by the Citizens Light, Heat & Power Company of Lawrence.

6. The contract between the Kansas Natural Gas Company and the Liberty Gas Company dated October 12, 1909.

7. The contract between the Kansas Natural Gas Company and Morris Cliggett, dated February 18, 1905, and now held by the Home



Light, Heat & Power Co., and Kansas Gas & Electric Company of Pittsburg, Kansas.

8. Contract between the Kansas Natural Gas Company and Weir Gas Company dated September 18, 1905.

9. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated July 10th, 1905, and now held by the Baldwin Gas Company.

10. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated February 1, 1906, and now held by the Anderson County Gas Company.

11. The contract between the Kansas Natural Gas Company and C. H. Pattison dated May 29, 1905, and now held by Anderson County Gas Company.

12. The contract between Kansas Natural Gas Company and C. H. Pattison dated May 29, 1905, and held by the Richmond & Princeton Gas Company.

13. The contract between Kansas Natural Gas Company and C. H. Pattison, dated May 29, 1905, and now held by the Richmond & Princeton Gas Company.

14. The contract between the Kansas Natural Gas Company and the Farmers Gas Company dated January 16, 1911.

961 15. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated February 1, 1906, and now held by the Johnson County Gas Company.

16. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated May 29, 1905, now held by the Edgerton Gas Company.

17. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated June 27, 1905, and now held by the Gardner Gas Company.

18. The contract between the Kansas Natural Gas Company and Olathe Gas Company dated November 30th, 1908.

19. The contract between the Kansas Natural Gas Company and the Elk City Gas & Oil Company, dated August 2, 1909.

20. The contract between the Kansas Natural Gas Company and Leavenworth Light & Heating Company, dated May 16, 1905.

21. The contract between the Kaw Gas Company and the Central Gas Company and Fort Scott Gas & Electric Co., dated March 13 1907.

22. The contract between the Kansas Natural Gas Company, The Central Gas Company and W. C. Gunn, dated May 1st, 1916.

23. The contract between the Kansas Natural Gas Company and Central Gas Company, dated January 16, 1911.

24. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated September 30, 1905, and now held by the Ottawa Gas and Electric Company.

25. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated November 2, 1905, and now held by the Tonganoxie Gas & Electric Company.

962 26. The contract between the Kansas Natural Gas Company and C. H. Pattison, dated July 12, 1905, and now held

by the Atchison Railway Light & Power Company, and the supply contracts between

The Kansas Natural Gas Company and the Joplin Gas Company.

The Kansas Natural Gas Company and the Oronogo Gas Company.

The Kansas Natural Gas Company and the Carl Junction Gas Company.

The Kansas Natural Gas Company and the Weston Gas Company.

The Kansas Natural Gas Company and the Coffeyville Gas & Fuel Company, and all other supply contracts between the Kansas Natural Gas Company and any distributing company.

Sixth. That the defendants, Frank W. McAllister, as Attorney General of the State of Missouri, Zach D. Patterson as General Counsel for the Public Service Commission of the State of Missouri, and William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson, and Edward Flad as members of the Public Service Commission of the State of Missouri and their assistants or successors in office, are permanently enjoined from enforcing against plaintiff or any of the defendant distributing companies with which the receiver is carrying on business, said orders of suspension or orders fixing or establishing rates or any similar orders or any of the penalty statutes in connection therewith for the non-observance of the orders of the said Public Service Commission, and also from in any manner interfering with plaintiff or said distributing companies in establishing such rates on natural gas delivered by said plaintiff directly or through distributing companies to consumers in Missouri, as this court has approved or may hereafter approve.

Seventh. The defendants, The Public Service Commission of the State of Missouri, Frank W. McAllister as Attorney General of the State of Missouri, Zach D. Patterson as General Counsel for the Public Service Commission of the State of Missouri, and William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson, and Edward Flad as members of the Public Service Commission of the State of Missouri and their assistants or successors in office, and the Public Utilities Commission of the State of Kansas, Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public Utilities Commission of the State of Kansas, H. O. Caster, as attorney for the Public Utilities Commission of the State of Kansas, S. M. Brewster as Attorney General of the State of Kansas, and the defendant cities of Kansas and Missouri are all permanently enjoined from enforcing the aforesaid supply contracts or rates fixed or referred to therein, against plaintiff and said distributing companies; and from interfering with the plaintiff or any of said defendant distributing companies in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri; and the defendant distributing companies are permanently enjoined from enforcing the said supply contracts or rates fixed or referred to therein against plaintiff; and from interfering with plaintiff in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri.

Eighth. That each, every and all of the defendants and  
964 their representatives, officers, attorneys, counselors, and agents,  
and the respective mayors, common councils, governing officers,  
city attorneys, city counselors, or representatives of the defendant cities and their successors in office are permanently enjoined from commencing, instituting, or prosecuting in any other court or tribunal any suit or proceeding to litigate any of the matters determined in this cause without leave of this court first had and obtained.

Ninth. That all relief prayed by the Kansas Natural Gas Company herein is denied without prejudice to further action as to all matters alleged in the plaintiff's bill of complaint and supplemental bill of complaint, and in its cross bill except as granted by the former decree herein and except that its prayer for a permanent injunction against the Public Service Commission of Missouri on the ground of interference with interstate commerce, is granted.

Tenth. The defendant, George F. Sharitt, the Receiver of the Kansas Natural Gas Company, having sought the same relief against the defendants and each of them as plaintiff, is hereby granted a permanent injunction against said defendants to the same extent and effect as plaintiff.

Eleventh. That the plaintiff recover from the defendants the Public Service Commission of Missouri, and William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad as members thereof and Frank W. McAllister as Attorney General of the State of Missouri all costs herein expended including the cost of final record taxed at — dollars, but that the clerk's costs and charges against plaintiff be paid in the first instance by plaintiff.

Twelve. The Court reserves jurisdiction over all the parties  
965 ties to this suit for the purpose of enforcing this decree and any further orders made herein.

Thirteen. The Public Service Commission of Missouri and their members and officers above named, the City of Kansas City, Missouri, and its officers above named, the City of St. Joseph, Missouri, and its officers above named, the Kansas City Gas Company, the Kansas City Pipe Line Company and all other defendants severally object and except to said decree and each and every part thereof and said exceptions are severally allowed.

WILBUR F. BOOTH, *Judge*.

Filed in the District Court on August 13, 1917. Morton Albaugh, Clerk.

966 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N. Equity.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS, Public Service Commission of the State of Missouri, et al., Kansas City, Missouri, et al., Defendants.

*The Answer of Kansas City, Missouri, One of the Defendants in the Above Entitled Suit, to the Bill of Complaint of the Above Named Plaintiffs.*

J. A. Harzfeld, Solicitor.  
A. F. Evans, of Counsel.

966½ In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS, Public Service Commission of the State of Missouri et al., Kansas City, Missouri, et al., Defendants.

*The Answer of Kansas City, Missouri, One of the Defendants in the Above Entitled Suit, to the Bill of Complaint of the Above Named Plaintiffs.*

Kansas City, Missouri, one of the defendants in the above entitled suit, for answer to the bill of complaint of plaintiffs herein, says:

This answer, conforming to the answer herein of the Public Service Commission of the State of Missouri, to many parts of which this defendant, to avoid expense and prolixity, hereinafter  
967 craves leave to refer, is divided into three principal parts, the first consisting of such defenses as rest upon want of lawful process and of lawful service of process on this defendant, and such other defenses, in point of law, as arise upon the face of the bill of complaint on account of misjoinder of causes of action and of parties and insufficiency of fact to constitute a valid cause of action in equity, as hereinafter more particularly appears, and upon

which this defendant will ask for a hearing before the final hearing of this cause upon facts; and, second, a statement in answer to the averments of said bill and a denial of such matters as are denied by this defendant; and, third, a statement of affirmative matters which it is averred by this defendant constitute defense to the bill of complaint of the plaintiffs herein.

First.

(a) This defendant avers that it is and was at all times mentioned in the bill a municipal corporation organized and existing under a freeholder's charter framed and adopted under and in accordance with Sections 16 and 17, Article IX, of the Constitution of Missouri, which reads as follows:

"Sec. 16. Large Cities May Frame Their Own Charters; How Adopted and Amended.—Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election, which board shall, within ninety days after such election, return to the chief magistrate of such city a draft  
968 of such charter, signed by the members of such board or a majority of them. Within thirty days thereafter such proposed charter shall be submitted to the qualified voters of such city, at a general or special election, and if four-sevenths of such qualified voters voting thereat shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city, and supersede any existing charter and amendments thereof. A duplicate certificate shall be made, setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other, after being recorded in the office of the recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter, so adopted, may be amended by a proposal therefor, made by the lawmaking authorities of such city, published for at least thirty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the state.

Sec. 17. Provisions of Such Charters—Alternative Sections May Be Submitted to Voters.—It shall be a feature of all such charters that they shall provide, among other things, for a mayor or chief magistrate, and two houses of legislation, one of which at least shall be elected by general ticket; and in submitting any such charter

or amendment thereto to the qualified voters of such city, any alternative section or article may be presented for the choice of the voters, and may be voted on separately, and accepted or rejected separately, without prejudice to other articles or sections of the charter or any amendment thereto," and is a governmental agency of the

969 State of Missouri, located wholly within and a resident of the County of Jackson, State of Missouri, and that the subpoena in this suit was served upon this defendant in said Jackson County, Missouri, outside of the state and district of Kansas, as shown by the return, of service thereof indorsed on or attached thereto, to which subpoena and return reference is now made, for which reasons said subpoena and the service thereof on this defendant was, and is, without authority of law and void, and this court does not have jurisdiction of this defendant in this suit.

Therefore, this defendant respectfully asks that said subpoena and return of service thereof be quashed and this suit dismissed as to this defendant.

(b) This defendant avers that said bill shows on its face that there is a misjoinder of causes of action and of parties therein:

1. For that plaintiffs in Divisions I to XX, both inclusive, and also in Divisions XXVIII to XXXII, both inclusive, of the bill have alleged facts which are therein alleged to constitute causes of action and grounds of relief against the Public Utilities Commission of the State of Kansas, an administrative agency created and existing by, and acting under, the laws of the State of Kansas alone, because of certain proceedings in the bill alleged to have been had and taken before and orders alleged to have been made by said Public Utilities Commission of Kansas; and that said bill also shows on its face that this defendant was not a party to any such proceedings and is, and was, not within the jurisdiction of said Public Utilities Commission, and that all matters and things in said divisions of the bill complained of are outside of any power or authority possessed by this defendant; and that no relief is prayed against this defendant  
970 because of any averments contained in said divisions of the bill.

2. And for that in Divisions XXI to XXVII, both inclusive, of the bills plaintiffs have alleged facts which are therein alleged to constitute causes of action and grounds of relief against the Public Service Commission of Missouri, an administrative agency created and existing by, and acting under, the laws of the State of Missouri alone, because of certain proceedings in the bill alleged to have been had and taken before orders and statements alleged to have been made by the Public Service Commission of Missouri, and that said bill also shows on its face that this defendant was not a party to any proceedings by or before the Public Service Commission of Missouri, or to any order or declaration in the bill alleged to have been made by it, and that said Public Service Commission has not made, or been asked to make, any order or take any proceedings in relation to, or in any wise affecting, the rate, sale or delivery of gas in Kansas City, Missouri; and that the matters and things in said Divisions



XXI to XXVII, both inclusive, of the bill complained of are wholly outside of the control and of any power, right or authority possessed by this defendant.

3. And for that the plaintiffs, in Division XXIX to XXXII, both inclusive, have attempted to allege facts therein alleged to constitute joint causes of action and grounds of relief against said Public Utilities Commission of Kansas and said Public Service Commission of Missouri, and it is also shown on the face of the bill that the matters and things alleged in said Divisions I to XXXII, both inclusive, are entirely outside of the control and of any power, right or privilege possessed by this defendant, and it also appears from the face of said bill that this defendant was not a party to, and was not affected

by, and that none or all averments in said Divisions I to 971 XXXII of the bill relate to or affect the rate, sale or delivery of gas in Kansas City, Missouri, and it also appears from the face of said bill that no relief against this defendant is prayed because of any matters or things alleged or averments of law contained in said Divisions I to XXXII of the bill.

(4) And for that the plaintiffs, in Division XXXIII of the bill, appear to have attempted to make a statement of facts for the purpose of showing that they have alleged causes of action against the municipalities located within the State of Kansas and municipalities located within the State of Missouri, which are named as defendants in this suit, and against the distributing companies named as defendants in this suit, some of which are doing business wholly within the State of Kansas and some wholly within the State of Missouri; but it is not apparent, and this defendant cannot determine, whether plaintiffs have attempted to state in said Division XXXIII joint causes of action against said municipalities and distributing companies, or separate causes of action against said municipalities and said distributing company, or separate causes of action against each of said municipalities and each of said distributing companies. As against the distributing companies it is averred in said Division XXXIII (Bill of Complaint, p. 61), "That said gas was originally furnished by the Kansas Natural Gas Company to said distributing companies under and pursuant to certain supply contracts of record in this court in said creditors' suit and foreclosure suit upon which this bill is dependent as aforesaid," which contracts are improvident, wasteful and destructive of the estate in the hands of plaintiff and 972 fraudulent and void and have not been adopted by plaintiffs.

Said contracts are not otherwise pleaded or identified and this defendant is not a party to said suits, or either of them.

The parties to said contracts are not set out or stated in the bill and it cannot be determined from anything averred in the bill whether or not the parties to said supply contracts are parties to this suit.

As against said cities, it is in said Division XXXIII averred "That natural gas is furnished by plaintiffs and distributed and sold as aforesaid in each and all of said defendant cities, under and pursuant to certain ordinances granting to said distributing companies the



right to the use of the public ways of said cities therefor," which said alleged ordinances are not otherwise pleaded or identified in the bill.

It is further alleged in said Division XXXIII "That said cities have heretofore exercised governmental power of rate regulation by the passage of certain ordinances purporting to establish, regulate and fix the price of and rate for the sale of natural gas in said several cities," which said ordinances are not otherwise pleaded or identified in said bill.

It is further averred in said Division XXXIII "That certain of said ordinances are in excess of powers conferred upon said cities by the State Legislature, and all of said ordinances and rates therein established and fixed are unreasonable, non-compensatory and confiscatory of the estate and property in the custody of plaintiffs and of this court, and the District Court of Montgomery County, Kansas, and an interference with interstate commerce," which said alleged ordinances are not otherwise pleaded or identified in the bill.

It is further averred in said Division XXXIII that said cities are claiming the power to fix, regulate and establish the rates, 973 charges and compensation which plaintiffs shall receive for natural gas furnished by them, and that said cities, and their respective city officials, are, and for more than three years have been, conducting or threatening injunctions and prosecutions with the purpose, design and intent to establish, regulate, control and fix said prices, and "that all of said acts, threats, ordinances and prosecutions and threatened prosecutions are an interference with interstate commerce conducted and carried on by plaintiffs to usurpation and abuse of power by said cities," which said alleged ordinances, acts, prosecutions or threats are not otherwise pleaded, identified or specified in said bill.

This defendant avers that it appears from the face of said bill that the matters and things therein averred do not constitute a cause of action in favor of the plaintiffs or against this defendant and do not entitle the plaintiffs to the relief prayed for or to any relief against this defendant; and that if it be held by the court that a cause of action against this defendant is stated in the bill, this defendant says that the averments in said Division XXXIII of the bill are so confused and indefinite and uncertain that the defendant cannot make proper answer or make, or prepare to make, defense thereto; and that said averments are so confused, indefinite and uncertain that in the event the court grant an injunction herein against this defendant, as prayed in the bill of complaint, this defendant will not know what ordinances it may or may not enforce without violation of the injunction, and will not know what acts it is required to do or refrain from doing in order to comply with such injunction.

Wherefore, this defendant prays the court to dismiss the bill of complaint as to it; and if its prayer that the bill be dismissed as to it be by the court denied, then it prays that plaintiffs be required 974 to make the bill of complaint definite and certain in the respects in which it is hereinbefore in this division of this

answer averred to be indefinite and uncertain, to the end that the defendant will be enabled to make proper answer and defense and prepare to make its further proper defense thereto.

(c) This defendant avers that the bill of complaint shows on its face that this Court is without jurisdiction to hear and determine the pretended causes of action in the bill alleged, for the reason that it appears on the face of the bill that plaintiffs are not without adequate remedy in the due course of law for any rights or remedies due them or for the redress of any wrongs complained of under the laws of the State of Missouri, or ordinances of Kansas City, Missouri, and that said plaintiffs have not pursued remedies provided by law for them, and that, therefore, said bill fails to show any cause for equitable relief in favor of the plaintiffs and against this defendant.

(d) This defendant, to avoid prolixity and expense, adopts Division VI and VII, Part First, of the answer of the Public Service Commission of Missouri this day filed herein to the bill of complaint of the plaintiffs as the further answer of this defendant as to plaintiffs' right to the relief prayed for in the bill or to any equitable relief in this suit.

#### Second.

This defendant, having pleaded its objections to the jurisdiction of the Court, based upon illegal process and illegal service thereof, and want of legal process and legal service thereof, on this defendant in this suit and objections arising upon the points of law disclosed upon the face of the bill of complaint, and having moved to dismiss this suit for the reasons therein stated, further answering, says:

975

1.

This defendant, further answering, to avoid prolixity and expense, adopts, as a part of this its answer herein, Division I, Part Second, of the answer of the Public Service Commission of Missouri this day filed herein to the bill of complaint of plaintiffs, and, in addition thereto, this defendant, making further answer of matters peculiar to itself, specifically denies that the Public Service Commission of the State of Missouri has fixed any rate regulating or controlling the disposition of natural gas by plaintiffs within the corporate limits of Kansas City, Missouri.

This defendant states that it does not now purchase or procure, and has never at any time purchased or procured, natural gas of the plaintiffs or of the Kansas Natural Gas Company, and that neither the plaintiffs nor the Kansas Natural Gas Company has, or ever had the right of lawful authority to sell or deliver gas to any consumers in Kansas City, Missouri, and that if plaintiffs, as such receivers, have sold or delivered, or are now selling or delivering natural gas to consumers within the corporate limits of said city, they were and are trespassers and wrongdoers and are not entitled to be protected therein by a court of equity.

## II.

Further answering, this defendant admits the statement of facts in the first, second and third paragraph- of Division II of the bill of complaint; and of the fourth paragraph thereof, except the allegation that the Attorney General of Missouri is charged by the law of the State of Missouri with the duty and obligation of executing and enforcing the laws of said state affecting public utilities, which allegation this defendant denies.

976 This defendant admits that the Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and from 1904 to 1912 was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas and that it has been admitted to do business in the State of Kansas as a foreign corporation; and admits that an order was made and entered September 22, 1914, in the case of John L. McKinney et al. v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title & Trust Company v. Kansas Natural Gas Company and Delaware Trust Company, No. 1-N, Equity, as stated in the last paragraph of said Division II.

This defendant denies that George F. Sharritt is in possession or control, actual or potential, of the property of the Kansas Natural Gas Company or of the property under lease by it within the States of Kansas, Oklahoma and Missouri, as receiver, by virtue of such order, or otherwise.

Further answering, this defendant denies that it has any knowledge or information save such as is derived from the bill of complaint and answers of other defendants herein as to the incorporation of Fidelity Title & Trust Company and its trusteeship under mortgages of Kansas Natural Gas Company; and as to the incorporation of Delaware Trust Company and its trusteeship under mortgage of Kansas Natural Gas Company; and as to Fidelity Trust Company and its trusteeship under mortgages of Kansas City Pipe Line Company; and as to incorporation of the latter and lease by it of its property to Kansas Natural Gas Company, and as to possession and operation thereof by receivers of the latter Company; and as to the value thereof unless operated in conjunction with the system of the Kansas Natural Gas Company; and as to the incorporation of Marnet

977 Mining Company and as to its property and pipe line and operation and value thereof as separated from the pipe line system operated by the Kansas Natural Gas Company; and as to John F. Overfield and appointment of him as receiver of the Kansas City Pipe Line Company; and as to the system of pipe lines owned or operated by the Kansas Natural Gas Company, location thereof and of its terminals, and leaves plaintiff to make such proof of all such alleged facts, and prays that he may be required to make strict proof.

## III.

Further answering, this defendant admits that said John M. Landon and R. S. Litchfield, plaintiffs, were, and that said John M. Landon now is, in actual possession and control of the property of the Kansas Natural Gas Company and property under lease by it within the State of Kansas, as receiver of said Company appointed by the District Court of Montgomery County, Kansas.

This defendant denies that it has any knowledge or information save such as is derived from the bill as to possession and control of pipe line system of Kansas Natural Gas Company, including the leased lines located in the States of Oklahoma and Missouri as alleged in the second paragraph of Division III of the bill and leaves plaintiff to make such proof thereof, and prays that he be required to make strict proof.

## IV.

This defendant admits all the averments of Division IV of the bill of complaint.

## V.

Further answering, this defendant denies that it has any knowledge or information save such as is derived from the bill as to the alleged "Creditors' Agreement" referred to in Division V or as to the parties thereto or as to the approval thereof by the District Court of Montgomery County, Kansas, and denies the matters and things set up in said "Creditors' Agreement," and states that even if said "Creditors' Agreement" was made as alleged in the bill, this defendant did not have notice of the making thereof, did not participate therein, is neither a party thereto nor in any wise bound thereby.

Further answering, this defendant admits that the Kansas Natural Gas Company, prior to the appointment of receivers, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas and carrying on its said activities in the States of Oklahoma, Kansas and Missouri; that after the appointment of the receivers in this Court, the receivers continued and carried on said business after the manner the same had been theretofore conducted by said Company, and after the delivery of the property aforesaid to said state receivers, they continued to carry on said business theretofore conducted by said federal receivers and by said Kansas Natural Gas Company; and admits that in carrying on said business the plaintiff receiver carries on and conducts the same by the use of instrumentalities consisting of pipe lines, gas wells, compressor stations, gathering lines, feed lines, measuring stations, regulation stations and other devices commonly used in the gas business.

Further answering, this defendant denies that it has any knowledge or information save that derived from the bill as to the location and routes of said pipe lines and terminals thereof in Kansas and

Oklahoma, and, therefore, leaves the plaintiff to make such proof thereof as he may be advised.

This defendant admits that the gas is taken from wells where it is produced in the States of Oklahoma and Kansas and conducted through pipe lines from Kansas and Oklahoma to Missouri, and that it is transported through said pipe lines by the use of compressors and that compressor stations are an essential and necessary part to said transportation system.

This defendant, further answering, specifically denies that natural gas is transported through said pipe lines controlled or operated by the plaintiffs to consumers in the State of Missouri, and especially in Kansas City, Missouri, and denies that said natural gas, from the time it leaves the gas wells in Oklahoma until it is delivered to consumers in the States of Kansas and Missouri and by them consumed, is in continuous course of transportation, or at no time stored or its transportation suspended; and denies that plaintiffs begin in Oklahoma such transportation of natural gas with the intent and purpose that said natural gas shall be continuously moved and transported without interruption until it is delivered to consumers in Kansas and Missouri, and denies that the same is true of natural gas transportation from Kansas to consumers in Missouri.

This defendant states, on the contrary, that gas is stored in said pipe lines, and is, and at all times during the operation of said business has been, stored therein in large quantities whenever the supply in possession of Kansas Natural Gas Company or of plaintiffs required or permitted the same to be stored, and that the storage capacity of the pipe lines from Ottawa, Kansas, to Kansas City, Kansas, is approximately 7,000,000 cubic feet at a pressure of 300 pounds, in excess of their normal delivery, and that said pipe lines operated by the plaintiffs, carrying a pressure of 300 pounds, afford very large storage capacity for small space, and that in the natural gas business it is not considered good business and is not customary to build holders for storage of natural gas for the reason that the same amount of money expended in pipe lines gives additional storage capacity as well as increased transportation facilities.

Further answering, this defendant denies that natural gas is delivered by plaintiffs to consumers in the several cities through distributing companies under written contracts, and especially denies that natural gas is so delivered by plaintiffs to any consumers in Kansas City, Missouri.

Further answering, this defendant denies that it has any knowledge or information save that derived from the bill as to ownership of compressor stations operated by the plaintiff or as to whether or not each compressor station is a part of the unit system of transportation owned and operated by the plaintiffs, or as to whether or not said pipe lines constitute one complete system which cannot be operated separately or otherwise than as one unit. This defendant admits that none of the natural gas transported by plaintiffs is produced in Missouri, and leaves plaintiffs to make such proof thereof as they may be advised.

Further answering, this defendant denies that it has any knowl-

edge or information save that derived from the bill as to the percentages of the gas obtained and transmitted by plaintiffs obtained in Oklahoma or in Kansas, or as to whether the gas procured in Kansas may be controlled without interfering with the control and management of the gas procured in Oklahoma.

This defendant denies that gas procured either in Kansas or in Oklahoma is transmitted through and by means of said pipe lines from the wells in Oklahoma in one continuous and uninterrupted journey to consumers in Kansas or to consumers in Missouri, and especially to any consumer in Kansas City, Missouri.

This defendant, further answering, denies that the business carried on and conducted by plaintiff is the carrying on of business and commerce among different states of the Union, to-wit, Oklahoma, Kansas and Missouri, and denies that it is exclusively under the control of the Congress of the United States as confided

981 to it by Section 8 of Article 1 of the Constitution of the United

States and not subject to control or regulation of the States of Kansas or Missouri, and alleges that the said business conducted by the plaintiff receiver is subject to the control and regulation of the States of Kansas and Missouri, respectively.

This defendant, to avoid prolixity and expense, adopts for its further answer to Division V of the bill, all, except only the first paragraph of Division V, Part Second, of the answer of the Public Service Commission of Missouri this day filed herein to the bill of complaint of plaintiffs.

## VI.

This defendant admits that the statement of fact in Division VI of the bill as to Section 238, Laws of Kansas, 1911, and as to rates in effect in Kansas January 1, 1911, as shown by schedule marked Exhibit "C" and made part of the bill.

This defendant admits that an order was entered in the receivership suits pending in this Court wherein an attempt was made to increase and fix the rates at which the federal receivers were authorized to sell natural gas, and that on January 4, 1913, said order was modified and, in effect, completely suspended.

This defendant states that said order was made January 2, 1913, as of December 30, 1912, and that thereby the receivers were ordered to shut off the supply of gas from all parties served by them who failed, within ten days after January 2, 1913, to enter into contract, in writing, to continue to take gas at the rate specified in said order and to shut off gas immediately from any party who refused, within such ten days, to enter into such written agreement; that said order was made in the very middle of the winter, ex parte, without notice to consumers, at a time when it was not possible for consumers of

982 gas to make arrangements for other or different fuel, and the enforcement thereof would have caused intense suffering and distress to thousands of consumers who were dependent upon natural gas alone for cooking, lighting and heating purposes; that the court which made the order as of December 30, 1912, recognizing



that the order was made without authority and was null and void, by its said order of January 4, 1913, suspended the enforcement, and has never pretended to enforce it.

#### VII.

This defendant states that it was not a party to any of the proceedings or to the alleged Creditors' Agreement referred to in Division VII of the bill, and is not bound or concluded by any order, judgment, decree or contract therein referred to, and is not sufficiently advised to make, as of its own knowledge, full answer thereto; but has no doubt that the statements contained in Division VII of the answer heretofore filed herein of the Public Utilities Commission for the State of Kansas are correct, and hereby refers to said answer and adopts Division VII thereof as its full answer to the matters of fact alleged in Division VII of the bill.

#### VIII.

This defendant states that it was not a party to any of the proceedings referred to in Division VIII of the bill and is not bound or concluded by any order, judgment or decree therein referred to, and is not sufficiently advised to make full answer, as of its own knowledge, to the matters of fact in said Division VIII alleged, but has no doubt that the statements contained in Division VIII of the answer heretofore filed herein of the Public Utilities Commission for the State of Kansas are correct, and hereby refers to said answer and adopts Division VIII thereof as its full answer to the matters  
983 of fact alleged in Division VIII of the bill.

#### IX.

This defendant states that it was not a party to any proceedings in Division IX of the bill referred to and is not bound or concluded by any order, judgment or decree therein referred to; that this defendant is not subject to the jurisdiction of the Public Utilities Commission for the State of Kansas, which has no jurisdiction or authority outside of the territorial limits of the State of Kansas.

Further answering, this defendant states that it is not sufficiently advised to make full answer, as of its own knowledge, as to the matters of fact set up in said Division IX of the bill, but has no doubt that the statements contained in Division IX of the answer heretofore filed of the Public Service Commission for the State of Missouri are correct, and hereby refers to said answer and adopts Division IX, Part Second, thereof as its answer to the matters of fact alleged in said Division IX of the bill.

#### X.

This defendant says that it has no knowledge or information save only as derived from the bill as to the assessed value of the property



of the Kansas Natural Gas Company, including operated and leased property, in the State of Kansas or in the State of Missouri or in the State of Oklahoma for the year 1915, or at any other time, and leaves the plaintiff to make proof thereof and asks that he be required to make strict proof.

This defendant denies that the assessed valuation of the property for purposes of taxation is the true or correct valuation on which to base rates for services rendered by public utilities such as that operated by plaintiffs.

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## XI.

This defendant, further answering to the bill of complaint, to avoid prolixity and expense, adopts as part of this its answer, Division XI, Division XII and Division XIII, Part second, of the answer of the Public Service Commission of the State of Missouri, this day filed herein to the bill of complaint of plaintiffs with the same force and effect as if herein set out as Division XI and Division XII and Division XIII of this, its answer.

## XV.

This defendant states that it has no knowledge or information as to the correct amount of revenue which the order of December 10, 1915, of the Public Utilities Commission of the State of Kansas will produce in the State of Kansas, or as to the revenue which the rates in existence will create in the State of Missouri, or the correctness of the table in Division XV of the bill, or as to the amount of additional revenue and increase of one cent per thousand cubic feet in the rate charged for natural gas sold in Kansas and Missouri, and leaves plaintiff to make proof thereof and asks that he be required to make strict proof.

This defendant denies that \$5,140,696.00 revenue is required for the year 1916, and \$4,698,845.00 for the year 1917 and each year thereafter during the remaining years of the life of the plant, and denies that the present rates fall short of producing the required revenue by \$2,339,464.00 for the year 1916, and \$1,897,613.00 for the year 1917 and each year thereafter, and denies that a rate of thirty-seven cents at all points in Kansas north of Montgomery County, and at all points in Missouri except St. Joseph, will not be sufficient to give plaintiff a fair return on the property em-

985 employed in said business, and alleges that the rates fixed December 10, 1915, by the Public Utilities Commission of Kansas and the rates now in effect in Missouri, are sufficient to give plaintiff a fair return on the property employed in such business.

## XVI.

This defendant denies that the table set out in Divisions XIII and XV of the bill are typical of the years of the remaining life of said plant, and denies that any lower schedule of rates in the State of

Kansas than those set out in Exhibit "F" of said bill will be unreasonable, unremunerative, non-compensatory or confiscatory, or that plaintiffs, receivers, have been deprived of property without just compensation or without due process of law, or that they will continue to be so deprived of property in the transportation of gas to consumers in the State of Kansas unless the rates set out in said Exhibit "F" are put into effect; and denies that the order of the Public Utilities Commission of the State of Kansas is void or in contravention of the 14th Amendment of the Constitution of the United States or an interference with interstate commerce; and states that it has been finally judged that the business conducted by the plaintiffs is not interstate commerce as fully set forth in Division VI, Part First, of the answer of the Public Service Commission of the State of Missouri.

This defendant does not know whether the Kansas Natural Gas Company or said Federal Receivers or the plaintiffs herein, or any of them, have or do deliver or sell gas to domestic consumers in the State of Oklahoma or conduct or carry on any business of or as a public utility therein.

986

## XVII.

This defendant states that the order of December 10, 1915, of the Public Utilities Commission for the State of Kansas is without force or effect outside of the boundaries of the State of Kansas, and do not bind or in any wise control this defendant; but this defendant has no doubt that the statements contained in Division XVII, Part Second, of the answer heretofore filed herein of the Public Utilities Commission for the State of Kansas are correct and hereby refers to said answer and adopts said Division XVII thereof as its full answer to the matters of fact alleged in said Division XVII of the bill.

## XVIII.

This defendant denies that adequate relief at law was not, or is not, available to the plaintiff for any wrong complained of in his bill, or that his resources and efforts would be absorbed in unnecessary or burdensome litigation because of any matter of fact in his bill set out; and denies that the property of the Kansas Natural Gas Company would be appropriated without due process of law.

## XIX.

This defendant, having once denied each and all of the matters of fact stated in Division XIX of the bill, again denies every allegation of fact contained in Division XIX of the bill.

## XX.

This defendant denies that by said opinion of the Public Utilities Commission of the State of Kansas no return is provided on 54.52

per cent of the property used by plaintiff in transportation of natural gas, and denies that the Public Service Commission of Missouri, in fixing rates for natural gas delivered in that state, cannot  
987 take into consideration property used by plaintiff located in the State of Kansas; and denies that if the rates for natural gas in Kansas are fixed by the Public Utilities Commission of that state and rates in Missouri are fixed by the Public Service Commission of Missouri, any part of the property of plaintiff used in production and transportation of natural gas, cannot be considered by either Commission in determining the fair value of the property employed in said business, and denies that plaintiff will be deprived of property without due process of law or that he will not be afforded equal protection of the law.

This defendant denies that the Public Utilities Commission of Kansas erred in fixing a rate for service rendered to consumers in Kansas upon the value of the property used or useful in rendering such service; and denies that the property and plant operated by the plaintiff is such that it cannot be operated or considered for any purpose except as one unit; and denies that the court of appeals for this circuit in the case of *Kansas City Pipe Line Company v. Fidelity Title & Trust Company*, 217 Federal 189, held that said property and plant must be considered and treated as one unit for rate making purposes, and that a rate ought to be fixed for service rendered in Kansas without regard to the fact that the same property, or a very large part thereof, was also used in rendering like service outside of the State of Kansas, or that a rate should be fixed in Missouri for like service, if any, rendered by plaintiff in Missouri without regard to the fact that the same property, or a very large part thereof, was also used in rendering like service in Kansas.

This defendant admits that it is not bound by the percentages of allocation fixed by the Public Utilities Commission of Kansas, and admits that the demand of consumers of natural gas in Kan-  
988 sas and Missouri is increasing, requiring the building, by plaintiff, of extensions to pipe lines if he is permitted to continue to operate said property, and admits that no such extensions can be made by plaintiff without the consent of the court.

This defendant states that the plant now operated by plaintiff is not, and never has been of sufficient capacity to produce or transport, and never has produced or transported to Kansas City, Missouri, an amount of gas reasonably sufficient to supply the demand therein; and that said Kansas Natural Gas Company, in 1911 and prior thereto and since that date, and up to the time its property was placed in the hands of receivers, and the receivers since that time, failed and refused to procure or produce or to transport and deliver to the distributing company in Kansas City, Missouri, sufficient amount of gas to reasonably supply the demand in said city, and that the capacity of the said pipe lines at this time is not sufficient to transport to Kansas City, Missouri, more than 65 per cent of the volume of gas reasonably necessary to supply the demand therein; that ever since the use of natural gas in Kansas City, Missouri, was first begun the supply thereof and pressure has been inadequate and

insufficient to reasonably supply the demand, and on a great many days and for days at a time, at many different times, the supply and pressure was so inadequate and insufficient as to be practically worthless, food could not be cooked, homes heated or lighted by use thereof, and thereby great suffering and injury to the health of consumers and their families resulted.

This defendant has no knowledge as to the comparative value of property operated by the receiver, located in Kansas, and elsewhere, or as to the value of such property which is within the jurisdiction of the Public Service Commission of Missouri, or what action, 989 if any, the Public Service Commission of Missouri has taken with regard to the observance of rates fixed by franchises in the cities of Missouri, and alleges that said Public Service Commission of Missouri has not taken, or been asked to take, any action with regard to rates, or fixed or required observance of any rates charged for natural gas in Kansas City, Missouri.

## XXI.

This defendant denies that John M. Atkinson, as Chairman of said Missouri Public Service Commission, or for said Commission, announced on the 27th day of December, 1915, or at any other time, that the Public Service Commission of Missouri would not permit higher rates to be charged in the cities in the State of Missouri than was charged in border cities in the State of Kansas; and denies that said Missouri Public Service Commission has since said date, at any time, adhered to any such policy or has refused to permit an increase in the rates charged in cities served by the plaintiff receiver in the State of Missouri because the rates charged in Kansas had not been raised.

On the contrary, this defendant states that the Public Service Commission of Missouri has since said date approved a rate of forty cents for the sale of natural gas in the city of St. Joseph, Missouri, and that said rate is higher than any rate at any time charged, or permitted by the Public Utilities Commission of the State of Kansas to be charged, in any city in the State of Kansas.

This defendant again alleges that the Public Service Commission of Missouri has not taken, and has not been asked to take, any action with regard to rates for natural gas in Kansas City, Missouri.

This defendant states that it does not know what orders or action, if any, the Public Service Commission of Missouri has 990 taken with regard to rates in Oronogo or Carl Junction, Missouri, or what orders or other action it has taken with reference to rates in St. Joseph, Missouri, other than as hereinbefore in this division of this answer stated, and leaves plaintiff to make proof thereof and asks that he be required to make strict proof.

This defendant denies that 26  $\frac{2}{3}$  cents per thousand cubic feet is unreasonably low, non-compensatory, unremunerative or confiscatory for the service and property employed by plaintiff in transporting gas to St. Joseph, Missouri.

## XXII.

This defendant denies that any schedule or rate below 37 cents per thousand cubic feet for natural gas delivered to consumers in all other cities in the State of Missouri except St. Joseph, and 26 2/3 cents for plaintiffs' portion of gas delivered in St. Joseph is and will be unreasonably low, unremunerative, non-compensatory or confiscatory, and denies that any rate which has been prescribed by the Public Service Commission of Missouri is unreasonably low, unremunerative, non-compensatory or confiscatory; and denies that plaintiffs have been deprived of the property without compensation or without due process of law, or that they will continue to be deprived of the property without compensation or without due process of law in the transportation of gas to consumers in the State of Missouri.

This defendant states that it does not have any knowledge or information as to the transportation by plaintiff of any gas to any consumers in the State of Missouri or what, if any, orders have been

made by the Public Service Commission of said state regulating or fixing the rate of gas to consumers except as stated in  
991 Division XXI of this answer.

This defendant states that the plaintiff has never sold or delivered, or had any right to sell or deliver, any natural gas to consumers in Kansas City, Missouri.

## XXIII.

This defendant denies that the plaintiff has no adequate remedy in the premises except such relief as may be obtained by appealing to a court of equity for any wrong alleged in the bill to have been sustained by him by reason of any action of the Public Service Commission of the State of Missouri.

This defendant denies that the plaintiff has the right or authority to fix rates for the sale of natural gas in Missouri, and denies that he has the right or authority to sell or deliver natural gas to consumers in Kansas City, Missouri; and denies that the present rates in effect in Kansas City, Missouri, were prescribed by the Public Service Commission of Missouri, and denies that they are unreasonable, or unremunerative, non-compensatory or confiscatory.

This defendant states that the rates for furnishing and delivering natural gas, and the obligation to furnish the same, to consumers in Kansas City, Missouri, are fixed and prescribed by ordinance contract more specifically referred to in Division — of this answer.

This defendant denies that it has any knowledge, as to the alleged desire of plaintiffs, receivers, to put into effect reasonable rates for natural gas sold in Missouri and leaves him to make proof thereof.

## XXIV.

This defendant states that it has no knowledge or information as to what action the Public Service Commission of Missouri will

992 take with regard to the basis of allocation of property used in the transportation of gas as between Kansas and Missouri.

This defendant denies that the rates charged Missouri cities (except Kansas City) supplied with natural gas will necessarily be higher than the rates charged border cities in Kansas on account of the distance, or value of property used, or leakage.

This defendant again denies that the Public Service Commission of Missouri has announced a policy to suspend the schedules of rates proposing or attempting to put into force in Missouri cities rates higher than rates collected in the border cities of Kansas; and denies that if said Commission should adopt such policy, the plaintiff would be compelled to violate any Act of Congress or subject plaintiff to suits or needlessly dissipate the property in his control.

This defendant states that it does not know what action, if any, the Public Service Commission has taken with reference to rates in the City of St. Joseph except as hereinbefore in Division XXI of this answer set out.

This defendant denies that the Public Service Commission of the State of Missouri has threatened, or does now threaten, to suspend any rate or schedule proposed or attempted to be put into force in Missouri by plaintiff receiver, or his agents, prescribing a higher rate than 28 cents per thousand cubic feet for gas delivered to consumers at Kansas City and all other points in the State of Missouri supplied by the plaintiff receiver.

This defendant states that the rate prescribed by said contract ordinance No. 33887 now being paid by consumers of natural gas in Kansas City, Missouri, is reasonable, remunerative and compensatory,

993 and even more than they should, in justice, be required to pay for the kind and character of service they receive.

This defendant denies that the Public Service Commission of Missouri has taken, or has been asked to take, or threatened to take, any action whatsoever with reference to the rates for natural gas furnished to consumers in Kansas City, Missouri.

## XXV.

This defendant admits that Sections 70, 83 and 85 of the "Public Service Commission Act" approved March 17, 1913, are as set out in Division XXV of the bill.

This defendant states that by Section XII of the Act of the General Assembly of Missouri approved March 17, 1913, and known as Public Service Commission Act (Laws of Mo. 1913, p. 556, l. c. 642), it was and is provided that any order of the Public Service Commission of the State of Missouri may be stayed pending a writ of review thereof by any Circuit Court having jurisdiction to review such order, and to which application for writ of review shall have been made, by the applicant filing with the court and by its consent, a bond approved by it and conditioned to pay all damages caused by delay in enforcing the order of the Commission and of all money which any person or corporation may be compelled to pay in excess of the



charges fixed by the Commission in case its order be sustained; and that by Section 14 of said Act (Laws of Mo. 1913, p. 644), it is provided that the judgment of the Circuit Court rendered on review of any order or judgment of said Commission may also be suspended pending an appeal to the Supreme Court by the applicant giving like bond with conditions as required in the bond given pending review in the Circuit Court.

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## XXVI.

This defendant denies that any penalties provided by said Public Service Commission Act or by Section 70, Section 83 and Section 85, or any of them, are excessive or unusually severe, and denies that plaintiff was, or is, intimidated by any penalty in said Act prescribed; and denies that, under the provisions of said Act, the fines and penalties provided for failure by plaintiff to comply, for a period of one year, with any order of said Commission, in event it should be judicially determined that plaintiff had wrongfully failed to comply therewith would approximate the sum of \$29,272,540,000.00, or any excessive sum; *mate the sum of \$29,272,540.00, or any excessive sum*; and states that even if the allegations set out in Division XXVI of the bill were true, it would still be within the power of the plaintiff, under the provisions of said Act, to comply with the provisions of said Section 112 and said Section 114 thereof which are reasonable and liberal and thereby avoid liability to any fines or penalties in any manner whatever.

This defendant denies that plaintiff has furnished, or is now furnishing, or has ever had the right to furnish, natural gas to consumers in Kansas City, Missouri, through distributing companies, or otherwise.

This defendant has no knowledge as to the number of consumers in Missouri, and leaves plaintiff to make proof thereof and asks that he be required to make strict proof.

## XXVII.

This defendant again denies that the penalties provided in the Public Service Commission Act are unusual, oppressive or unreasonable, and denies that plaintiff has been constrained or intimidated thereby or prevented thereby from challenging, in the courts,

995 any other order of said Public Service Commission of Missouri, or forced to keep in effect requirements or schedules prescribed by said Commission; and denies that plaintiff has been, or is now, denied the equal protection of the law in contravention of the 14th Amendment to the Constitution of the United States, by reason of any law of the State of Missouri, or of anything done, or order or judgment made or rendered, by the Public Service Commission of said state; and denies that adequate relief at law from any wrong stated or complained of in the bill is not available to plaintiff, or that the resources and efforts of plaintiff would be absorbed in unnecessary or burdensome litigation; and denies that the properties of the



Kansas Natural Gas Company would be appropriated without due process of law; and denies that by reason or by virtue of any facts stated in the bill or of any Acts of the Public Service Commission of Missouri or of any penalties prescribed by the statutes of said state, plaintiff is deprived of property without due process of law or compelled to transport gas to consumers in Missouri for less than the natural cost of said services or at an actual loss for gas so supplied or delivered.

This defendant again denies that plaintiff supplies or delivers gas to any consumer in Kansas City, Missouri.

#### XXVIII.

This defendant admits the matters of fact stated in Division XXVIII of the bill.

#### XXIX.

This defendant denies any knowledge of any rate fixed by the Public Service Commission of Missouri except only as stated in Division XXI of this answer.

This defendant denies that the rates prescribed by the Public Utilities Commission of the State of Kansas and the Public Service Commission of the State of Missouri, or either of them, will 996 take all, or any part, of the property now in the actual possession of the plaintiff, as such receiver, before the end of the six-year period as set out in said Creditors' Agreement, Exhibit "A," as the duration of their control and possession or leave nothing to turn over to George G. Sharritt as receiver of this court; and denies that any rates prescribed by either of said Commission- is an interference with the possession and control of this court over property, potentially or otherwise, in its charge or custody.

This defendant states that the parties to said Creditors' Agreement had neither right or authority to fix therein the duration of the control and possession of the receivers, and that any such provision in said agreement is of no force and effect.

#### XXX.

This defendant denies that the plaintiff is without adequate remedy at law in the premises in his bill set forth or that he will suffer irreparable injury unless accorded injunctive relief as prayed for therein.

This defendant states that the plaintiff has full and adequate remedy at law for each and every alleged wrong stated in his said bill if, in fact, any wrong has been done, or threatened to be done.

#### XXXI.

This defendant has already hereinbefore answered in full each and every statement of fact in Division XXXI of the bill contained,

and now again denies that any of the circumstances or that all the circumstances enumerated in the bill deprived the Kansas Natural Gas Company, or the plaintiff, of property without due process of law or take property of said Company or of the plaintiff without compensation or deny to it, or to him, equal protection of the law, and specifically denies the matter of fact stated in paragraphs (a), (c) and (f), and in each of them, in Division XXXI of the bill contained. This defendant, upon information and belief, denies each and every statement of fact contained in paragraphs (b), (d) and (e), and each of them, in said Division XXXI of the bill contained.

### XXXII.

This defendant, upon information and belief, denies that the Public Utilities Commission of the State of Kansas has refused to permit plaintiff receiver to put into force and effect a schedule of reasonable rates in the State of Kansas; and denies that any order or judgment referred to in the bill as having been made by the Public Utilities Commission of the State of Kansas is void for any reason stated in Division XXXII of the bill, or for any other reason.

This defendant states that it has no knowledge concerning any orders, if any, made by the Public Service Commission of the State of Missouri, suspending the schedule of rates sought to be put into effect at Oronogo or Carl Junction, and has no knowledge of any order made by said Public Service Commission concerning rates or division of rates in St. Joseph, Missouri, except as stated in Division XXI of this answer, and leaves plaintiff to make proof thereof and asks that he be required to make strict proof.

This defendant again denies that the Public Service Commission has at any time announced a policy to allow no higher rate to be charged in Missouri than in the cities of Kansas, and denies each and every statement of fact contained in paragraphs (a), (c) and (e), and each of them, of Division XXXII of the bill; and denies that any order made by said Public Service Commission is void for the reason stated in said paragraphs (a), (c) and (e) of the bill, or any of them.

998 This defendant, upon information and belief, denies the facts stated in paragraphs (b) and (d), and each of them, in said Division XXXII of the bill, and denies that any order made by the Public Service Commission is void for any reason stated in said paragraphs (b) or (d).

### XXXIII.

This defendant states that it has no knowledge, except as in this answer hereafter set out, as to which of the twenty-one distributing companies named as defendants in the bill distribute, deliver or sell gas to the forty-five cities and towns, respectively, named as defendants in the bill, thirty-seven of the latter being in Kansas and eight in Missouri, or as to how many of said distributing companies obtain

the gas so sold, delivered and distributed now from the plaintiffs or originally from the Kansas Natural Gas Company, or as to what alleged supply-contracts are of record in the suits referred to in the bill, to neither of which this defendant is a party, or as to the terms or provisions of such contracts or respective obligations, duties, advantages or disadvantages of the parties thereto, or as to the adoption by plaintiffs of such contract, or as to the method or result of doing business under or in accordance with them, or as to the circumstances under which such contracts were made or what the parties thereto then thought, or whether or not each of said contracts contained the provisions in the bill set out and alleged therein to be so contained, or as to the necessities of such distributing companies or their dependence upon supply companies, or as to what franchises plaintiffs refer to in their bill, or the terms or provisions of such franchises, or as to what ordinances plaintiffs intend to refer to, or as to what cities and distributing companies knew at the time such ordinances were passed or accepted, or as to the result to plaintiffs or to Kansas

999 Natural Gas Company of continuing to furnish natural gas to such distributing companies under said contracts or ordinances, or as to the ordinances referred to in the bill as granting to such distributing companies the right to use the public ways of said cities under and pursuant to which it is alleged that natural gas is furnished by plaintiffs and distributed and sold in each of said cities, or as to gas so furnished by plaintiff or so distributed or sold, or as to the enactment by said cities of ordinances referred to in the bill as purporting to establish or fix the price or rate for sale of natural gas in said several cities, or as to which of said ordinances are intended to be referred to in the averment "that certain of said ordinances are in excess of powers conferred upon said cities by the State Legislatures," or as to the rates established or fixed by said ordinances or effect thereof upon the property in the custody of the plaintiffs, or as to the powers claimed by said cities, or any of them, to fix, regulate, determine or establish rates or compensation which plaintiff shall receive for natural gas furnished by them, or as to any injunctions, prosecutions or police regulations conducted or threatened by said cities, or their respective mayors or city officials, or any of them, for the purpose, design or intent to regulate, control or fix the price at which plaintiffs may sell natural gas furnished by them, and leaves plaintiffs to make proof of such of said allegations as may be material, and prays that they be required to make strict proof.

Except that this defendant denies that it has ever granted to plaintiffs, as such receivers, or that they have, or ever had, any right or privilege to sell or distribute natural gas to or in Kansas City, Missouri; and denies that plaintiffs sell or distribute gas to or in said city; and denies that any ordinance enacted by it regulating or fixing any price or rate for the sale of natural gas in said city is in

1000 excess of its powers, or that any rate so fixed by it is unreasonable, non-compensatory or confiscatory; and denies that it now claims or has the right to fix, regulate, determine or establish rates, charges or compensation for the sale of natural gas, except by contract; and denies that its mayors, city counselors or

common councils, or any of them, are or have been conducting or threatening injunctions, prosecutions or police regulations with the purpose, design or intent to regulate, control or fix the price at which plaintiffs may sell natural gas, and denies that it has done or threatened any act or thing, or passed any ordinance, which interferes with the lawful or legitimate management and operation by plaintiffs of the property and business in their hands as receivers, or is a usurpation or an abuse by it of power; and denies that the business conducted or carried on by plaintiffs in the operation, as such receivers, of the property and business of the Kansas Natural Gas Company is interstate commerce; and denies that this defendant, or any of its officers, unless restrained and enjoined by this Court, will subject plaintiffs or any of the defendant distributing companies to a multiplicity of suits, injunctions or prosecutions in state or municipal courts, or subject plaintiffs or any of said distributing companies to irreparable damage, loss or expense, and denies that any distributing company delivers plaintiffs' gas to consumers in Kansas City, Missouri.

This defendant states, on the contrary, that it has not only not harassed or injured plaintiffs, or the property in their possession, by suits, threats or otherwise, but has, at all times, when practicable, aided, assisted and endeavored to co-operate with plaintiffs.

On information and belief, this defendant avers that since the proceedings before the Public Utilities Commission of Kansas, begun in January, 1913, and shortly thereafter concluded as stated in Division VI of the bill, plaintiffs have not been involved 1001 in any suits or proceedings in any judicial or administrative tribunal in the State of Kansas or in the State of Missouri other than such as were instituted by themselves, except only the continued proceedings in the District Court of Montgomery County, Kansas, and in this Court in the suits in which the receivers were appointed, and in those courts only upon their own initiative, and the proceedings in the Supreme Court of Kansas in case entitled State of Kansas on Relation of H. O. Caster et al. v. Thomas J. Flannelly et al., which last named proceedings were made necessary by aggressive and wrongful action and proceedings of receivers themselves in the District Court of Montgomery County, Kansas.

This defendant denies that the Kansas City Gas Company, one of the defendants in the above entitled suit, is, or was at any time, a distributing company, or an agent or distributing company of the plaintiffs or of the Kansas Natural Gas Company or of the Kansas City Pipe Line Company; on the contrary, this defendant avers that said Kansas City Gas Company is, and was at all times mentioned in the bill, an independent corporation actually engaged in the business of buying, selling and delivering to Kansas City and other consumers natural gas in said city; and is, and since its organization has been, owned and controlled by the United Gas Improvement Company, a corporation, of Philadelphia, Pennsylvania, and has not herein asked, or joined the receivers in asking, an increase of the rate or price of natural gas in Kansas City, Missouri.

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## Third.

This defendant, having fully traversed and answered the bill of complaint filed herein, further answering, says:

## I.

On January 13, 1912, there was begun, and is now pending, in the Circuit Court of Jackson County, Missouri, at Kansas City, a suit, No. 63201, on the docket of said court, wherein Kansas City, Missouri, a municipal corporation, this defendant, is plaintiff, and Kansas City Gas Company, a corporation, one of the defendants in this suit, is defendant, wherein said Kansas City sues for itself and all consumers who may elect to join therein, and alleges that the Kansas City Gas Company had repeatedly failed, neglected and refused to supply, furnish and deliver to said city and other consumers of natural gas therein which it had agreed to furnish and was under obligation to furnish under ordinance of said city No. 33887, approved September 27, 1906, and known as the Natural Gas Franchise, and had constantly and continuously failed to meet its obligations thereunder, and prayed the court for an accounting with the defendant, and that the court ascertain and determine the value of gas furnished and delivered by the defendant, and to restrain and enjoin the defendant from shutting off the gas from any consumer who refused to pay the charges made by the Kansas City Gas Company, for the reason that the Kansas City Gas Company had failed to furnish the volume of gas under the pressure required by said franchise contract in reasonable compliance therewith, in which suit a restraining order and, subsequently, a temporary injunction was granted, and plaintiff gave and filed therein, as required by the court, an injunction bond in the sum of \$25,000.00, which still remains in full force and effect.

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## II.

That on the — day of January, 1912, there was begun, and is now pending, in the District Court of the United States for the Western Division of the Western District of Missouri, a suit wherein said Kansas City Gas Company is complainant and said Kansas City, its then mayor and city counsel and other city officials are defendants, and numbered 3793 on the docket of said court, wherein the plaintiff complained that a certain ordinance therein complained of and theretofore passed by said city prescribing the pressure to be maintained within the corporate limits by said Kansas City Gas Company in furnishing and delivering gas under its said franchise was unreasonable and confiscatory, and prays that the city be restrained and enjoined from enforcing said pressure ordinance; that a temporary injunction was therein granted as prayed for and said Kansas City Gas Company gave and filed therein an injunction bond as required by the court; that this defendant subsequently

filed in said cause, in the District Court of the United States for the Western Division of the West District of Missouri, its amended and supplemental answer and counter-claim, wherein, among other things, it alleges that the United Gas Improvement Company, a corporation; Kansas City, Missouri, Gas Company, a corporation; Kansas Natural Gas Company, a corporation; Kaw Gas Company, a corporation; Marnet Mining Company, a corporation; W. F. Douthirt, Charles E. Small and Randall Morgan are necessary parties to said suit, to the end that the issues therein may be fully and properly presented, and that said United Gas Improvement Company is the owner of a certain Ordinance No. 6125, approved January 10, 1895, wherein Robert M. Snyder and others therein named were granted a franchise to construct and maintain gas works for the purpose of manufacturing and selling gas to said city and its  
1004 citizens; and that said United Gas Improvement Company is also the owner of a certain other ordinance of said city, No. 6658, which became a law without the signature of the mayor August 24, 1895, wherein Milton J. Payne and others therein named were granted a franchise to acquire, construct and maintain gas works in said city for the purpose of manufacturing and selling gas to said city and its citizens; and also of a certain other Ordinance No. 8033, which became a law without the signature of the mayor February 13, 1897, which authorized and permitted the two gas franchises hereinbefore named to be consolidated, and that said United Gas Improvement Company is the owner of all said franchises, rights and privileges thereunder, and is also the owner of said Ordinance No. 33887, known as the Natural Gas Franchise, and of all franchises, rights and privileges thereunder, and is, in fact, operating under said franchises and doing business in Kansas City, Missouri, in the name of Kansas City Gas Company; that said United Gas Improvement Company caused to be organized said Kansas City Pipe Line Company and said Kaw Gas Company, and is the owner of the stock of said companies and of bonds of Kansas City Pipe Line Company and of stock and bonds of the Kansas Natural Gas Company and of stock and bonds of the Marnet Mining Company, and of certain pipe lines and compressor stations and other property held in the name of Kaw Gas Company, of the Kansas City Pipe Line Company and of the Wyandotte County Gas Company, the grantee of a natural gas franchise in Kansas City, Kansas, and is the sole owner of all of said corporations except the Kansas Natural Gas Company, and directs, dominates and controls all of them, and that said corporations had formed a trust, pool or  
1005 agreement to control the supply of gas and price of gas to consumers, as well as to producers thereof, in violation of the laws of the United States and of the State of Missouri; and said Kansas City therein prays, among other things, that said United Gas Improvement Company, Kansas City Gas Company, Kansas Natural Gas Company, Kaw Gas Company, W. F. Douthirt, Charles E. Small, Randall Morgan and Marnet Mining Company be made parties to said suit and that a writ of subpoena issue to each



of them, respectively; that said United Gas Improvement Company be decreed to be the owner of said franchises and of the several corporations which it is therein alleged to own, and that all the obligations and liabilities of said Kansas City Pipe Line Company be decreed to be the obligations and liabilities of said United Gas Improvement Company, and that the parties thereto be enjoined from complying with or enforcing any of the terms or provisions of any pool, trust, combination or understanding with each other or with any other to fix or control the price of gas or the amount of natural gas to be furnished to said city and inhabitants thereof, or to control or fix the price of natural gas to be paid to producers and that said artificial and natural gas franchises be adjudged and decreed to be forfeited or that said United Gas Improvement Company be compelled to keep and perform the obligations thereof, and at all times to procure and supply to Kansas City, Missouri, and its inhabitants for all domestic purposes such as cooking, lighting and heating, and for public purposes, natural gas in reasonably sufficient quantity and of reasonably suitable quality and at reasonably adequate pressure for such purposes, and that a receiver or receivers be appointed for said Kansas City Gas Company, Kansas City, Missouri, Gas Company, United Gas Improvement Company, Kansas City Gas Company, incorporated in November, 1906; Kansas City Pipe Line Company, Kaw Gas Company and Kansas 1006 Natural Gas Company, and of the property of each of them, to the end that further violations of the law may be prevented and the property cared for and preserved.

This defendant states that neither of the plaintiffs is a party either to the suit pending, as aforesaid, in the Circuit Court of Jackson County, or to the suit pending in the District Court of the United States for the Western Division of the Western District of Missouri; and that none of the parties thereto have asked or have joined the plaintiffs in asking that any such proceedings be enjoined; that both of said suits were pending before either of the suits, to which this suit is alleged to be dependent, were filed in this court, and that it will be inequitable to enjoin this defendant from prosecuting its said cause of action in either of said suits and to prevent it from obtaining such relief in said suits, and each of them, as the respective courts in which said suits are pending may finally determine to be just and equitable, and especially to enjoin it at the suit of the plaintiff herein.

That said amended and supplemental answer and counter-claim of Kansas City was filed in said United States District Court on or about April 20, 1914, and writs of subpoena forthwith issued for the new parties therein named and duly served upon said United Gas Improvement Company, Kansas City Gas Company, Kansas City, Missouri, Gas Company, Charles E. Small and W. F. Douthirt.

### III.

This defendant denies that the plaintiffs are entitled to any relief whatever, or any part of the relief in their said bill demanded, and



alleges that plaintiffs have no standing in this Court or in any court of equity.

1007 And defendant prays in all things the same benefit and advantage of this, its answer, as if it had pleaded or demurred to said bill of complaint.

And this defendant denies all and all manner of threats, wrongful or unlawful acts whatsoever, whereof it is in any wise by said bill of complaint charged; all of which matters and things this defendant is ready and willing too prove as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL OF KANSAS CITY.]

KANSAS CITY, MISSOURI,

By GEO. H. EDWARDS, *Mayor*.

Attest:

J. A. BIRMINGHAM,

*City Clerk*,

J. A. HARZFELD,

*Solicitor for Defendant Kansas*

*City, Missouri.*

A. F. EVANS,

*Of Counsel for Defendant Kansas*

*City, Missouri.*

STATE OF MISSOURI,

*County of Jackson, ss:*

George H. Edwards, being first duly sworn, deposes and says that he is the mayor of Kansas City, Missouri, a municipal corporation named as defendant in the above entitled suit, and is well acquainted with its business; that so much of the foregoing answer as concerns the acts and deeds of said Kansas City is true to the best of his knowledge; and so much thereof as concerns the acts and deeds of any other person, or persons, corporation or corporations, he believes to be true.

GEORGE H. EDWARDS.

1008 Subscribed and sworn to before me, a notary public within and for the County of Jackson, State of Missouri, this 15th day of May, 1915.

Witness my hand and notarial seal.

[NOTARIAL SEAL.]

CARRIE M. RUPPELIUS,

*Notary Public.*

My commission will expire May 6, 1917.

Filed in the District Court on May 15, 1916. Morton Albaugh, Clerk.

1009 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON et al., Plaintiffs,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

Now comes Kansas City, Missouri, appearing especially for the purposes of this motion only, and moves the court to quash the writ of subpoena issued upon the bill of complaint in the above entitled cause against it, and vacate and set aside the return of service of said writ on Kansas City, Missouri, for the following reasons:

Because Kansas City, Missouri, is, and was at the time said subpoena was issued and served, a municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of Missouri, and is a governmental agency of the State of Missouri.

Because Kansas City, Missouri, is, and was at the time said subpoena was issued and served, a citizen and resident of the District of Missouri, Western Division, and not a citizen or resident of the District of Kansas.

Because said subpoena was served upon Kansas City, Missouri, as shown by the Marshal's return, outside of the District of Kansas and in Jackson County, State of Missouri, and is and was not a valid and legal service of process upon Kansas City, Missouri, in the above entitled cause, and this court has not jurisdiction of the defendant, Kansas City, Missouri.

A. F. EVANS,

*Attorney for Defendant Kansas City.*

Plaintiffs agree that the foregoing motion may be filed in the above entitled cause at any time on or before February 21, 1916.

JOHN H. ATWOOD,

*Solicitors for Plaintiffs.*

Filed in the District Court on February 15, 1916. Morton Albaugh, clerk.

1010 In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Motion by Defendant Kansas City, Missouri, That Its Defenses in  
Point of Law Be Separately Heard and Disposed of Before the  
Trial, and to Dismiss the Bill of Complaint as to It.*

Now comes Kansas City, Missouri, one of the defendants in the  
above entitled suit, and respectfully shows to the court that in its  
answer filed herein to the bill of complaint, it pleaded defenses in  
point of law arising upon the face of the bill, as follows:

- (a) Misjoinder of parties.
- (b) Misjoinder of causes of action whereby the bill is multifarious.
- (c) Insufficiency of fact to constitute a valid cause of action in  
equity against Kansas City, Missouri.
- (d) That this court is without jurisdiction of the defendant,  
Kansas City, in this suit for the reason that the process served upon it  
herein was not authorized by law and no process has been authorized  
by law by which this court may acquire jurisdiction of the defendant,  
Kansas City, in this suit.
- (e) That the plaintiff is not without adequate remedy in the due  
course of law and his bill fails to show cause for equitable relief  
against Kansas City, Missouri.

Wherefore, this defendant, Kansas City, Missouri, prays the court  
to separately hear and dispose of its said defenses before the trial of  
the principal case and to dismiss this suit as to this defendant  
1011 and that it may have judgment for its costs expended and in-  
curred in this suit.

J. A. HARZFELD,  
*Solicitor for Kansas City, Missouri.*  
A. F. EVANS, *Of Counsel.*

Filed in the District Court on October 17, 1916. Morton Albaugh,  
clerk.

1012 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS, Public Service Commission of the State of Missouri et al., Kansas City, Missouri, et al., Defendants.

*Answer of Kansas City, Missouri, a Defendant, to the Supplemental Bill of Complaint.*

Kansas City, Missouri, one of the defendants in the above entitled suit, for answer to the supplemental bill of complaint of plaintiff herein, says that it saves and here again pleads its several defenses in points of law arising upon the face of the original bill and of said supplemental bill, and prays leave to refer for more particularity to its answer filed herein to the original bill of complaint.

## I.

Further answering, it denies that the rates alleged to have been established by the Receiver were fixed or established by him in pursuance of the order of this court entered June 3, 1916, or that such are graduated according to distance or that such rates will produce an average rate of about 32 cents per 1,000 cubic feet of domestic gas applied by him to consumers in cities of Kansas and Missouri, and avers that such average price is substantially in excess of 32 cents per 1,000 cubic feet.

It denies that plaintiff is entitled to an average rate of 32 cents per 1,000 cubic feet of gas transported and sold by him, and denies that this court has, at any time, determined that anything less than an average rate of 32 cents to the consumer will be compensatory and confiscatory.

1013 This defendant says that it has no knowledge or information save only as derived from the supplemental bill as to the directions alleged to have been given by plaintiff to distributing companies, and leaves him to make proof thereof.

## II.

This defendant denies that this court, by its decree of June 3, 1916, in this case, reserved exclusive jurisdiction over all matters and things in controversy in this suit.

It says that it has no knowledge or information, save only as de-

rived from the supplemental bill, as to the complaint alleged to have been filed by Kansas City Gas Company with the Public Service Commission of Missouri, or of any order made by it thereon, and leaves plaintiff to make proof thereof.

### III.

This defendant admits that the Kansas City Gas Company filed with the Public Service Commission of the State of Missouri, a new schedule of rates to be charged and collected by said Company for natural gas supplied by it to Kansas City, Missouri, and its inhabitants; that Kansas City, by its counselor, approved and consented thereto and that said Public Service Commission made an order putting the said new schedule of rates into effect after October 19, 1916, whereby the rate will be increased from 27 cents to 30 cents per 1,000 feet.

It states that said change of rates was consented to on its behalf for the reason that the franchise ordinance and contract, more particularly referred to in its answer to the original bill in this suit, by which the Kansas City Gas Company is authorized to supply natural gas to said city and its inhabitants provides, among other things, in Section XIII thereof, that the grantees therein "shall be entitled to charge and collect from consumers of such gas, during the period of five years from and after natural gas is first furnished hereunder at the rate of not to exceed 25 cents per thousand cubic feet, and during the period of the 5 years next thereafter at the rate of not to exceed 27 cents per thousand cubic feet, and thereafter, during the period of the aforesaid grant at the rate of not to exceed 30 cents per thousand cubic feet."

Natural gas was first furnished under said ordinance in Kansas City, Missouri, on November 19, 1906, and that said 25 cent rate obtained during said first five years, and until November 19, 1911, whereupon said 27 cent rate was put into effect and has obtained to the present time and the five years mentioned for such rate will expire on November 19, 1916; at which date said increase in the rate is authorized by said ordinance contract.

It denies that the order of the Public Service Commission putting said new schedule into effect was, or is, an interference with the Interstate commerce business, if any, in which plaintiff is engaged, or is engaging, or is in conflict with the decree of this court of June 3, 1916.

### IV.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division IV of the supplemental bill, and leaves the plaintiff to make proof thereof.

### V.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division V of the supplemental bill, and leaves the plaintiff to make proof thereof.

## VI.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division VI of the supplemental bill, and leaves the plaintiff to make proof thereof.

## VII.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division VII of the supplemental bill, and leaves the plaintiff to make proof thereof.

## VIII.

1015 It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division VIII of the supplemental bill, and leave the plaintiff to make proof thereof.

## IX.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division IX of the supplemental bill, and leaves the plaintiff to make proof thereof.

## X.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division X of the supplemental bill, and leaves the plaintiff to make proof thereof;

Except that it denies that the acts of the Public Service Commission of Missouri, as set out in Division III of the Supplemental Bill, were done for the purpose, aim or desire to intimidate any party in any respect whatever, or that any such acts interfered with plaintiff in the administration of his trust or in the performance of his duties as Receiver, or with Interstate Commerce, or that the new schedule thereby approved and authorized to be put into effect October 19, 1916, has been determined by this court to be unreasonable, non-compensatory or confiscatory.

## XI.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XI of the supplemental bill, and leaves the plaintiff to make proof thereof.

## XII.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XII of the supplemental bill, and leaves the plaintiff to make proof thereof.

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## XIII.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XIII of the supplemental bill, and leaves the plaintiff to make proof thereof.

## XIV.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XIV of the supplemental bill, and leaves the plaintiff to make proof thereof.

## XV.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XV of the supplemental bill, and leaves the plaintiff to make proof thereof.

## XVI.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XVI of the supplemental bill, and leaves the plaintiff to make proof thereof.

## XVII.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XVII of the supplemental bill, and leaves the plaintiff to make proof thereof;

Except it admits that the City Counselor wrote to the plaintiff a letter, as stated in Division XVII of the supplemental bill.

It denies that it is necessary for plaintiff to obtain 18 cents per thousand cubic feet of gas delivered by him to the Kansas City Gas Company in order to make a profit.

## XVIII.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XVIII of the supplemental bill, and leaves the plaintiff to make proof thereof.

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## XIX.

It says that it has no knowledge or information, save only as derived from the bill, as to the facts alleged in Division XIX of the supplemental bill, and leaves the plaintiff to make proof thereof.

## XX.

This defendant admits that it has, at all times, by and through its officers and agents, counseled and advised consumers of natural gas



within its corporate limits, that the price to them of natural gas is fixed by said Franchise Ordinance, and that the plaintiff is wholly without authority to change or modify it, and further advised and encouraged such consumers to refuse to pay any price in excess of said rate until and unless a different rate be legally established by another contract or by competent authority.

It denies that the rates fixed by said contract, and thereunder paid, are confiscatory, unreasonably low or non-compensatory; and states that such rates have been patiently paid notwithstanding the consumers *know*, and now know, that any charge at all is exorbitant for the kind of service they receive practically all the time whenever the temperature has been below 20 degrees above zero.

It denies that the rates which the plaintiff attempted to establish are reasonable, and states that they are unreasonable and exorbitant.

It denies that it has, at any time or in any manner, sought to render nugatory or ineffective the orders or decrees of this court, or that it has, by suit or application to any Commission, threat or otherwise, sought to intimidate any distributing company.

It has refused to violate or to consent to the violation of its said Franchise Contract.

It denies that the plaintiff is, or will be, without adequate remedy at law.

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## XXI.

This defendant denies that the plaintiff is entitled to any part of the relief in his original bill or in his supplemental bill demanded, or to any relief whatever, against this defendant.

And defendant prays in all things the same benefit and advantage of this its answer as if it had pleaded or demurred to said bill of complaint.

All of which matters and things this defendant is ready and willing to prove as this Honorable Court shall direct, and prays in its answer to said original bill that said original bill and also the supplemental bill be dismissed as to this defendant and it be hence dismissed with its reasonable costs and charges in this behalf wrongfully sustained.

KANSAS CITY, MISSOURI,  
By GEO. H. EDWARDS, *Mayor*.

Attest:

J. A. BERMINGHAM,  
*City Clerk.*

STATE OF MISSOURI,  
*County of Jackson, ss:*

George H. Edwards, being first duly sworn, deposes and says that he is the Mayor of Kansas City, Missouri, a municipal corporation named as defendant in the above entitled suit, and is well acquainted with its business; that so much of the foregoing answer as concerns

the acts and deeds of said Kansas City is true to the best of his knowledge; and so much thereof as concerns the acts and deeds of any other person, or persons, corporation, or corporation-, he believes to be true.

GEO. H. EDWARDS.

Subscribed and sworn to before me, a Notary Public within and for the County of Jackson, State of Missouri, this 16th day of October, 1916.

Witness my hand and notarial seal.

My commission will expire May 6, 1917.

CARRIE M. RUPPELIUS,  
*Notary Public.*

J. A. Harzfeld, Solicitor for Defendant, Kansas City, Missouri.  
A. F. Evans, of Counsel for Kansas City, Missouri.

Filed in the District Court on October 17, 1916.

MORTON ALBAUGH, *Clerk.*

1019 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 13@N.

JOHN M. LONDON, as Receiver for the Kansas Natural Gas Company,  
Plaintiff,

VS.

PUBLIC UTILITIES COMMISSION OF STATE OF KANSAS et al., De-  
fendant-.

*Answer of the City of Joplin, Missouri.*

Comes now the City of Joplin, Missouri, and for its separate answer to plaintiff's supplemental bill filed herein, reserves all its rights and exceptions to the jurisdiction of this court as set forth in its answer to the original bill filed in this case, and says:

I.

That as to the allegations in division No. 1 of said supplemental bill, defendant has no positive information and neither affirms nor denies said allegations, and asks that proof be made of same, except that as to that part of division No. 1 which is an extract from the opinion delivered by this court, which said defendant admits.

## II, III, IV, V.

That as to the allegations contained in paragraphs 2, 3, 4 and 5 relative to the Kansas City Gas Company and suits it brought and the Weston Gas and Light Company, this answering defendant has no information and therefore neither denies nor affirms the allegations therein.

## VI.

Said answering defendant admits that the Joplin Gas Company on or about the — day of August, 1916, filed with the Public Service

Commission a new schedule of rates wherein it proposed to 1020 change the rate for the sale of natural gas in the city of

Joplin, effective September 1st, 1916. That said new rate would be thirty cents (30¢) per thousand cubic feet, with a minimum charge of sixty cents (60¢). That thereafter the city of Joplin filed a complaint before the Public Service Commission of the state of Missouri. That said complaint was attached to said supplemental bill as "Exhibit 6." That the Public Service Commission of the State of Missouri suspended said proposed new rates from going into effect until 120 days from September 8th, 1916.

That this answering defendant, the city of Joplin, alleges that there is a contract in full force and effect between the receivers of the Kansas Natural Gas Company, the plaintiff in this case, and the Joplin Gas Company, wherein said Joplin Gas Company buys and the receiver of the Kansas Natural Gas Company sells gas to be used in the city of Joplin, Missouri. That the title to all gas used in the city of Joplin, Missouri, is vested in the Joplin Gas Company as soon as it is delivered into the pipes of the Joplin Gas Company, and that the said receiver of the Kansas Natural Gas Company loses all control over said gas as soon as it is so delivered into the pipes of the Joplin Gas Company. That said contract further provides that the Joplin Gas Company shall have the right to sell said gas to the consumers in Joplin, Missouri, for any price it shall fix, provided, however, that it shall not sell for less than twenty-five cents (25¢) per thousand cubic feet. That said Joplin Gas Company has sold to the consumers in Joplin for the last ten years for 25¢ per thousand cubic feet and a minimum charge of fifty cents (50¢) per month, and this answering defendant has not been informed and does not now believe that the Joplin Gas Company has elected to have any higher price than twenty-five cents per thousand cubic feet, and alleges now upon belief that it has elected upon its contract to sell gas to the consumers of Joplin, Missouri, for twenty-five cents (25¢) per thousand cubic feet, with a minimum of fifty cents (50¢) per month.

1021 Said answering defendant further alleges that under and by virtue of said contract above referred to, the Joplin Gas Company has been buying gas from the receiver of the Kansas Natural Gas Company, and paying for it under and by virtue of the terms of said contract, i. e., two-thirds of said amount goes to the

receiver of the Kansas Natural Gas Company and one-third to the Joplin Gas Company, and that by the acts and conduct of the receiver of the Kansas Natural Gas Company, he has elected to affirm said contract made by the Kansas Natural Gas Company or by its predecessor. That a copy of said contract is hereto attached and marked "City of Joplin's Exhibit No. 1."

Further answering said allegations in paragraph 6 of said supplemental bill, wherein it says that E. F. Cameron, city attorney of the city of Joplin, Missouri, threatened to have the officers of the Joplin Gas Company arrested 7,200 times per month in case they attempted to violate the orders of the Public Service Commission and that the punishment would be not less than \$100 nor more than \$200. This allegation, the said City of Joplin denies. That it never at any time threatened or notified the officials of the Joplin Gas Company that they would be arrested as alleged in said supplemental bill, for violating the orders of the Public Service Commission.

The said answering defendant says that it is not an interference with interstate commerce in which said plaintiff is engaged when the City of Joplin attempts to interfere with the Joplin Gas Company in putting into effect any rate that has not been approved by the Public Service Commission for the reason that the Joplin Gas Company is not selling gas to the citizens of Joplin, Missouri, as an agent of the Kansas Natural Gas Company or its receiver, and that the commerce of selling gas by the Joplin Gas Company to the citizens of the city of Joplin, Missouri, is not interstate commerce but wholly intra-state commerce, over which the Public Service Commission of the state of Missouri has exclusive control.

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## VII, VIII, IX.

That as to paragraphs 7, 8 and 9, relative to allegations of the Fort Scott and Nevada Light, Heat, Water and Power Company, and the Carl Junction Gas Company in paragraph 8, and the Oronogo Gas Company in paragraph 9, this answering defendant has no information and, therefore, neither denies nor affirms the allegations therein.

## X.

That as to the allegations in paragraph 10 of said supplemental bill of complaint, in so far as relates to the city of Joplin, Missouri, this answering defendant says that such acts as have been done by the City of Joplin have not been done to interfere with the interstate commerce in which the said plaintiff is engaged. That it has never at any time filed any complaint, bill or communication or made any statement that in any way interfered with the interstate commerce in which said plaintiff is engaged, but all of its allegations, statements and complaints have had reference to the intra-state commerce in which the said Joplin Gas Company is engaged, and at no time has it directed any complaint, statement or allegations against the Kansas Natural Gas Company or its receiver. This answering defendant says

and alleges that the Joplin Gas Company is engaged in intra-state commerce and that it sells all of its product to the citizens of the city of Joplin, Missouri. That the public service commission of the state of Missouri has exclusive control over its rates and that before any raise in the price of gas to citizens of the city of Joplin, Missouri, should be made, a proper inventory and appraisal of the things and property and effects used by the Joplin Gas Company which are used and useful in the distribution and sale of natural gas in the city of Joplin, Missouri, should be made as alleged in defendant's original bill and marked "Exhibit 6" and that any act that this defendant does in attempting to prevent the Joplin Gas Company from raising its rates to thirty cents (30¢) per thousand cubic feet, is not preventing the plaintiff herein from securing an average per cent of thirty-two cents (32¢) per thousand cubic feet, which  
1023 he purchases in Kansas and Oklahoma and sells to consumers in Kansas and Missouri.

#### XI, XII, XIII, XIV, XV, XVI, XVII.

That as to the allegations in paragraph 11, relating to the city of Kansas City, Kansas, the city of Rosedale, Kansas, and the Wyandotte County Gas Company, and as to the allegations in paragraph 12, relating to the Wyandotte County Gas Company, and as to the allegations in paragraph 13, relating to an order of the Public Utilities Commission of the State of Kansas, and as to the allegations in paragraph 14, relating to a suit filed by the Public Utilities Commission before the Supreme Court of Kansas, and as to the allegations in paragraph 15, relating to the consumers of gas in cities of Kansas City, Kansas, and Rosedale, Kansas, and the Wyandotte County Gas Company, and as to the allegations in paragraph 16, relating to the Public Utilities Commission of the State of Kansas, and as to the allegations in paragraph 17, relating to the Wyandotte County Gas Company and the Kansas City Gas Company, and the sale of natural gas in Kansas City, Missouri, notifying the receiver of the Kansas Natural Gas Company that it was not its agent, as to all such allegations, this answering defendant has no information and neither affirms nor denies such allegations.

#### XVIII.

That as to the allegations in paragraph 18, relative to the financing of the Kansas Natural Gas Company by various persons and stockholders of the company for four and a half million dollars, this answering defendant has no information and neither admits nor denies same. That exhibit No. 26, which is a true and correct copy of the application of the Kansas Natural Gas Company for the discharge of its receiver as filed in the District Court of Montgomery County, Kansas, this defendant has no information and said exhibit No. 26 is not attached to the supplemental bill of complaint furnished to it by the plaintiff herein.

## XIX.

1024 That said answering defendant denies all the allegations in paragraph 19 of said supplemental bill of complaint.

## XX.

That as to the allegations in paragraph 20 of said supplemental bill of complaint, this answering defendant denies each and every allegation therein contained.

Wherefore, said defendant having fully answered, prays to be discharged with its reasonable costs herein incurred, and especially asks that no injunction be granted against the city of Joplin, Missouri, in interfering with the Joplin Gas Company in putting into effect any rate until same has been approved by the Public Service Commission of the State of Missouri, and prays that this court adjudge and determine the force and effect of the contract attached to this answer, marked "City of Joplin's Exhibit No. 1" and for such other and further orders as to the court may seem meet and just in the premises.

E. F. CAMERON,  
*Solicitor for the City of Joplin, Mo.*

## STATE OF MISSOURI,

*County of Jasper, ss:*

E. F. Cameron, being duly sworn, makes oath and says that he is the duly appointed, qualified and acting city attorney of the city of Joplin, Missouri, and authorized to make this affidavit; that he has read the above and foregoing answer and knows the contents thereof, and that the same are true as he verily believes.

E. F. CAMERON.

Subscribed and sworn to before me this 17th day of October, 1916.

[SEAL.]

MINA M. FOSTER,  
*Notary Public.*

My term expires May 5, 1917.

1025 "*City of Joplin Exhibit One,*" Consisting of Seven Pages.

This agreement, made and entered into this 19th day of January, A. D. 1905, by and between T. N. Barnsdall of Pittsburgh, Pennsylvania, party of the first part, and the National Gas Electric Light and Power Company, a corporation duly organized and existing under the laws of the State of New Jersey, party of the second part.

Witnesseth: Whereas, the party of the first part is the owner of a large acreage of gas leases with a number of gas wells thereon, in the gas belt of Kansas, and desires to find a market for his product, and

Whereas, the party of the second part is the owner of a system of



mains and pipes for the distribution of gas in the city of Joplin, Missouri, and desires to secure a supply of natural gas for the use of said city of Joplin and its inhabitants.

Now, therefore, this agreement witnesseth: That the party of the first part hereby agrees to lay and complete or cause to be laid and completed on or before July 1st, 1905 (unavoidable delays excepted) a pipe line for conveying natural gas from the gas fields of Kansas to a point on the city limits of the city of Joplin, Missouri, and to install and maintain at said point a reducing and regulating station for the delivery of gas into the mains and pipe line system of the party of the second part in the said city of Joplin, Missouri.

That it will for and during the term of twenty (20) years from and after July 1st, 1906, supply and deliver through its said pipe line or lines and through said reducing and regulating station natural gas in sufficient volume to maintain a pressure not to exceed eight (8) ounces on the principal main lines of the low pressure system in said city, that they will at all times supply the demands for all purposes of the consumption as provided in this contract, and at such prices per thousand cubic feet as are hereinafter agreed upon, or may hereafter be agreed upon, in accordance herewith.

1026 However, as the production of gas from wells and the conveying of it over long distances is subject to accidents, interruptions and failures, the party of the first part does not by this contract undertaken to furnish the party of the second part with an uninterrupted supply of gas for the period named therein, but only to *finish* such a supply of gas to the party of the second part as the wells and pipe lines supplying gas to the party of the second part are capable of supplying, and in the case of its inability to fully supply all of the cities and towns with which it is connected, the gas supplied under this contract shall at all times be pro rata share of the total deliveries of gas. And it is expressly understood and agreed by the party of the second part that the party of the first part shall not be liable for any loss, damage, or injury to the party of the second part that may result directly or indirectly from such shortage or interruptions, but said party of the first part agrees to use diligence to supply said party of the second part with a constant and adequate supply of merchantable gas for all consumers and that the party of the second part may secure within the corporate limits of the city of Joplin, Mo., as the said limits now exist or hereafter be established by law.

Said party of the second part in consideration of the covenants and agreement of the party of the first part hereby covenants and agrees to and with party of the first part to reconstruct and adapt its existing system of mains and pipes in said city of Joplin for the distribution of such natural gas as may be necessary to supply said city and all its inhabitants who may desire to purchase and use natural gas for any purposes with such gas. And the low pressure system of said pipe lines in said city shall be of a sufficient size to deliver an ample supply of said gas to the said city of Joplin and all its inhabitants at all times, with a pressure not to exceed eight (8) ounces on the principal main lines of said low pressure system. To



construct and maintain all necessary appliances and connections and service pipes; to keep said appliances, lines and pipe connections in good repair, and serviceable condition to prevent leakage, waste or escaping gas, and to extend its mains for new consumers whenever they can secure an average of one responsible consumer for each one hundred (100) feet of such extension; to make proper connections with and attachments to the pipe line of said party of the first part at said reducing and regulating stations of the said party of the first part. To locate and furnish an office at some convenient point in said city to be selected by it, the said party of the second part; to employ and pay all necessary clerks and employees required to conduct and carry on the business of supplying natural gas to all consumers in said city; to make all contracts for supplying natural gas to said consumers, to use its best endeavors to secure customers and consumers, and to build up and extend said business by advertising, soliciting by agents and otherwise, and to do all things necessary, and to manage and conduct said business and furnish natural gas to all consumers in said city during the continuance of this contract.

Said party of the second part further agrees to assume all expense, cost, labor and risk incurred in the construction, operation and management of said pipe line and business within the corporate limits of said city from its connections with the pipe line of the party of the first part, to pay all taxes and assessments of every kind whatsoever on all of the property within said city, that it will (unavoidable delays excepted) have said plant so to be constructed, fully completed, and will receive gas from the said party of the first part, and begin the distribution of same to consumers upon the completion of the said first party's line to the city limits, as herein agreed not later than July 1st, 1905.

It is also further covenanted and agreed by and between said party of the first part and said party of the second part, that the prices to be charged and collected for all natural gas furnished and sold to consumers within the said city under this contract during the  
1028 continuance of the same shall be regulated and fixed by said party of the second part, but that the price to be fixed shall be in no case less than thirty (30) cents per thousand cubic feet subject to discount of five (5) cents per thousand cubic feet when payment be made on or before the 10th of the month for gas consumed during the preceding month.

The said party of the second part shall pay to the said party of the first part at the general office of the said party of the first part wherever the same be located, on or before the 10th day of each and every month during the continuance of this contract, sixty-six and two-thirds ( $66 \frac{2}{3}$ ) per cent of the gross earnings from the sales of natural gas during the preceding month for domestic purposes less the amounts of uncollectable bills when the delinquent party has been shut off for default in payment thereon within thirty (30) days after the maturity of such bill or bills and all reasonable efforts have been made to collect such delinquent bills without success. If at any such subsequent time or times any bill or bills which are deemed

uncollectable shall be paid in whole or part, said party of the second part shall pay to said party of the first part sixty-six and two-thirds ( $66 \frac{2}{3}$ ) per cent thereof as hereinbefore stipulated to be paid by it, the said party of the second part, save and except that during the first year after the introduction of gas into said city under this contract, the party of the second part shall pay to the party of the first part sixty (60) per cent of the gross earnings from sales of gas on or before the 10th day of each month during said year.

It is further covenanted and agreed by and between the party of the first part and the party of the second part, that the said party of the second part will make service connections free of cost to the consumers; furnish all meters to be used by consumers and set same free of cost to the consumer; require all consumers to sign a contract for gas before connections are made with its pipe line or gas  
1029 turned into the house or service pipes of such consumer, that all gas sold shall be supplied through meters of approved design; that such meters shall be read and inspected once each month and shall be kept in such working order and efficiency by said second part- that each meter shall register within two per cent of the actual amount of gas passed through it. That the party of the second part will at all times permit the officers or authorized agents of the party of the first part to inspect its main pipes, regulators, meters and appliances for the purpose of determining or verifying its monthly statements as herein provided and for the purpose of determining the condition of said mains, pipes and regulators, meters and other appliances and further that it, the party of the second part will forward to the party of the first part a weekly record of the number of contracts made and cancelled and the number of meters set, connected and disconnected together with the total number of consumers at the end of each week and will make and keep at its office a copy of such contract together with full and complete record of the same, and of all meters used and will also keep at its office such book accounts as will clearly and fully show all accounts, and contracts with consumers and all other transactions and matters relating to the business of the party of the second part, and which together with any and all other papers relating to or connected to and with the business matters of the party of the second part, under this agreement and contract, shall at all reasonable and proper times, — open to examination and inspection by the officers, agents, attorneys and employees of the said party of the first part and that it, the said party of the second part, will by their agents and employees aid and assist said officers, agents, attorneys and employees of the said party of the first part in making such examination and inspection, whenever requested to do so by him.

While this agreement shall remain in force, the party of the second part shall purchase of the party of the first part all the gas necessary to supply said city of Joplin and its inhabitants  
1030 and the business houses and manufacturing plants therein except that in the event of the party of the first part failing to supply gas as herein provided, and said party of the second part may secure gas from other sources until the first party shall supply

gas as herein provided; the party of the first part shall not supply gas to any other firm, corporation or individual which may be a competitor of the said second part- in selling and distributing gas in the said city of Joplin.

It is further covenanted and agreed by and between the said party of the first part and the said party of the second part, that said party of the second part will, at the end of each and every calendar month during the continuance of this contract deliver to said party of the first part at the general office of said party of the first part a statement showing in detail the amount collected for gas sold and delivered to consumers during said month and also the amount of all bills for gas sold and delivered during said month which have not been paid.

It is further covenanted and agreed by and between the said party of the first part, and the said party of the second part, that if the party of the second part, shall for a period of thirty (30) days neglect and fail to pay said party of the first part any money due him under this contract or shall neglect to perform faithfully and fully each and every covenant and agreement herein stipulated to be performed by it, the said party of the second part, this contract shall at the option of the said party of the first part be cancelled and annulled and all rights of said party of the second part forfeited, and said party of the first part shall in such case have the right to enforce by actions at law or in equity the payment of any money due or to become due to him, the said party of the first part, and all claim or claims for damages or other claim or claims that he, the said party of the first part may have against the said party of the second part by reason of these presents.

It is further covenanted and agreed by and between the parties hereto, that all the terms and conditions herein contained shall  
1031 extend to and be mutually binding upon the heirs, successors and assigns of the respective parties hereto.

In Testimony Whereof, the said T. N. Barnsdall, party of the first part, by J. C. McDowell, his agent, thereunto duly authorized so to do, has signed this agreement in triplicate and the said National Gas, Electric Light and Power Company has, on its behalf, caused its corporate seal to be affixed and these presents to be signed in triplicate by J. T. Lynn, its president, and F. K. Pelton, its secretary, the day and year first hereinbefore written.

T. N. BARNSDALL,

By J. C. McDOWELL, *Agent*.

NATIONAL GAS, ELECTRIC LIGHT &  
POWER CO.,

By J. T. LYNN, *President*.

Attest:

— — —, *Secretary*.

Filed in the District Court on October 18, 1916. Morton Albaugh,  
Clerk.

1032 In the District Court of the United States, District of Kansas,  
First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Defendant the City of St. Joseph, Missouri.*

Charles L. Faust and Merrill E. Otis, Attorneys for Defendant City.

1032½ In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS et al.,  
Defendants.

*Answer of the Defendant the City of St. Joseph, Missouri.*

Charles L. Faust and Merrill E. Otis, Attorneys for Defendant City.

This answering defendant, City of St. Joseph, now and at all times hereafter saving and reserving to itself all and all manner of benefits and advantages of exceptions, which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in parties, in said Bill of Complaint contained, and for answer thereunto, or unto so much of such parts thereof as this defendant is advised that — is material, or necessary for it to make answer unto, answering says:

That this answer is divided into three principal parts, the first consisting of such defenses, in point of law, as arise upon the face of the Bill of Complaint on account of misjoinder and insufficiency of fact, to constitute a valid cause of action in equity, as hereinafter more particularly appears, and upon which this defendant above named will ask for a hearing before the final hearing of this cause, upon the facts;

second, a statement in answer to the averments of said Bill of Complaint, and a denial of such matters as are denied by this defendant, and, third, a statement of affirmative matters,

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which it is averred by this defendant constitutes a defense to the Bill of Complaint of plaintiffs herein.

First.

A.

This answering defendant, above named, further answering the Bill of Complaint of the plaintiffs herein, avers that said Bill of Complaint shows upon its face, that there is a misjoinder of causes of action herein for that the plaintiffs, in paragraphs I to XX, both inclusive, of their Bill of Complaint, as well as in paragraphs XXVIII to XXXIII, inclusive, of said Bill of Complaint, has attempted to set forth facts which constitute causes of action and averments of law and fact which the said plaintiffs, intended as grounds for relief in equity against this answering defendant, based on a certain order made by The Public Utilities Commission for the State of Kansas on December 28th, 1915, allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory, and that all proceedings prior and relative to the establishment thereof are illegal and void.

This defendant further answering avers that in the paragraphs of plaintiffs' Bill of Complaint, after paragraph XX, including paragraphs XXVIII to XXXIII, heretofore mentioned, avers and sets forth that because the pipe lines and other property of the Kansas Natural Gas Company extend into Oklahoma and Missouri, that the same should be treated as a whole, or as one unit, and that the character of defendant's business is wholly Interstate, and not of a local character in Kansas or Missouri, and that said Commission of the State of Kansas and Missouri are jointly interested in allocating the value of the property used in such states for supplying gas for the purpose of determining what is a legal charge or rate thereon for such service, and that in paragraph XXI of said Bill of Complaint, 1034 it is averred that the Public Service Commission of the State of Missouri is determined that it will allow no rates or charge for supplying gas in the western cities of Missouri higher than is charged in the eastern cities of Kansas, and that said Public Service Commission of the state of Missouri has suspended certain rates sought to be put into operation by the plaintiffs herein as receivers of the Kansas Natural Gas Company, and it is averred in paragraphs XXII to XXVII of said Bill of Complaint, that the aforesaid acts of the Missouri Public Service Commission are unlawful and confiscatory, and that because of said facts so averred, in the said paragraph, after paragraph XX of said Bill of Complaint, show that the causes of action and grounds for relief in equity attempted to be set forth as against the Public Utilities Commission of the State of Kansas, and the Public Service Commission of the State of Missouri, and their several attorneys and officers are related to each other and of joint interest and concern to the plaintiffs and these several defendants, but this answering defendant avers that said pretended causes of action

are not related to each other to any extent that would allow them to be joined in one Bill of Complaint in this Court, and that the Public Utilities Commission for the State of Kansas, or its attorneys or officers are not responsible for, nor interested in any way, in any action of the Public Service Commission for the State of Missouri, or its attorneys or officers, and that this answering defendant has no common interest in the cause or causes of action or the subject or subjects of the action, or the relief demanded in said Bill of Complaint, as to the causes of action attempted to be set up in said Bill of Complaint against said Public Utilities Commission for the State of Kansas, or its attorneys or officers, or the other Kansas defendants joined in said bill, and that there are no other averments or allegations in said Bill of Complaint which show that said causes of action or any other causes of action attempted to be set forth in plaintiffs' Bill of Complaint, or any other of the several causes of action and grounds for complaint can be properly joined in one Bill of Complaint in this court, and this defendant asks that upon hearing of the points of law so arising upon the fact of the Bill of Complaint, that said Bill of Complaint for this reason be dismissed against this answering defendant, because of said misjoinder of causes of action therein.

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B.

This defendant, further answering the Bill of Complaint herein, avers that it does not appear from said Bill of Complaint why the Hon. John T. Barker, as attorney general of the State of Missouri, is made a party to said Bill of Complaint except upon the theory of law that it is the official duty of said Attorney General, under the general laws of said state, as its chief law officer, to enforce the laws thereof, and all legal orders made by the Public Service Commission of the State of Missouri, establishing rates for public service corporations and public utilities.

But this answering defendant says that the Public Service Commission Act of the State of Missouri, approved March 17, 1913, provides that all such orders of the Public Service Commission of the State of Missouri, shall be enforced and defended by the counsel of said commission, and that by reason thereof the defendant, John T. Barker, as such attorney general, is not a necessary or proper party defendant herein, and this defendant, for this reason says, that there is a misjoinder of causes of action for the reasons alleged, and that the Bill of Complaint should be dismissed as against this answering defendant.

C.

This answering defendant above named, further answering the Bill of Complaint of the plaintiffs herein, avers that said Bill of Complaint shows upon its face that there is a misjoinder of causes of action herein, and that the plaintiffs in paragraph I to XX, both inclusive, of their Bill of Complaint, as well as in paragraph XXVIII to XXXIII, inclusive, of said Bill of Complaint, have attempted to



set forth facts which constitute causes of action and averments of law and fact, which the said plaintiffs intended as grounds for relief in equity against the Public Utilities Commission for the State of Kansas and other Kansas defendants, based on a certain order made by the Public Utilities Commission for the State of Kansas on December 28th, 1915, allowing the said plaintiffs to put into effect certain rates for supplying gas to their patrons in Kansas, and establishing the same as the legal rates, and alleging that said rates are unlawful and confiscatory and that all proceedings prior and relative to the establishment thereof are illegal and void.

This answering defendant further avers that in paragraph XXXIII of the plaintiffs' Bill of Complaint, it is averred and set forth that the Kansas Natural Gas Company, prior to the appointment of the plaintiffs receivers herein had been delivering gas to certain distributing companies in Kansas and Missouri, under and by virtue of certain written contracts made by the Kansas Natural Gas Company with said distributing companies, and certain contracts which are alleged to be typical ones are set forth and described in said paragraph of the Bill of Complaint, and it is further averred that said contracts were made the basis of certain franchises granted by the defendant cities in the states of Missouri and Kansas to said distributing companies, and to the Kansas Natural Gas Company for the purpose of delivering and distributing gas in said Missouri and Kansas cities, and that said cities, both in Missouri and Kansas, are attempting to regulate, control and fix the price at which the plaintiffs may sell natural gas furnished by them to their patrons in violation of said contracts, and it is further averred and set forth that said contracts are illegal and unreasonable and should be set aside, and the plaintiffs relieved from complying with the terms thereof, both as to the Kansas cities and towns situated in the State of Missouri.

This answering defendant further avers that this defendant has no common interest in the cause of action or the subject thereof, or the relief demanded, based on the facts averred in said paragraph XXXIII of the Bill of Complaint, as to the defendant cities in the State of Missouri, and that neither in said paragraph XXXIII, nor in any other part of the bill is it disclosed that the plaintiff is entitled to any relief, in equity against the cities and distributing companies of the State of Missouri, in which this answering defendant is interested or in any way related, and this defendant asks that upon the hearing of the points of law so arising upon the face of the Bill of Complaint, that it be held that there is a misjoinder of causes of action, as to the matters herein set forth, and that the Bill of Complaint, for this reason be dismissed as against them.

1037

D.

This answering defendant, for its further defense, avers that the Bill of Complaint and the record herein reveals that it is and was at the time the subpoena herein was issued and served upon it, a municipal corporation of the State of Missouri, performing its duties



under and by virtue of authority delegated to it by the State of Missouri, and that it is and was, at such times, a citizen and within the boundary of the Western District of Missouri, and was not a citizen nor within the boundaries of the District of Kansas, and that said subpoena was served upon it outside of the District of Kansas, and in Buchanan County, State of Missouri, and is not and was not a valid, legal service of process upon this defendant in this cause; that this Court is without jurisdiction of this defendant, and this defendant moves a dismissal of this cause for that reason.

E.

This defendant further answering said Bill of Complaint avers that said bill reveals upon its face that this Court is without jurisdiction to hear and determine the pretended causes of action herein averred, for the reason that it appears from said bill that the plaintiffs are not without adequate relief in due course of law for any rights or remedies due them, or for the redress of any wrongs complained of under the laws and statutes of the State of Missouri, and that said plaintiffs have not pursued the remedies provided for them by said laws, and that therefore said Bill of Complaint fails to show any equitable cause for relief in favor of the plaintiffs, and against this answering defendant.

F.

This answering defendant for its further defense avers that the Bill of Complaint and record in this case, reveal that the plaintiffs cannot recover and are not entitled to the relief prayed for in said Bill of Complaint, on the grounds that the plaintiffs' receivers are engaged wholly in Interstate Commerce, and that the properties of said company are instrumentalities of Interstate Commerce, and not subject to the local laws of the States of Missouri and 1038 Kansas, the police power thereof, and not within the jurisdiction of the defendant Public Utilities Commissions of said states for the following reasons, to wit:

First. That it appears from said Bill of Complaint that said receivers were appointed in a proceeding had in the District Court of Montgomery County, Kansas, upon a petition filed by the Hon. John S. Dawson, Attorney General of said state, January 5, 1912, against the Kansas Natural Gas Company et al., which said petition and all files and proceedings of this case, to wit, No. 13476, are made a part of the Bill of Complaint, and the record in this case at Paragraph 3 thereof; that suit was begun by the Attorney General of the State of Kansas for the purpose of enforcing the criminal laws and the other statutes of Kansas imposing penalties against persons and corporations who, being engaged in local business in said state, had formed or entered into combinations with others in said local business in the restraint of trade, or for the purpose of securing a monopoly therein, as well as for other purposes more fully set out in

said Bill of Complaint at paragraph 4 thereof, and that said petition contains the following allegations, to wit:

"That plaintiffs allege that the above named defendants, the Kansas Natural Gas Company, a corporation, et al., and each of them, have entered into a series of unlawful arrangements, contracts, agreements, trusts, combinations with each other, in violation of the laws of the State of Kansas, with a view to prevent, and are done to prevent full and free competition in the production and sale of natural gas within the State of Kansas, which product is an article of domestic raw materials produced in large quantities in Montgomery County, Kansas, and elsewhere in Southern Kansas, and is an article of trade and commerce, and is an aid to commerce, which arrangements, contracts, agreements, trusts and combinations are in restriction and restraint of the full and free operation of divers and various lines of legitimate business, authorized and permitted by the laws of the State of Kansas, and are a perversion, misuse and abuse of the corporate powers and privileges granted to them and each of them by the State of Kansas, as above set forth, and all of which is more particularly set forth as follows:"

That said petition after alleging the purchase of The Independence Gas Company, a corporation, and the Consolidated Gas, 1039 Oil and Manufacturing Company, a corporation, by the defendant Kansas Natural Gas Company, contains the following allegations:

"That said The Independence Gas Company, and the Consolidated Gas, Oil and Manufacturing Company, defendants, were at all times mentioned herein public service corporations of the State of Kansas, and were without authority under the law to sell and dispose of their entire properties, franchises and means of performance of their duties to the public, in and about the production, transportation, delivery and sale of natural gas to the inhabitants of the State of Kansas, \* \* \* and the said Kansas Natural Gas Company, defendant, in pursuance of said unlawful wrong agreement, understanding, arrangement, purpose and intent, has ever since been and is now in exclusive possession and control and claims to own all gas, gas leases, franchises and property of every kind and character as aforesaid, that were used, owned and employed by said other corporations, defendants, and said partnership in and about the production, transportation, distribution, delivery and sale of natural gas to the said inhabitants of the State of Kansas, but said possession and control by said Kansas Natural Gas Company, defendant, is merely as agent or trustee."

To which petition the Kansas Natural Gas Company, on May 21st, 1912, filed its answer in which it denied each and every, all and singular, the allegations and averments of the said petition, and these defendants aver that thereupon an issue was joined in said case, as to whether the Kansas Natural Gas Company was engaged in domestic or interstate commerce, in the State of Kansas, and that whether being so engaged, it had violated the laws of the State made

in conformity to and in pursuance of its police power prohibiting combinations in restraint of said trade.

The plaintiffs further aver that a trial of said issue was had, with the other issues of said cause, beginning September 30, 1912. The attorney general for the State of Kansas, as the attorney for the plaintiffs in said cause, in defining the issues of said cause, made the following statement:

"These defendants are charged civilly with perversion of their corporate privileges, because they have entered into a combination and trust to prevent competition in the production, distribution and sale of natural gas, which product is an article of domestic raw material, an article of trade and commerce, and in aid to commerce in this state."

The attorney for the defendant, the Kansas Natural Gas Company, in said cause, in his opening statement, said:

1040 "We particularly deny that anything that is shown or that will be shown has any of the elements of a combination or trust or monopoly. I do not care to add anything further but the questions to be read will show, in detail, I think, more accurately than I could say it, just exactly what has transpired."

This defendant further avers that on a trial of said cause, the Hon. T. J. Flannelly, Judge of said Court, who presided at said trial, determined all of the issues arising upon the pleadings and statements of the defendants against the contentions of the Kansas Natural Gas Company, and held and determined it to be guilty of violating the laws and police regulations of the State of Kansas, made for the purpose of prohibiting trusts and combinations in domestic commerce, and in passing upon the particular question raised by said pleadings as to whether said company was engaged in domestic commerce and had made a combination in restraint of said trade, the said Hon. T. J. Flannelly, in his opinion and findings, filed in said cause, said:

"Is the defendant, the Kansas Natural Gas Company, a monopoly, and has it, and other defendant corporations entered into a trust and combination to prevent competition in the production, distribution and sale of natural gas?"

"Sec. 5185, General Statutes of Kansas, Chapter 257, Laws of 1889, provides: 'That all arrangements, contracts, agreements, trusts or combinations between persons, or corporations made with a view, or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into said state, or in the product, manufacture or sale of articles of domestic growth or products of domestic raw material, or for the loan or use of money or to fix attorneys' or doctors' fees, and all arrangements, agreements, contracts, trusts or combinations between persons or corporations designed, or which tend to advance, reduce, or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance or which tend to advance or control the rates of interest for the loan or use of money to the borrower, or any other services are hereby declared to be against public policy, unlawful and void.'

"This act was followed by the act of 1897, which the Supreme Court of the State of Kansas, in the case of *State vs. Lumber Company*, 83 Kans., 399, said was intended by the legislature to supplement, not repeal, the law of 1889. In section 5142, General Statutes of Kansas, 1909, being section 1 of Chapter 265, Laws of 1907, the legislature defines a trust as follows:

1041 "A trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either any or all of the following purposes: First, to create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state; second, to increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance; third, to prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce; fourth, to fix any standards or figures whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use, or consumption in this state; fifth, to make or enter into or execute, or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption, below a given standard figure, or by which they shall agree, in any manner, to keep the price of such articles, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article, or commodity or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the transportation, sale or manufacture of any such article or commodity, or by which they shall agree to pool, combine or unite any interests they have in connection with the manufacture, sale or transportation of any such article or commodity that a price may in any manner be affected.'

"Section 2, of the same act, provides:

"All persons, companies or corporations within this state are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee, or otherwise, in any trust, as defined in Section 1 of this act.'

"The decisions of the United States Supreme Court with reference to the National Anti-Trust Act, have direct force and application in interpreting our own Anti-Trust laws. The statutes of this state in regard to monopolies and trusts is as broad in its terms as the Sherman Anti-Trust Act.

"That statute' (the Sherman act) says the Supreme Court of Kansas, 'differs in verbal phraseology, but not in essential particular or effect from ours,' citing *State vs. Smiley*, 65 Kans. 240. A violation of the Sherman Anti-Trust Act itself by a corporation doing business in this state would be a perversion and abuse of its

1042 corporate privileges. The laws of the United States, as far as civil suits are concerned, are a part of the State's system of jurisprudence,' citing *Mondou vs. N. Y. H. R. Co.*, 32 Supreme Court, 169, and *Clafflin vs. Housman*, 93 U. S. 130.'

"One cannot read this record and examine these contracts to which attention has been called in the foregoing statement, without reaching the conclusion that the whole purpose and design of the Kansas Natural Gas Company from the very inception has been to monopolize the production, transportation, sale and distribution of natural gas in the Kansas field. Not only was it the purpose and design to secure a monopoly, but the plans were successful, the purpose was accomplished, and the Kansas Natural Gas Company almost completely dominates the situation; it practically controls the field of production, the field of transportation, and the sale and distribution of natural gas in Kansas."

This defendant avers that the said Court thereafter rendered its judgment upon said finding of facts and conclusions of law, and as a part thereof, appointed the plaintiffs receivers to receive and control the property in controversy herein, as the officers of said court; that said judgment is unappealed from, and in full force and effect, and that said receivers have acquiesced in the said judgment, and the rules of law declared by the said Court, and acted in conformity therewith, and that, therefore, and thereby, the fact that said corporation, the Kansas Natural Gas Company, was, prior to the appointment of said receivers, and said receivers since then, as the representatives of said corporation, in continuing its said business, have been engaged in local or intrastate commerce, and that the properties controlled by them are, therefore, not such instrumentalities of interstate commerce, as withdrew all business done by the use of said properties in said states of Kansas and Missouri, from the control of the local laws of said states, the police power thereof, or, from the jurisdiction of the Public Utilities Commission for the State of Kansas or the Public Service Commission of the State of Missouri; that said facts having been fully adjudicated by the said Court, and the said receivers having acted in conformity therewith, and in pursuance of the principles of law, followed and announced by the said court, and which thereby became the law of said case, are now estopped and barred from asserting anything contrary thereto in this cause.

1043 This defendant further answering avers that as a part of said judgment, the plaintiffs' receivers, John M. Landon and R. S. Litchfield, were directed to appear in the case of John L. McKinney et al. vs. The Kansas Natural Gas Company, No. 1351, No. 1-N in equity, which case is fully referred to and set out in the Bill of Complaint herein, for the purpose of recovering the control and management of the physical property of the Kansas Natural Gas Company, as is fully set out in the Bill of Complaint herein, at paragraphs 3 and 4, and else-here in said bill; that for the purpose of said appearance in said cause, the Attorney General, acting for and in behalf of said receivers, and under the direction of the District Court of Montgomery County, Kansas, prepared and filed therein, a peti-

tion for said purposes, which said petition contained the following averments, to wit:

"First, that on January 5, 1912, the State of Kansas, by its Attorney General, brought an action in the nature of quo warranto in the District Court of Montgomery County, Kansas, against The Independence Gas Company, and the Consolidated Gas, Oil and Manufacturing Company, Kansas Corporations, and the Kansas Natural Gas Company, a Delaware corporation, authorized to do business in Kansas, charging said corporations with misuse, perversion and abuse of their corporate privileges, and with having connived and engaged in various illegal combinations in restraint of trade, and in violation of the anti-trust laws of the State of Kansas, and in violation of the national anti-trust laws, which are a part of the civil jurisprudence of the State of Kansas, by which unlawful combinations, said Kansas Natural Gas Company had secured a monopoly of the sources of gas supply and a monopoly of the sale and distribution of gas to the people of Kansas, by which unlawful combination, the selling price of gas, a product of domestic raw material, and an article of commerce, and an aid to commerce, had been advanced and controlled by the said Kansas Natural Gas Company, and a true copy of the petition filed by the State of Kansas in said action is contained in an abstract filed herewith and made a part hereof.

"That thereafter the complainant in said cause, and the Fidelity Title and Trust Company appeared in said cause, and contested the averment of the petition filed by the said Attorney General on and in behalf of the plaintiffs, receivers herein, and that said John McKinny, and the Fidelity Title and Trust Company filed as paragraph 10 of their answer, the following averments, to wit:

"These complainants further allege that although the defendant the Kansas Natural Gas Company, is engaged in operating a  
1044 pipe line within the State of Kansas, for the transportation of natural gas from the various sources of supply, from localities within the State of Kansas, to respective towns and cities within the State of Kansas, the pipe line of said Kansas Natural Gas Company and its system likewise, extends into the adjacent states of Missouri and Oklahoma for the purpose of receiving and transporting gas through the pipe lines to cities in said states, and is therefore an interstate carrier, subject to the Act of Congress, February 7, 1887, and its amendments; that by the judgment and order appointing receivers over the property of the Kansas Natural Gas Company, by the District Court of Montgomery County, State of Kansas, in the proceedings by the State of Kansas, instituted by the Attorney General as aforesaid, for a claimed violation of the penal statute of the state constitute an exertion of the power of the State of Kansas, acting through and under the District Court of Montgomery County, Kansas, over interstate commerce, and is invalid and violative of the commerce clause of the Constitution of the United States, and the District Court of Montgomery County, Kansas, was without jurisdiction to appoint receivers over the property of the Kansas Natural Gas Company in said proceedings by reason of said fact."

And this defendant avers that by a filing of said petition and



answer, an issue was made in said cause as to whether said Kansas Natural Gas Company, at the time of the filing of the petition in the District Court of Montgomery County, Kansas, by the State of Kansas, through its Attorney General, heretofore referred to, was engaged in domestic commerce and not engaged wholly in interstate commerce, and whether by reason of said fact, the District Court of Montgomery County, Kansas, had the right, authority and jurisdiction, because of the violation of the local laws of said Kansas, by said corporation, to bind the plaintiffs' receivers as the officers of said court, to take possession of said property, and whether, as such officers, they were now entitled to the possession of the property of said Natural Gas Company as against certain receivers theretofore appointed in the said cause of John L. McKinney et al. vs. The Kansas Natural Gas Company, heretofore set out and referred to in this answer and in the Bill of Complaint of the plaintiffs.

That said cause came on for trial on June 5, 1913, on said issues of law and fact before the Hon. John A. Marshall, District Judge of the United States, sitting as such Judge of the District Court for the District of Kansas. After hearing testimony adduced 1045 by the said parties and being wholly advised in the premises, the Court found in favor of the said petitioners, the plaintiffs herein, and against the said John L. McKinney, and the Fidelity Title and Trust Company, the complainants in said original action.

That as a part of said decision, the Court filed written findings and a written opinion as to the law controlling said case, and as to this question the Court said:

"Under the Kansas Anti-Trust Act (Gen. Stat. 1909, Sec. 5146), which provides that every person or corporation within or without the state violating its provisions within the state, shall be denied the right to do business in the state, and authorizes the enforcement of such provision 'by injunction or other proceeding'; a State Court has power to appoint receivers of the property within the state of a foreign corporation charged with violation of the act, and under the state practice such remedy is not precluded because the legal relief of ouster is sought in the action. The appointment of a state court of a receiver of the property within the state of a foreign corporation engaged in interstate commerce does not amount to an unlawful interference with the rights of such corporation to transact interstate commerce." (206, Fed. 777.)

This defendant further answering avers that the said John L. McKinney, and the Fidelity Title and Trust Company, complainants, as aforesaid, excepted to the findings of the Court and regularly took their appeal to the Circuit Court of Appeals of The Eighth District of the United States in said cause, and that thereafter said cause came regularly on for hearing and was decided by said court December 4, 1913, and it was there held and decided by the Honorable Circuit Court of said district that the opinion and decision of the District Court of the United States heretofore set forth should be affirmed and in determining the questions arising on said appeal the Court, speaking by the Hon. William C. Hook, Circuit Judge, said:

"A foreign corporation engaged in interstate and local commerce



may be adjudged guilty of a violation of the anti-trust laws of the state, its license to do business in the state may be cancelled, and a receiver for all its property therein appointed under the general laws in aid of the enforcement of the judgment, and it is no defense that such property included instrumentalities used by it in conducting its interstate business, or that the corporation, by the same course of conduct, has also violated similar laws of the United States." (209 Fed. 300.)

And again, at pages 306-7, inclusive, the Court further said:

"There remains for consideration the contention that as applied to this case, the anti-trust statute of the state conflicts with the Sherman Act (Act July 2, 1890) (C. 647, 26 Stat. 209) (U. S. Comp. 1046 1901, page 3,200) and hence must give way. In this action it is unimportant that the Kansas Natural Gas Company is a Delaware corporation instead of a corporation of Kansas. The character of its trade and commerce, interstate or local, determines the applicability of the anti-trust laws of the nation or state, but not the origin of its corporate existence. The term 'interstate corporation' is a convenient colloquialism, but hardly accurate. In respect of the contention now being considered, the case would not be different had that company been organized under the laws of Kansas, nor is it material that it transports some of the gas it deals in, from Oklahoma into Kansas, and from Kansas into Missouri by pipe lines. By express exemption, it is not a common carrier subject to the Interstate Commerce Act (Act June 29, 1906, C. 3391) (U. S. Comp. Stat. Supp. 1911, page 1284) (34 Stat. 584), Sec. 1, even would it matter were it otherwise.

"The point urged by counsel rests on the fact that the company is engaged in both interstate and local commerce, and upon the assertion that the two are so intricately interwoven as to be inseparable.

"The claim of inseparable intricacy is not tenable. The two kinds of commerce are no more interwoven than with most railroads of the country and many manufacturing and mercantile concerns. Whatever may be the origin and admixture of the commodity dealt in, or the common use of the same plant and equipment and instrumentalities, the two kinds of commerce are distinguishable. The company is in no better position than if it were an ordinary industrial and mercantile concern of Kansas producing, buying, shipping and selling locally and in other states grains, oils, or other commodities which lose their particular identity in the mass of that which is dealt in.

"Again, the property and business of the company which are wholly within the state of Kansas, are not negligible incidents to which the state anti-trust statutes are being forced. Much of its property, including that obtained from the other corporations, is located there, and much of its business is there transacted. The action of the state of Kansas was directed to a violation of the state statutes. The decree of the State Court was expressly confined to the matters within its jurisdiction, and subject to its local laws. There was no attempt to enforce the Sherman Act."

This defendant therefore further avers that by the aforesaid de-

cision and holding of the courts, it has been fully determined and adjudicated that the plaintiffs' receivers are engaged in intra-state commerce, subject to the local laws and police power of the  
1047 state of Kansas, and the jurisdiction of the Public Utilities Commission for said state, and that the plaintiffs are not engaged wholly in interstate commerce, and that the property under their control are not instrumentalities of interstate commerce of such note as to deprive the defendant Public Utilities Commission for the State of Kansas of jurisdiction over it, and that said plaintiffs have acquiesced in said holding and principles of law announced by the courts in the said cases, and having in this cause alleged that this case is dependent upon and ancillary to the case of John L. McKinney et al. vs. Kansas Natural Gas Company, No. 1351, equity, and Fidelity Title and Trust Company vs. Kansas Natural Gas Company, and Delaware Trust Company, No. 1-N Equity, as averred in plaintiffs' Bill of Complaint, paragraph 1, which this defendant in no wise admits, and that said findings and principles of law, having become the law of said cases and of this case and all of said matters having been fully determined, the plaintiffs are estopped from averring to the contrary herein, and from causing a re-trial of said issues in this suit.

#### G.

This answering defendant above named further answering the Bill of Complaint, avers that said bill reveals upon its face that the plaintiffs cannot recover and are not entitled to the relief prayed for in said bill for the reason that it appears from said bill, and particularly in paragraph XXII and the prayer thereof that plaintiffs ask this honorable court to exercise a power beyond its jurisdiction, to wit, the power of rate-making, which is exclusively a legislative power and function.

This defendant further avers that in paragraph XXII of the plaintiffs' Bill of Complaint, it is averred and set forth that any schedule of rates for natural gas below thirty-seven cents per thousand cubic feet for gas delivered to consumers in all other cities in the State of Missouri, except St. Joseph, Missouri, the answering defendant, and twenty-six and two-thirds cents for plaintiffs' proportion of the revenue for gas delivered at St. Joseph, is and will be unreasonably low, unremunerative, non-compensatory and confiscatory, and it is further averred and set forth and particularly in sub-paragraphs "c" and "h" of said Bill of Complaint that this answering  
1048 defendant be restrained from interfering with plaintiffs putting into effect reasonable rates and of putting into effect the rates provided in "Exhibit F," of said Bill of Complaint, and similar rates for other cities in Missouri.

This defendant further avers that it thus appears from the face of plaintiffs' said bill, that plaintiffs are not invoking the jurisdiction of this Honorable Court for the purpose of having declared the present rates and charges for natural gas supplied in the cities of the State of Missouri, confiscatory, non-compensatory and undemunerative, but

for the purpose of having this Honorable Court by its order and decree fix and establish rates for natural gas to be hereafter, and in the future, charged and exacted from the consumers in the said cities of Missouri, which said purpose and proposed action so averred and prayed for this answering defendant avers is not properly within the jurisdiction of this Honorable Court, but it is exclusively a legislative function and power, and that therefore said Bill of Complaint fails to show any equitable cause for relief properly cognizable by this Honorable Court.

#### Second.

This defendant having objected to the jurisdiction of this Court, arising upon the points of law disclosed upon the face of the Bill of Complaint, and having moved to dismiss this action for want of such jurisdiction, begs leave to refer to the answer herein of the Public Service Commission of the State of Missouri, which conforms in many particulars to the answer of the defendant, further answering says:

#### I.

This defendant denies that the Bill of Complaint herein is dependent upon and ancillary to the causes entitled John L. McKinney et al. vs. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title and Trust Company vs. Kansas Natural Gas Company and Delaware Trust Company, No. 1-N Equity, now pending in this court, and further denies that this action is brought for the purpose of protecting the property now in the potential possession of this court in said causes, and of enforcing the jurisdiction of this Court in said causes.

1049 This defendant specially denies that the matter and amount in controversy in this cause exceeds the sum or value of three thousand dollars, exclusive of interest and costs.

This defendant specially denies that the cause of action, if any such be stated in the Bill of Complaint, filed here, arises under the Constitution or Laws of the United States.

This defendant does not know for what purpose the Bill of Complaint was filed herein, but nevertheless denies that the Public Service Commission of Missouri has fixed rates which are unreasonably low or that are unremunerative, non-compensatory and confiscatory, or which amount to the taking of the property in the possession and control of these plaintiffs without due compensation and without due process of law or that the Public Service Commission of the State of Missouri has issued any order interfering with Inter-state Commerce.

This defendant denies that there is any relationship and acts of the Public Utilities Commission for the State of Kansas, and the Public Service Commission of the State of Missouri, or the attorneys and counsel of said commissions, either now or at any time, such that it is practicable to present, hear and determine said causes in one suit in this court, but alleges that plaintiffs' pretended causes of

action against the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri are wholly different and cannot be joined as one cause of action, nor can the Public Utilities Commission for the State of Kansas and the Public Service Commission of the State of Missouri be joined as parties defendant in the same cause of action, nor are the pretended causes of action against the counsel for the Public Service Commission of the State of Missouri and the attorney for the Public Utilities Commission for the State of Kansas such that they can be joined in one cause of action, nor can the counsel for the Public Service Commission of the State of Missouri, and the attorney for the Public Utilities Commission for the State of Kansas be joined in one cause of action, such as attempted in the suit at bar.

## II.

Further answering this defendant admits the statement of fact in the first, second and third paragraphs of Division II of the Bill of Complaint, and in the fourth paragraph thereof, except the 1050 allegation that the Attorney General of Missouri is charged by the law of the State of Missouri, with the duty and obligation of execution and enforcing the laws of said state affecting public utilities, which allegation this defendant denies.

This defendant admits that the Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and from 1904 to 1912 was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas, and that it has been admitted to do business in the state of Kansas as a foreign corporation, and admits that an order was made and entered September 22, 1914, in the case of John L. McKinney et al. vs. Kansas Natural Gas Company, No. 1351 Equity, and Fidelity Title and Trust Company, versus Kansas Natural Gas Company and Delaware Trust Company, No. 1-N. Equity, as stated in the last paragraph of said Division II.

This defendant denies that George F. Sharritt is in possession or control, actual or potential, of the property of the Kansas Natural Gas Company, or of the property under lease by it within the states of Kansas, Oklahoma and Missouri, as receiver, by virtue of such order or otherwise.

This defendant further denies that it has any knowledge or information, saving and excepting such as is derived from the Bill of Complaint and the answers of other defendants herein, as to the incorporation of Fidelity Title and Trust Company and its trusteeship under mortgages of Kansas Natural Gas Company, and as to the incorporation of Delaware Trust Company and its trusteeship under mortgages of the Kansas Natural Gas Company, and as to Fidelity Trust Company, and its trusteeship under mortgages of Kansas City Pipe Line Company, and as to incorporation of the latter, and lease by it, of its property to Kansas Natural Gas Company, and as to possession and operation thereof by receivers of the latter company, and as to value thereof unless operated in conjunction with the balance of

the system of the Kansas Natural Gas Company, and as to the incorporation of the Marnet Mining Company, and as to its property and pipe line and valuation thereof, as separated from the pipe line system operated by the Kansas Natural Gas Company, and as to 1051 John F. Overfield and the appointment of him as receiver of the Kansas City Pipe Line Company, and as to the system of pipe lines owned or operated by the Kansas Natural Gas Company, location thereof, and of its terminals, and leaves plaintiffs to make such proof of all such alleged facts as they may, and prays that they be required to make strict proof.

### III.

This answering defendant admits that said John M. Landon and R. S. Litchfield, plaintiffs, were at the time of the filing of this Bill of Complaint in the actual possession and control of the property of the Kansas Natural Gas Company and property under lease to it, within the State of Kansas, as receivers of said Company, appointed by the District Court of Montgomery County, Kansas.

This defendant denies that it has any knowledge or information save such as is derived from the Bill of Complaint, as to possession and control of the pipe line system of the Kansas Natural Gas Company, including the leased lines located in the states of Oklahoma and Missouri, as alleged in the second paragraph of Division III, of the Bill of Complaint and leaves plaintiffs to make such proof thereof as they are advised, and prays that they be required to make strict proof.

### IV.

This defendant admits all of the averments of Division IV of the Bill of Complaint.

### V.

Further answering this defendant denies that it has any knowledge and information save such as is derived from the Bill of Complaint, as to the alleged "creditors' agreement" referred to in Division V of said Bill or as to the parties thereto, or as to the approval thereof by the District Court of Montgomery County, Kansas, and denies the matters and things set up in said "creditors' agreement," and states that even if such "creditors' agreement" was made as 1052 alleged in the bill, this defendant did not have notice of the making thereof, did not participate therein, and is neither a party thereto, nor in any wise bound thereby.

The defendant further answering admits that the Kansas Natural Gas Company, prior to the appointment of receivers, was engaged in the business of producing, purchasing, transporting, distributing and selling natural gas, and carrying on its said activities in the states of Oklahoma, Kansas and Missouri; that after the appointment of the receivers of this court, said receivers continued and carried on said business after the manner the same had theretofore been conducted

by Kansas Natural Gas Company, and after the delivery of the property aforesaid to said state's receivers as aforesaid, they continued to carry on said business theretofore conducted and carried on by said Federal Receivers, and by said Kansas Natural Gas Company, and admits that in carrying on said business, the plaintiffs receivers carried on and conducted the same, by the use of instrumentalities, consisting of pipe lines, gas wells, compressor stations, and other devices commonly known and used in the gas business.

Further answering this defendant denies that it has any knowledge or information save that derived from said Bill as to the location and routes of said pipe lines and terminals thereof, in Kansas and Oklahoma, and therefore leaves the plaintiffs to make such proofs thereof as they may be advised.

This defendant admits that the gas is taken from wells where it is produced in the states of Oklahoma and Kansas, and conducted through pipe lines from Kansas and Oklahoma to Missouri, and that it is transported through said pipe lines by the use of compressors, and that compressor stations are an essential and necessary part of said transporting system.

Further answering this defendant specifically denies that natural gas is transported through said pipe lines controlled or operated by the plaintiffs to consumers in the State of Missouri, and especially in St. Joseph, Missouri, and denies that said natural gas, from the time it leaves the wells in Oklahoma until it is delivered to consumers in the states of Kansas and Missouri, and by them consumed, is in continuous course of transportation, or at no time stored or its transportation suspended, and denies that plaintiffs begin in Oklahoma such transportation of natural gas with the intent and purpose that said

1053 natural gas shall be continuously moved and transported without interruption, until it is delivered to consumers in Kansas and Missouri, and denies that the same is true of natural gas transportation from Kansas to consumers in Missouri. On the contrary, this defendant states that gas is stored in said pipe lines, and is, and at all times during the operation of said business has been stored therein, in large quantities whenever the supply in possession of the Kansas Natural Gas Company, or of plaintiffs required or permitted the same to be stored.

That in the natural gas business, it is not considered good policy and is not customary to build holders for storage of natural gas for the reason that the same amount of money expended in pipe lines gives additional storage capacity, as well as increased transportation facilities.

It is admitted that the natural gas is delivered to consumers in the defendant City of St. Joseph through a local and independent company under a written contract entered into by said independent company with said Kansas Natural Gas Company, but this answering defendant denies that as a municipality it had any part in the making of said contract, or that it is a party thereto, or that it participated in any way in entering into the contractual agreement, and that it is neither a party thereto, nor in any wise bound thereby.



This defendant further sets out a complete copy of said contract attached to this answer, and marked "Exhibit A."

Further answering this defendant denies that it has any knowledge or information save that derived from said bill as to the ownership of compressor stations operated by the plaintiffs, or as to whether or not each compressor station is a part of the unit system of transportation owned and operated by the plaintiffs, or as to whether or not said pipe lines constitute one complete system which cannot be operated separately or otherwise than as one unit.

This defendant admits that none of the natural gas transported by plaintiffs is produced in Missouri.

Further answering this defendant denies that it has any knowledge or information save that derived from said bill as to the percentages of gas obtained and transmitted by plaintiffs in Oklahoma, or in Kansas, or as to whether the gas procured in Kansas may be controlled without interfering with the control and management of the gas procured in Oklahoma.

1054 This defendant denies that gas procured either in Kansas or in Oklahoma is transmitted through and by means of said pipe lines from the wells in Oklahoma, in one continuous and uninterrupted journey to consumers in Kansas or to consumers in Missouri, and especially to any consumer in the City of St. Joseph, Missouri.

This answering defendant further denies that the business carried on and conducted by the plaintiffs, is the carrying on of business and commerce among different states of the Union, to wit, Oklahoma, Kansas and Missouri, and denies that it is exclusively under the control of the Congress of the United States as confided to it by Section 8, of Article 1, of the Constitution of the United States, and not subject to the control or regulation of the states of Kansas and Missouri, and alleges that said business conducted by the plaintiffs receivers, is subject to the control and regulation of the states of Kansas and Missouri, respectively.

This defendant, to avoid prolixity and expense, adopts for its further answer to Division V of the said Bill, all except only the first paragraph of Division V, part Second of the answer of the Public Service Commission of Missouri, filed herein to the Bill of Complaint of plaintiffs.

## VI.

This defendant admits all of the allegations of fact contained in sub-division VI of the Bill of Complaint herein except with reference to the alleged orders of this Court purported to have been made on December 30, 1912, and on January 4, 1913, with reference to which orders this defendant alleges that this Court had no power, authority, or jurisdiction to make any such alleged order, and that, if such orders were made, as alleged in said Bill of Complaint, they were wholly illegal and void, and this Court recognizing that said orders of December 30, 1912, and of January 4, 1913, were made without juris-



diction and were wholly null and void, has never pretended to enforce the same.

#### VII.

This defendant states that it was not a party to any of the proceedings, or to the alleged "creditors' agreement" in Division VII of said

Bill, and is not bound or concluded by any order, judgment, 1055 decree or contract therein referred to, and is not sufficiently advised to make, as of its own knowledge, full answer thereto, and therefore asks that the plaintiffs be held to make strict proof of any material allegation therein contained.

#### VIII.

This answering defendant states that it was not a party to any of the proceedings referred to in Division VIII of said bill and not bound or concluded by any order, judgment or decree therein referred to, and is not sufficiently advised to make full answer, as of its own knowledge, to the matters of fact in said Division VIII alleged, and therefore asks that plaintiffs be held to make strict proof of the allegations therein contained.

#### IX.

This defendant states that it was not a party to any proceeding in Division IX of the bill referred to and is not bound or concluded by any order, judgment or decree therein referred to; that this defendant is not subject to the jurisdiction of the Public Utilities Commission for the State of Kansas, which has no jurisdiction or authority outside of the territorial limits of the State of Kansas.

Further answering the defendant states that it is not sufficiently advised to make full answer, as of its own knowledge to the matters of fact set up in Division IX of said bill, and asks that the plaintiffs be required to make strict proof of material allegations in said Division IX.

#### X.

This defendant does not know, and therefore unable to state the facts concerning the alleged valuations of the property of the Kansas Gas Company in the states of Kansas, Missouri and Oklahoma, as set up in sub-division X of said Bill of Complaint, and leaves the plaintiffs to make such proof thereof as they may be advised.

#### XI.

This answering defendant states that it is without knowledge of the facts alleged in paragraph XI of the Bill of Complaint and 1056 therefore asks that the plaintiffs be held to strict proof of the material allegations therein contained.

## XII.

This defendant specifically denies that there has been any decrease in gas pressure in the year 1915, as compared with the year 1914, and denies that the miscellaneous revenues of 1915, are less than those of 1914, and denies that future years will be less than the previous years, and denies that the table set out in the Twelfth sub-division of the Bill of Complaint correctly shows a comparison of the miscellaneous revenues for ten months of 1915, as compared with the same period of 1914.

## XIII.

This defendant further answering to the Bill of Complaint, to avoid prolixity and expense, adopts, as part of its answer, the answer of the Public Service Commission of the State of Missouri to Division XIII of the Bill of Complaint filed herein, with the same force and effect, as is herein set out, as Division XIII of this defendant's answer.

(No sub-division XIV appears in the Bill of Complaint.)

## XV.

This defendant denies that the table set out in Division XV of plaintiffs Bill of Complaint shows the correct amount of revenue, which the order of December 10, 1915, will produce in the State of Kansas, and the revenues which the rates now in existence will produce in the State of Missouri.

This defendant admits that the rate now charged at the defendant City of St. Joseph is forty cents per thousand cubic feet, and denies that said rate is not sufficient to give plaintiffs a fair return on the property employed.

This defendant further denies all the other allegations of Division XV of the plaintiff's Bill of Complaint.

## XVI.

This defendant denies that the table set out in sub-divisions XIII and XV of said bill are typical of the years of the remaining life of said plant, and denies that any lower schedule of rates in the 1057 state of Kansas than those set out in "Exhibit F" of said bill will be unreasonable, unremunerative, non-compensatory or confiscatory, or that plaintiffs' receivers have been deprived of property without just compensation or without due process of law, or that they will continue to be so deprived of property in the transportation of gas to consumers in the state of Kansas, unless the rates set out in "Exhibit F" are put into effect, and denies that the order of the Public Utilities Commission of the State of Kansas is void or in contravention of the Fourteenth Amendment of the Constitution of the United States, and an interference with interstate commerce, and states that it has been finally adjudged that the business conducted by the plain-

tiffs is not interstate commerce, as fully set forth in Division F, Part First, of this answer.

This defendant does not know whether the Kansas Natural Gas Company or said federal receivers, or the plaintiffs herein, or any of them, have or do deliver or sell gas to domestic consumers in the state of Oklahoma, or conduct or carry on any business of or as a public utility therein.

#### XVII.

This answering defendant is without knowledge of the facts alleged in paragraph XVII of the bill and asks that plaintiffs be held to strict proof of the same.

#### XVIII.

This answering defendant says that it has no knowledge or information save only as derived from said bill as to the facts alleged in paragraph XVIII in said Bill of Complaint, and leaves the plaintiffs to make proof thereof, and asks that they be required to make strict proof thereof.

#### XIX.

This defendant further answering, says that it is without knowledge of the facts stated in paragraph XIX of said Bill of Complaint, and leaves the plaintiffs to make proof thereof and asks that they be required to make strict proof.

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#### XX.

This answering defendant specifically denies every allegation of fact in sub-division XX of the Bill of Complaint.

#### XXI.

This answering defendant admits that John M. Atkinson and John Kennish, two of the five members of the Public Service Commission of the State of Missouri, held a conference with the Public Utilities Commission of the State of Kansas on the 27th day of September, 1915, but denies that after, or as a result of, such conference, said John M. Atkinson, either for himself individually, or for the Missouri Public Service Commission, announced, or was authorized to announce, that the said Missouri Commission would not permit a higher rate to be charged in cities in the State of Missouri, than was charged in the border cities of the State of Kansas, and this defendant denies that the said Missouri Commission has ever since such conference, or announcement, maintained or adhered to an arbitrary policy of not permitting an increase in rates in such Missouri towns and cities over and above such rates charged in Kansas towns and cities; that the said statement or announcement of the said John M. Atkinson as made and published in the

Kansas City Times and Kansas City Journal, on September 26th, 1915, was simply that no increase in gas rates in the State of Missouri, would be authorized by the said Missouri Commission until the Missouri cities and towns using natural gas were notified and had a day in Court, and then only when such increased rates were justified by the facts before the commission.

This defendant further answering says that the Public Service Commission law of the State of Missouri, approved March 17, 1913, precribes the manner and procedure necessary to be followed in promulgating, entering and publishing reports, decisions and orders of said commission; that it is provided by said law that such reports, decisions and orders shall be recorded in the office of the commission and served upon every person and corporation to be affected thereby in the manner provided by such law and shall be published in accordance with the provisions of such law and the rules of the commission; and that the alleged announcement of the policy of the commission by the verbal statement of the said John 1059 M. Atkinson, was not made, recorded, served nor published in the manner nor in accordance with the procedure prescribed by the said law and rules of the said commission, and was not the official legal finding, ruling, order or announcement of said commission.

This defendant further alleges that Section 82, of said Public Service Commission law of the State of Missouri, provides that before the said Commission may fix the rates to be charged by any gas corporation, it shall hold a hearing, after having given all persons or corporations affected thereby notice and an opportunity to be heard; that in determining the rates to be charged for gas, the commission shall consider such evidence as is before it, with due regard, among other things, to the reasonable average return upon the capital actually expended, and to the necessity of making reservation of the income for surplus and contingencies; that said commission is without power or authority under said law to fix or establish rates to be charged for gas, save and except in the manner provided in said Section 82 of said law, and that the alleged announcement of the said John M. Atkinson was not made as the official announcement of the said Missouri commission, but is the announcement of the individual view and opinion of the said John M. Atkinson.

This answering defendant is not sufficiently advised of its own knowledge, as to the matters of fact set up with reference to the establishing or suspending of rates for the towns of Oronogo and Carl Junction, Missouri, but has no doubt that the statements with reference thereto in Division XXI, of the answer of the Public Service Commission for the State of Missouri are correct, and this defendant hereby refers to said answer and adopts said portions thereof as this defendant's answer, and the matters of fact so alleged with reference thereto.

This defendant further answering denies that the St. Joseph Gas Company is or was an agent or distributing company of the Kansas Natural Gas Company, or of these plaintiffs' receivers, at the City of St. Joseph, Missouri, but this defendant alleges the fact to be that

the said St. Joseph Gas Company is and was at all the times mentioned in plaintiffs' Bill of Complaint, a local and independent gas company at said city, purchasing its supply of gas from these plaintiffs' receivers, and itself distributing and selling the same to the consumers in the City of St. Joseph, Missouri.

This defendant further answering admits that on September 29, 1914, the St. Joseph Gas Company filed with the Public Service Commission of the State of Missouri, a proposed new schedule, to be effective November 1, 1914, whereby it sought to raise the rate for natural gas in said defendant City of St. Joseph from forty cents to sixty cents per thousand cubic feet, and admits that on October 19, 1914, the Missouri Public Service Commission issued an order suspending said rate and made further orders from time to time extending the suspension of said rates pending an investigation and determination of the propriety of the same, until on November 27th, 1915, when the said Missouri Commission, after a hearing, rendered its finding and opinion that the said St. Joseph Gas Company had failed, by its evidence, to justify such increase of the rate at St. Joseph, Missouri, and refused to issue its order permitting such increase.

This defendant further denies that the said Missouri Commission found that the return on the property employed by the said St. Joseph Gas Company, in the public service in the distribution and sale of natural gas alone, was nearly 2.42 per cent, and denies that the said commission refused the said increase of gas rates at St. Joseph, Missouri, because of any policy on the part of said Commission to not allow higher rates in the State of Missouri than in the State of Kansas, and denies that the said Missouri Commission, in its said order, directed the St. Joseph Gas Company to cancel its contract with these plaintiffs' receivers, or with the Kansas Natural Gas Company, and this defendant alleges that it is without knowledge of the fact, save as appears on the face of the Bill of Complaint, that the St. Joseph Gas Company ever instituted suit in the District Court of Montgomery County, Kansas, to cancel said contract with the plaintiffs' receivers, or with the Kansas Natural Gas Company, and states that if such suit has been filed or prosecuted as alleged, it was done without notice to this answering defendant, or to the consumers of gas in St. Joseph.

This defendant further answering denies that the sum of 26 2-3 cents per thousand cubic feet, which the St. Joseph Gas Company has been paying plaintiffs' receivers as said receivers' proportion of the forty cent rate charged at St. Joseph, Missouri, is the same as paid by other local gas companies for such gas to the plaintiffs' receivers. It denies that the seventeen cents which the said Missouri Commission found was a reasonable price for the St. Joseph Gas Company to pay the plaintiffs, receivers, for the gas consumed at St. Joseph, Missouri, is unreasonably low, non-compensatory, unreasonable or confiscatory or would amount to an undue preference in favor of consumers of gas at St. Joseph, Missouri, in violation of the Act of Congress called "The Clayton Law." It

denies that by reason of the longer haul or transportation of gas to St. Joseph, Missouri, there is any considerable difference in the leakage or in the cost of transportation, than in the transportation of such gas by the plaintiffs, receivers, to Atchison, Kansas, and other towns and cities located similarly with St. Joseph, Missouri, and denies that the rate of twenty-six and two-thirds cents to the plaintiffs, receivers, per thousand cubic feet is unreasonable, non-compensatory, unremunerative and confiscatory as alleged by the plaintiffs.

## XXII.

This defendant specifically denies that any schedule or rate for natural gas below thirty-seven cents per thousand cubic feet for gas delivered to consumers in all other cities in the State of Missouri, except St. Joseph, Missouri, with twenty-six and two-third cents per thousand cubic feet for plaintiffs' proportion of the gas delivered in St. Joseph, is or will be unreasonably low, unremunerative, non-compensatory and confiscatory, and this defendant specifically denies that the rates now prescribed by the Public Service Commission of Missouri are unreasonably low, unremunerative, non-compensatory and confiscatory.

This answering defendant specifically denies that the plaintiffs have been or will be deprived of property without due process of law in the schedule of rates or orders now obtaining in the State of Missouri, and denies that the schedule of rates and orders made by the Public Service Commission of said State of Missouri are void or are in contravention of the Constitution of the United States.

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## XXIII.

This defendant denies that plaintiffs have no adequate remedy at law in the State of Missouri, and specifically denies that the present rates in effect in Missouri, prescribed by the Public Service Commission of Missouri are unreasonable, or are unremunerative, non-compensatory or confiscatory.

## XXIV.

This defendant denies all the allegations made in Division XXIV of the Bill of Complaint.

## XXV.

This answering defendant admits that in March, 1913, the legislature of the State of Missouri enacted a certain law designated as the Public Service Commission Act, and that said law is now in force and effect in the State of Missouri, and that said sections 70, 83 and 85 quoted in the Bill of Complaint are correct copies of said sections in the Missouri Public Service Commission Act.



## XXVI.

This answering defendant states that it has no knowledge save as derived from the face of the Bill of Complaint as to how many consumers in the State of Missouri are served by the plaintiffs' receivers, per day, and leaves said plaintiffs to make such proof thereof as they may be advised. This defendant denies that the plaintiffs are prevented or intimidated from putting into effect a schedule of rates for gas supplied to points in Missouri, because of the penalties provided in the Public Service Commission Act of the State of Missouri, and denies that said penalties are excessive or unusually severe, or that they constitute any restraint upon the actions of plaintiffs' receivers.

## XXVII.

This defendant denies that the penalties for violation of the order of the Public Service Commission of the State of Missouri are unusually oppressive or unreasonable, or that the plaintiffs are  
1063 precluded from asserting their rights, by reason of constraint and intimidation from said penalties.

This defendant specifically denies that the plaintiffs have no adequate remedy in the premises, except such relief as may be obtained by applying to a Court of Equity, or that the plaintiffs, receivers, are being deprived of their property without due process of law, and are compelled to transport and deliver gas to consumers in Missouri for less than the actual cost of said service and this defendant alleges the fact to be that these plaintiffs, receivers, have never made complaint before the Public Service Commission of the State of Missouri, and have never asked of said commission a change in the schedule of rates for gas supplied by them to Missouri consumers, nor in any way have availed themselves of said Public Service Commission Act of the State of Missouri.

## XXVIII.

This defendant does not know and cannot state what orders if any, have been made by the Public Utilities Commission for Kansas in 1912, or the effect of such orders, or what other proceedings were had, if any, before said Public Utilities Commission for Kansas, but denies that any orders that have been made by the Public Utilities Commission for the state of Kansas are material to any cause of action presented in the Bill of Complaint against this defendant.

## XXIX.

This defendant does not know what rates, if any, have been prescribed for the sale and distribution of gas in the State of Kansas, but alleges that the rates permitted by the Public Service Commission of Missouri are just and reasonable and will yield plaintiffs a just and reasonable return upon their property used and useful and devoted



to the public use in supplying natural gas to consumers in Missouri, and does not interfere with the possession and control of this court over property potentially in its charge and custody.

### XXX.

This defendant denies that the plaintiffs are without adequate remedy at law in the premises, as in the Bill of Complaint set  
1064 forth, and denies that the plaintiffs will suffer irreparable injury unless accorded the injunctive relief herein prayed for.

### XXXI.

This defendant specifically denies all allegations made in Sub-Division XXXI of said Bill of Complaint, and alleges that said sub-division of plaintiffs' Bill of Complaint consists of mere conclusions based upon previous averments of fact in said Bill of Complaint, all of which said averments of fact have been fully answered by this defendant herein.

### XXXII.

This defendant denies knowledge of the acts or orders of the Public Utilities Commission for the State of Kansas, and asks that as to all such averments in sub-division XXXII, the plaintiffs be required to produce strict proof.

Further answering, this defendant states that the allegations of sub-division XXXII of the Bill of Complaint, so far as the same relates to the orders of the Public Service Commission of the State of Missouri are merely conclusions based upon allegations of fact theretofore made in said Bill of Complaint, all of which said allegations of fact have been fully answered by this defendant, and all of which allegations are here again, now, specifically denied.

### XXXIII.

This defendant further answering states that it has no knowledge except as in this answer hereinafter set out, which of the twenty-one distributing companies named as defendants in the said Bill of Complaint distribute, deliver or sell gas to the forty-five cities and towns respectively named herein, as defendants, thirty-seven of the whole number being in Kansas, and eight in Missouri; or as to how many of said distributing companies obtain the gas so sold, delivered and distributed now from the plaintiffs, or originally from the Kansas Natural Gas Company.

This defendant specifically denies that it has ever granted to plaintiffs, as such receivers, or that they have ever had any  
1065 right or privilege to sell or distribute natural gas to or in St. Joseph, Missouri, and denies that plaintiffs sell or distribute gas to or in said City of St. Joseph, and denies that any ordinance enacted by it regulates or fixes any price or rate for the sale

of natural gas in said city; denies that it now claims or has the right to fix, regulate, determine or establish rates, charges or compensation for the sale of natural gas except by contract; denies that its Mayor, City Counselor or Common Council, or any of them, are or have been conducting or threatening injunctions, prosecutions or police regulations with the purpose, design or intent to regulate, control or fix the price at which plaintiffs may sell natural gas, and denies that this defendant city has done or threatened any act or thing, or passed any ordinance which interferes with the lawful or legitimate management or operation by the plaintiffs of the property and business in their hands as receivers, or is a usurpation or abuse by it of power; denies that the business conducted or carried on by plaintiffs in the operation as such receivers of the property and business of the Kansas Natural Gas Company, is inter-state commerce, and denies that this defendant or any of its officers, unless restrained and enjoined by this court, will subject plaintiffs, or any of the defendant distributing companies, to irreparable damage, loss or expense.

This defendant states that on the contrary, it has not only not harassed or injured plaintiffs or the property in their possession, by suits, threats or otherwise, but has at all times, when practicable, aided, assisted and endeavored to co-operate with plaintiffs.

On information and belief, this defendant avers that since the proceedings before the Public Utilities Commission for the state of Kansas, began in January, 1913, and shortly thereafter concluded, as stated in sub-division VII of the Bill of Complaint, plaintiffs have been involved in any suits or proceedings in any judicial or administrative tribunal in the state of Kansas, or in the state of Missouri, other than such as were instituted by themselves, except only the continued proceedings in the District Court of Montgomery County, Kansas, and in this court, in which suit the receivers were appointed, and in those courts only upon their own initiative, 1066 and that if the receivers had devoted to the open and legitimate management and operation of the property and business in their hands as such receivers, the energy and effort which they have devoted and sacrificed to scheming and manipulation, litigation and controversy, initiated by them, the business would be in much better condition than it is, and its alleged distresses much less serious than alleged to be.

As to all other matters and things in said sub-division XXXIII, not specifically denied, this defendant denies knowledge, asks that the plaintiffs be put upon their proof as to such allegations and averments.

### Third.

This defendant, having fully traversed and answered the Bill of Complaint filed herein, further answering says:

That the City of St. Joseph as a municipal corporation and governmental agent of the State of Missouri, has never had and does not now have any relations, contractual or otherwise, with the plaintiffs, receivers, nor with the Kansas Natural Gas Company, nor with any

other company that transports from the wells to the consumer the article or commodity known as natural gas, and this defendant states the fact to be that the citizens of the City of St. Joseph, Missouri, purchase from the St. Joseph Gas Company all natural gas that is consumed in said city; that said St. Joseph Gas Company is a local independent gas company of said city; that it purchases its supply of natural gas from these plaintiffs, receivers, under and by virtue of a written contract, to which the St. Joseph Gas Company, and the Kaw Gas Company were the original contracting parties, and to which said contract the City of St. Joseph is not a party, did not participate in the making of said contract, has no interest therein, and is not bound thereby; that a copy of said contract, between the St. Joseph Gas Company, and the Kaw Gas Company is appended hereto, marked "Exhibit A."

This defendant further answering avers that the St. Joseph Gas Company operates a system of pipes and mains in and through the City of St. Joseph under and by virtue of two franchises known as the Nash Franchise and the McGuire Franchise respectively; that said franchises were granted by the City of St. Joseph to the 1067 original holders thereof for the sole purpose of transportation, sale and distribution of gas to the inhabitants of St. Joseph, for manufactured or artificial gas; that said franchise in no wise contemplated the transportation, delivery or sale of natural gas, but do constitute the only rights and authority of the St. Joseph Gas Company to the use and occupancy of the streets of the City of St. Joseph for the purpose of furnishing gas to the inhabitants of said city; that a copy of the franchises referred to as the Nash Franchise and marked "Exhibit B" and the McGuire Franchise, marked "Exhibit C" are hereto appended and made a part hereof.

This answering defendant further avers that all of the natural gas delivered by the plaintiffs, receivers, to the St. Joseph Gas Company is transported through the mains of the Kansas Natural Gas Company to a point just inside the city limits of the City of St. Joseph; that it is transported from said place to the holder of the St. Joseph Gas Company through the mains of said St. Joseph Gas Company, and that none of said gas is distributed or delivered by the plaintiffs, receivers of the Kansas Natural Gas Company, or the St. Joseph Gas Company, to any consumer until and after the said gas is deposited in said holder of the St. Joseph Gas Company; that the said St. Joseph Gas Company, after the delivery to it and acceptance by it, of the natural gas so purchased by it from the Kansas Natural Gas Company and these plaintiffs, receivers, transports, sells and distributes to its consumers, in the City of St. Joseph, the natural gas so purchased by it, and that at no time do the plaintiffs, receivers, sell, transport or deliver to consumers in the City of St. Joseph, any kind of gas whatever.

That said defendant city has at no time claimed or attempted to exercise any power to fix, regulate, determine or establish rates or compensation which plaintiffs have received for natural gas furnished by them, nor has it threatened injunctions, prosecutions or police regulations for the purpose, design or intent, to regulate, control or

fix the price at which plaintiffs may sell natural gas furnished by them, and has at all times treated and considered that it was not a party to nor participant in any contract or agreement by and between the plaintiffs, receivers, or the Kansas Natural Gas Company, and the St. Joseph Gas Company, and this defendant further states that it has never granted to plaintiffs, as receivers, nor have they ever had any right or privilege to sell or distribute natural gas to or in St. Joseph, Missouri, and avers that plaintiffs do not sell or distribute gas to or in said City of St. Joseph, and avers that no ordinance has been enacted by this defendant city regulating or in any manner fixing any price or rate for the sale of natural gas in said city, and avers that it does not claim the power or the right to fix, regulate or determine rates, charges or compensation for the sale of natural gas.

This defendant further answering denies that the plaintiffs are entitled to any part of the relief in said Bill of Complaint demanded, or to any relief whatsoever, as against this defendant, and alleges that the plaintiffs have no standing in this court or in any court of equity, and this defendant prays, in all things, the same benefits and advantages of this, its answer, as if it had moved to dismiss said Bill of Complaint, and that a hearing be granted it upon the issues of law arising upon the face of the Bill of Complaint as set forth in the First Division of this answer, and that the Bill of Complaint be dismissed against this defendant; that should the Bill of Complaint not be dismissed as against this defendant before final hearing of the cause, this defendant prays that the Bill of Complaint be dismissed as against it at that time and that it go hence without day, and that it have judgment for its costs.

CITY OF ST. JOSEPH, MISSOURI,  
By CHARLES L. FAUST AND  
MERRILL E. OTIS,  
*Its Solicitors.*

STATE OF MISSOURI,  
*County of Buchanan, ss:*

Charles L. Faust, being first duly sworn, on his oath deposes and says, that he is the City Counselor of the defendant City of St. Joseph; that he has read the foregoing answer of said defendant City, and knows the contents thereof, and that the facts stated therein are true.

CHARLES L. FAUST.

Subscribed and sworn to before me this 13th day of May, 1916. The term of my commission will expire Aug. 22, 1919.

(Signed)  
[SEAL.]

WILLIAM M. McKAY,  
*Notary Public of said County.*

"EXHIBIT A."

Agreement made and entered this thirtieth day of August, in the year of our Lord one thousand nine hundred and five, by and between the Kaw Gas Company, a corporation duly created, organized and now existing under the laws of the State of West Virginia, hereinafter called the "Kaw Company," party of the first part, and the St. Joseph Gas Company, a corporation duly created, organized and now existing under the laws of the State of Missouri, hereinafter called the "St. Joseph Gas Company," party of the second part.

2. Whereas, the said Kaw Company is the owner of leases of large quantities of natural gas producing lands in the gas belt of the State of Kansas, with gas producing wells developed, and is desirous of marketing its gas product; and

3. Whereas, the St. Joseph Company is the owner of a system of pipes for the distribution and sale of gas in the city of St. Joseph, Missouri, and is desirous of securing a supply of natural gas for said city and the inhabitants thereof;

4. Now This Indenture Witnesseth, that for and in consideration of the sum of one dollar each to the other paid, the receipt of which is hereby acknowledged, and for other valuable considerations and the mutualities hereinafter named, the said Kaw Company hereby agrees to lay and complete on or before December 1, 1905, unavoidable delays excepted, a sixteen inch pipe line for conveying natural gas from the gas belt of Kansas to a point at the city limits of the city of St. Joseph, Missouri, to be hereinafter mutually agreed upon by the two parties of this contract, and to install and maintain at such point a reducing and regulating station for the delivery of natural gas into the mains and pipes of the St. Joseph Company at a pressure of substantially ten pounds per square inch, and the said Kaw Company agrees to continue to thus deliver natural gas at this point to the St. Joseph Company for a period of twenty years from and after December 1, 1905, and the St. Joseph Company agrees to purchase, receive and pay for the natural gas so delivered as the gas shall be demanded by its consumers, and to distribute the same through its system of pipes in the City of St. Joseph; the quantity of gas so purchased shall be ascertained by monthly readings of meters in use with or by the consumers of gas supplied by the St. Joseph Company, and the quantities so ascertained shall be paid for by the St. Joseph Company at the rate of twenty cents per thousand cubic feet and 1070 such payments to be made on or before the twentieth day of the month succeeding the month in which the gas is used.

5. The price of twenty cents per thousand cubic feet for natural gas to be paid by the St. Joseph Company is based on a general price of thirty cents net per thousand cubic feet to the St. Joseph Company's consumers. But should the St. Joseph Company at any time obtain a higher price for natural gas than thirty cents net per thousand cubic feet for any part or all of the gas purchased from the

Kaw Company, then, and in that event the price to be paid the Kaw Company shall be, for all natural gas sold at the higher price, twenty cents per thousand cubic feet, plus two-thirds of the excess price obtained by the St. Joseph Company. In the event that any natural gas is sold at less than thirty cents per thousand cubic feet, as hereinafter provided, to the St. Joseph Company's consumers, then the price to be paid the Kaw Company shall be twenty cents per thousand cubic feet less two-thirds of the reduction made by the St. Joseph Company from its regular price of thirty cents per thousand cubic feet. The Kaw Company shall receive two-thirds of the amounts collected from the consumers failing to take advantage of the discount allowed for prompt payment.

6. The said Kaw Company further agrees that it will, for and during the term of twenty years from December 1, 1905, supply and deliver through its said pipe line and through its said reducing and regulating station, natural gas at a pressure of substantially ten pounds and in sufficient volume to maintain a pressure of substantially four ounces on the principal main lines of the low pressure system in the said city, and at all times fully supply the demand for all purposes of consumption as provided for in this contract. However, as the production of gas from wells and the conveying of it over long distance is subject to accidents, interruptions or failures, the Kaw Company does not by this contract undertake without qualification to furnish the St. Joseph Company with an uninterrupted supply of natural gas for the period named herein, but only to furnish such supply for such period of time as its wells and pipe line conveying gas to the St. Joseph Company are capable of supplying.

7. The Kaw Company agrees that it will at all times make reasonable efforts to supply the St. Joseph Company with all the natural gas needed to meet the demands of its consumers, and will as far as lies within its power furnish an uninterrupted supply of gas at the pressure above stated, and will keep its pipe lines, regulating stations, etc., free from any interruption or any known menace which might cause interruption, but that it will not be liable to the St. Joseph Company for any unavoidable interruptions to the supply, or for an insufficient supply due to accidents and unavoidable causes.

1071 8. The St. Joseph Company agrees that it will use diligent efforts to develop the sale of natural gas by solicitation, advertising and other means, and that it will keep its mains, services and meters and all other appliances free from excessive leakage; that it will make extensions to its mains to accommodate such profitable business as may be secured; that it will lay free services to the curb for new consumers of gas; that it will keep its meters in good condition for accurate registration, and that it will be ready to accept and deliver to its consumers the natural gas purchased by December 1, 1905; Provided any and all necessary consent from the City of St. Joseph has been obtained; and that it will also keep its records complete, so that the conditions of this contract can be accurately determined, and that it will grant said Kaw Company access to its records at any and all reasonable times; that it will maintain its distributing system adequate for the maximum sale of gas with substan-



tially four ounces pressure on low pressure mains; that all gas sold shall be registered by meters; that the Kaw Company shall have the right at any and all reasonable times to inspect the mains, lines and meters of the St. Joseph Company for the purpose of discovering leaks and ascertaining whether they are kept in the condition provided for by this contract, and so long as said Kaw Company is able to supply all gas needed by the St. Joseph Company and will supply gas at prices and on terms and conditions as favorable as any other person or company, that the St. Joseph Company will purchase all of its gas from the said Kaw Company.

9. As a basis for settlement between the parties hereto, it is agreed that, subject to whatever, if any, consent may be necessary on the part of the City of St. Joseph, natural gas will be sold by the St. Joseph Company for domestic use at a minimum price of thirty cents per thousand cubic feet net, during the first five years to December 1, 1910, and at a minimum price of forty cents per thousand cubic feet, net, thereafter; the minimum gross price being thirty-five cents and forty-five cents respectively, with a discount of five cents per thousand cubic feet for payment of bills by the tenth day of the succeeding month in which the gas was used.

10. It being understood, however, that the Kaw Company shall not be required under this contract to furnish gas for domestic purposes at less than thirty cents per thousand cubic feet, net, for the first five years of this contract following December 1, 1905, or at less than forty cents, net, per thousand cubic feet for the remaining years of this contract. Natural gas may be sold for manufacturing and other special purposes at a less price than those mentioned above, but not less than fifteen cents, net, per thousand cubic  
1072 feet, without the consent of the Kaw Company; and the rules and conditions under which said special contracts are taken shall be subject to the approval of the Kaw Company, and upon sales made for manufacturing and other special purposes at less than fifteen cents per thousand cubic feet, the division of receipts shall be three-fourths to the Kaw Company and one-fourth to the St. Joseph Company, instead of two-thirds, and one-third, as above provided in case of receipts from other sales.

11. In the event of the supply of natural gas diminishing, the St. Joseph Company may supply the deficiency by the distribution of manufactured gas, or gas obtained from other sources, and the quantity of gas so supplied shall be carefully measured at the works or at the station by large meters, and the quantity so ascertained shall be deducted from the total amount sold as indicated by the consumers' meters, to ascertain the quantity of natural gas for which the Kaw Company shall be paid; provided, however, that in ascertaining the amount of manufactured gas, or gas obtained from other sources, which has been sold, provision shall be made for leakage thereof. This shall be based each year upon the same percentage of leakage as for the last preceding year in which manufactured gas was supplied in said town.

12. Or, if the Kaw Company so elect, they may at their own expense provide accurate meters to measure the natural gas supplied



to the St. Joseph Company, and in that event they shall be paid on the percentage of the registration of their meters to the sum of the gas registered by the station meters of both the St. Joseph Company and the Kaw Company. In the event of an inadequate supply of natural gas for the domestic consumers connected with its system of pipe lines throughout Kansas and Missouri, all special rate contracts shall be discontinued at the option of the Kaw Company, and the original contracts made by the St. Joseph Company shall be so worded as to permit of this cancellation.

13. Should the Kaw Company fail to supply the maximum quantity of gas required by the St. Joseph Company for the use of its consumers, as provided in this contract, during each heating season, it shall be the duty of the said St. Joseph Company to notify said Kaw Company of such default on or before the first day of the succeeding April, and if said Kaw Company shall in the succeeding heating season again fail to supply the maximum quantity of gas required by the St. Joseph Company's consumers, then and in that event the St. Joseph Company may, if they so elect, terminate this contract by giving six months' written notice of its desire so to do; however, accidents due to unavoidable causes, and which are promptly repaired shall not constitute a default as specified in this clause.

14. In the event the Kaw Company shall be unable to deliver to all of the companies with whom it has contracts, all of the natural gas required by said companies, then the available gas shall be divided between these companies each day proportionately to the purchase of gas made by each of these companies for the previous year.

15. During the life of this contract the Kaw Company binds itself not to supply to any person, firm or corporation other than the St. Joseph Company, who will use or sell gas in St. Joseph or within a radius of five miles thereof, gas at prices or on terms or conditions more favorable than to the St. Joseph Company, and at all times to give the St. Joseph Company prices as low, and terms and conditions as favorable as are given by the Kaw Company or any other person, firm or corporation in said city or radius.

16. Should the St. Joseph Company fail to accept the natural gas and distribute the same through its distributing system in the said City of St. Joseph, Missouri, on or before December 1, 1905, unavoidable delays excepted, this contract at the opinion of the Kaw Company may be cancelled.

17. The St. Joseph Company is now supplying gas for lighting to the city buildings free of cost, and the Kaw Company agrees they may continue to do this and no charge will be made for the gas.

18. It is understood that the St. Joseph Company shall not be required to pay for gas sold delinquent parties when such parties have been shut off for default in payment within fifteen days after maturity of their bill or bills, and all reasonable efforts have been made to collect the same without success; but if the bill of any delinquent so shut off should afterwards be paid or collected in whole or in part, the Kaw Company shall be entitled to receive two-thirds of such payment or collection.

19. This contract is executed in duplicate.

20. In Witness Whereof the said The Kaw Gas Company has caused this instrument to be signed by its President and its corporate seal to be hereto affixed and the same attested by its Secretary, and the St. Joseph Gas Company has caused this instrument to be signed by its President and its corporate seal to be hereunto affixed and the same attested by its Assistant Secretary on this the day and year first above written.

[SEAL.]

THE KAW GAS COMPANY,  
By F. V. EATON,  
*Its President.*

Attest:

W. J. HIGGINS,  
*Its Secretary.*

[SEAL.]

ST. JOSEPH GAS COMPANY,  
By EMERSON McMILLIN,  
*Its President.*

Attest:

ALANSON P. LATHROP,  
*Its Assistant Secretary.*

1074 The Kansas Natural Gas Company does now and hereby for full value received, certify to the St. Joseph Gas Company that it, the Kansas Natural Gas Company, has sold all its oil and gas leases, lands, rights and grants and system of pipe lines in the State of Kansas to the Kaw Gas Company, which is now the owner and holder thereof, and guarantees to it, the said St. Joseph Gas Company, that it, the Kaw Gas Company, will fully keep and perform all and each and every of its promises, covenants and agreements in the foregoing contract contained.

In Witness Whereof the Kansas Natural Gas Company has caused its name to be hereunto subscribed by its President and its common and corporate seal to be hereunto affixed and the same attested by its Secretary this sixth day of October in the year of our Lord One Thousand Nine Hundred and Six.

[SEAL.]

KANSAS NATURAL GAS COMPANY,  
By T. W. BARNSDALE,  
*Its President.*

Attest:

JOHN S. SCULLY, Jr.,  
*Its Secretary.*

"EXHIBIT B."

An Ordinance Giving Authority to Charles H. Nash and Others to Construct Gasworks and Lay Mains and Pipes in St. Joseph.

Be it ordained by the City of St. Joseph.

Section 1. That Charles H. Nash, his heirs, or associates, or assigns, either as individuals, or as a body corporate, under such name

as they may choose, be, and they are hereby, authorized and empowered to erect and operate gas works in said City of St. Joseph, and to use the streets, avenues, lanes, alleys and public places and grounds and all such territory as may be hereafter added thereto, for laying down their mains and pipes, for the conveyance of gas for supplying said city and the citizens thereof with gas, and shall have full power to take up, alter and repair the said pipes when, and so often, as the said Charles H. Nash, his heirs, associates or assigns shall deem it necessary so to do, in all cases doing no unnecessary damage in the premises, and taking care as far as may be to preserve a free and unobstructed passage through the said streets, avenues, lanes, alleys, and public grounds, and shall leave them in as good condition as they were before being dug up, without unnecessary delay.

Section 2. That the said Charles H. Nash, his heirs, associates, or assigns, shall supply the said City of St. Joseph with such quality of gas as it may require, for the lighting of the streets, the city hall, markets, and other public places, and buildings of the City 1075 of St. Joseph, Missouri, at such price as may be agreed on, not exceeding two dollars and fifty cents per thousand cubic feet, but nothing herein contained shall be construed into an exclusive right in the said Charles H. Nash, his heirs, associates or assigns, to furnish gas for the purposes in this section named, or into an exclusive right to furnish the inhabitants of said City, the said City being left free to contracts in regard thereto, as her municipal authorities may deem best.

Section 3. That the said Charles H. Nash, his heirs, associates, or assigns, shall complete the construction of their gas works in said city, within one year from the passage of this ordinance, and be ready to furnish gas to the city and citizens of said City of St. Joseph, to the extent to which they may have their pipes laid.

Section 4. Any failure on the part of the said Charles H. Nash, his heirs, or associates, or assigns, to conform to the conditions of section three of this ordinance, shall work a forfeiture of all the rights and privileges by this ordinance granted.

Section 5. This ordinance shall be in force and take effect from and after its passage.

Approved January 8, 1878.

T. H. HAIL,  
*Acting Mayor.*

In testimony whereof, I have hereunto set my hand and affixed the seal of the City of St. Joseph.

Done at the Register's office this 9th day of January, A. D. 1878.

E. J. CROWTHER,  
*City Register.*

## "EXHIBIT C."

*Special Ordinance No. 860.*

An Ordinance granting to Charles McGuire authority to construct and operate Gas Works within the corporate limits of the City of St. Joseph, Mo., and to lay pipes in the avenues, streets, alleys and public places thereof, for the purpose of furnishing heat, light and power to the said city and the inhabitants thereof.

Be It Ordained by the Common Council of the City of St. Joseph, as follows:

Section 1. That permission be, and it is hereby granted to Charles McGuire, his heirs, associates or assigns, either as individuals or as a body corporate, under such name as they may choose, to construct, maintain and operate works within the corporate limits of the City of St. Joseph, Mo., and all such territory which may here-  
1076 after be added thereto or become subject to the jurisdiction thereof; to be occupied, used and employed in and for the manufacture, sale and distribution of Gas. And to enable the said Charles McGuire, his heirs, associates or assigns, either individually or as a body corporate as aforesaid, to deliver such gas to their customers for the purpose of heat, light or power, the right is hereby granted him and them along, upon, under, in and through all the avenues, streets, alleys, public grounds and places and in such additional territory as aforesaid, for the purpose of laying down, operating, maintaining, changing and repairing pipes, tubes, feeders and service pipes and to erect and maintain all necessary engines and machinery in connection with said business of making, selling and delivering gas, subject, however, to the limitations and conditions hereinafter set forth.

Section. 2. All avenues, streets, alleys and public places which, under the authority hereof, shall be excavated by said Charles McGuire, his heirs, associates or assigns, shall be restored by him or them to the same or as good condition in all respects — they were in before the beginning of the work and with all convenient dispatch. The City Engineer shall have supervision of all excavations and refilling and restoration of all avenues, streets, alleys and public places as aforesaid, and all of such work shall be done in the manner said City Engineer may require. Whenever the said pipes or other works in said avenues, streets, alleys and public places of the city shall be in any respect defective or out of repair, the said Charles McGuire, his heirs, associates or assigns as aforesaid, shall, within ten days after notice from the City Engineer, repair and put in good condition all such pipes and works, and upon failure to do so the city may make such repairs and put the pipes and works in good condition, and the said Charles McGuire, his heirs, associates or assigns as aforesaid shall reimburse the said city for all such expenditures within ten days thereof. Said Charles McGuire, his heirs, as-

sociates or assigns as aforesaid, shall at all times be liable direct to the party, or liable over to the city for any damage done by reason of injury caused to any property or person by reason of the construction or the repairing of its work as herein contemplated.

Section 3. The works shall be constructed so as not to injure the rights and property of others in said city, and any injury resulting from such construction shall be paid for by said Charles McGuire, his heirs, associates or assigns, and if any person shall wilfully or maliciously injure or destroy any portion of the works, fixtures or other property of said Charles McGuire, his associates, heirs or assigns, such person shall be guilty of a misdemeanor, and, 1077 upon conviction thereof, shall be fined not less than three nor more than fifty dollars.

Section 4. The said Charles McGuire, his heirs, associates or assigns as aforesaid, shall, on or before August 1st, 1890, have on the ground three miles or more of pipe for distribution of gas, one mile or more of which shall have been laid, and shall also have begun the construction of its plant for the manufacture of gas; and shall, within eighteen months from the date of the acceptance of this ordinance, be prepared to furnish gas for heat, light and power to those desiring it, along at least ten miles of pipe. Unless these conditions are complied with the City Council may repeal this ordinance and all the rights conferred thereby shall be forfeited by such repeal; provided, however, that if said Charles McGuire, his heirs, associates or assigns, shall be delayed by any ordinance, resolution, or act of the City of St. Joseph, or by any suit, injunction, order or decree of any court of competent jurisdiction, then the periods of any and all such delays shall be added to the limit of time aforesaid. And the said McGuire, his heirs, associates or assigns as aforesaid, shall, within sixty days from the acceptance of this ordinance, and before any avenue, street, alley or public place shall be used by them for the purpose herein provided, deposit with the City Comptroller, or depositary of the City of St. Joseph, the sum of twenty thousand dollars, which shall remain so deposited as a guaranty by said McGuire, his heirs, associates or assigns as aforesaid, that they will faithfully and fully comply with all the terms, conditions and obligations of this ordinance. And the said sum of twenty thousand dollars shall remain in the hands of said city until the said McGuire, his heirs, associates or assigns as aforesaid, can and do show to said city that they have invested in plant, pipes, labor and real estate and machinery for the purpose of manufacturing and distributing gas as herein provided, the sum of one hundred and fifty thousand dollars, and on such showing being made to the Council of said city the said sum of twenty thousand dollars shall be released and paid over to said McGuire, his heirs, associates or assigns as aforesaid, forthwith. Provided, further, that said McGuire, his heirs, associates or assigns at the time of the above deposit of money shall deposit a bond in the sum of twenty thousand dollars, with two good and sufficient securities to be approved by the City Comptroller and Common Council, for the faithful performance of this contract,

and said bond shall be released and canceled so soon as the terms of this ordinance have been complied with. Unless these conditions as to acceptance, deposit of money and giving of bond are each and all complied with as herein required, this ordinance may be repealed.

1078 Section 5. The said Charles McGuire, his heirs, associates, or assigns as aforesaid, shall not charge within the territory aforesaid, a price exceeding seventy-five cents per one thousand cubic feet for gas for fuel or for power, nor more than one dollar per thousand cubic feet for gas used for light, except in case where the gas is not paid for on or before the tenth of the month of the month next following the month in which the gas was used, in which case or cases the price may be made twenty-five cents per thousand cubic feet more; and the said Charles McGuire, his heirs, associates or assigns as aforesaid, shall at all times furnish to the City of St. Joseph such gas for heat, light and power as it may require along the lines of its pipes and at rates not greater than is charged other persons or parties, and shall at all times furnish to the city hall and fire department and city calaboose, such gas for light as the city may require, free of any costs whatever.

Section 6. The said Charles McGuire, his heirs, associates, or assigns as aforesaid, shall have the right to make reasonable regulations for the management and conduct of the business of manufacturing, selling and distributing gas in said city.

Section 7. The said Charles McGuire shall, within twenty-five days from the approval of this ordinance, file with the City Clerk his written acceptance thereof, and of the terms and conditions of the same, and the said acceptance shall be taken and held to bind him to build and operate such works.

Section 8. It is further ordained, that if in any case, or under any circumstances, the said grantees under any name, or their assigns, consolidate with any other party, person, concern, or corporation, then the gas furnished by the consolidation shall not be charged for at a price to exceed that named in this ordinance.

Section 9. It is further ordained, that in all cases and for all uses the gas furnished under this ordinance, shall be made odoriferous, so that its escape from joints, pipes, connections *and* etc. may be immediately and distinctly detected.

Section 10. The gas furnished under this franchise, shall be of the following defined quality or qualities as to producing light. The gas shall, when consumed or used at the rate of five (5) cubic feet per hour, be at least equal in illuminating power to sixteen standard candles burning at the rate of 1211 grains of sperm per hour, the production of light by incandescents.

Section 11. The City of St. Joseph shall always have the right by and through such experts as they may select, to go through all the houses and buildings in which the gas manufactured by the holders of this franchise shall be made, and shall have the right to  
1079 examine into the methods of such manufacture and to ascertain the ingredients used and to require that the quality of such gas shall always be kept and maintained up to the test prescribed



in section ten, and a failure to comply herewith shall give the Common Council of St. Joseph the right to repeal this franchise.

This ordinance having been returned by the Mayor with his objections thereto, and, after reconsideration, having passed the Common Council by a vote of two-thirds of all the members elected, as provided and required by law, has become a law this 28th day of February, A. D. 1890.

JACOB GEIGER,

*President of Common Council.*

Attest:

[SEAL.] PURD B. WRIGHT,

*City Clerk.*

St. Joseph, Missouri,

March 22, 1890.

I, Charles McGuire, hereby accept Special Ordinance No. 860 and the terms and conditions thereof, said ordinance being entitled "An ordinance granting to Charles McGuire authority to construct and operate gas works within the corporate limits of the City of St. Joseph, Mo., and to lay pipes in the avenues, streets, alleys and public places thereof, for the purpose of furnishing heat, light and power to the said city and the inhabitants thereof," which became a law February 28th, 1890.

In testimony whereof, I have hereunto affixed my name this 22nd day of March, 1890.

CHARLES MCGUIRE [SEAL.]

Filed March 22nd, A. D. 1890 at 11:55 o'clock a. m.

PURD B. WRIGHT,

*City Clerk.*

Filed in the District Court on May 15, 1916. Morton Albaugh, Clerk.

1080 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Assignment of Errors on Appeal by Kansas City Gas Company.*

Now comes the Kansas City Gas Company and assigns the following errors in the above entitled cause, to-wit:



Assignment No. 1. The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas City Gas Company, to-wit, the distribution and sale of natural gas in Kansas City, Missouri, furnished to it by the Kansas Natural Gas Company and its Receivers, John M. Landon and George F. Sharitt is interstate commerce of a national character and not of a local nature, and enjoining said Kansas City Gas Company from interfering with said Kansas Natural Gas Company and its receivers establishing and maintaining without the consent & over the objection of the Kansas City Gas Company natural gas rates approved by the Court for the patrons and consumers of the Kansas City Gas Company in Kansas City, Missouri, as appears from paragraphs "second," "seventh," "ninth," and "tenth" of its Decree entered August 13, 1917, for the following reasons, to-wit:

(a) The Kansas City Gas Company is a Missouri corporation, chartered to do a local public utility service in Kansas City, Missouri, and is doing a business affected with a local public interest under franchises granted by the State of Missouri and its municipalities granting the use of the public streets of said City for such purpose.

1081 (b) The Kansas City Gas Company has purchased its supply of natural gas from the Kansas Natural Gas Company or its Receivers since 1906 under and pursuant to written contracts dated November 17th and December 3rd, 1906, fixing the price that the Kansas City Gas Company should pay said Kansas Natural Gas Company, its successors and assigns, for said gas.

(c) There has been no agreement between the Kansas City Gas Company and the Kansas Natural Gas Company or its Receivers providing for any alteration, modification, change, rescission or cancellation of that contract.

(d) The Kansas Natural Gas Company and its Receivers have no franchise to furnish, sell or distribute gas in Kansas City, Missouri, and no right to lay and maintain pipes in its streets and have, own or control no pipes in said City.

(e) The Kansas Natural Gas Company and its Receivers have no right contractual, legal or equitable, to establish and maintain rates for the Kansas City Gas Company, without its consent, to be charged by said Company for gas sold to its consumers in Kansas City, Missouri.

1082 Assignment No. 2. The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas Natural Gas Company and its Receivers, to-wit, the transportation of natural gas from Kansas and Oklahoma to Missouri and the distribution and sale of said gas in said state by said Kansas Natural Gas Company and its Receivers, is interstate commerce of a national character and not of a local nature, and enjoining the Kansas City Gas Company from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining over the objection of the Kansas City Gas Company natural gas rates approved by the Court for the patrons and consumers of the Kansas City Gas Company in Kansas City, Missouri, as appears from paragraphs "second,"

"seventh," "ninth," and "tenth" of its Decree entered August 13, 1917, for the following reasons, to-wit:

(a) The Kansas Natural Gas Company and its Receivers are doing a business affected with the public interest; their participation or interest, if any, in the distribution and sale of natural gas in Kansas City, Missouri, is a local public utility service of and for the State of Missouri.

(b) Said Kansas Natural Gas Company and its Receivers have no franchise upon the public streets of Kansas City, Missouri, but deliver, market and sell their natural gas by and through the instrumentality of the Kansas City Gas Company, which is a licensed agency of the State of Missouri and a public utility corporation under its laws and rendering a local public service under franchises duly granted by the State and its municipalities, by reason of which said Kansas Natural Gas Company and its Receivers have devoted their property and natural gas to the public use of the State of Missouri and submitted to state regulation and control thereof.

(c) The Kansas Natural Gas Company and its Receivers have voluntarily made and maintained physical connections between their pipe-lines and the distribution plant of the Kansas City Gas Company and aid and contribute to the local public service rendered by the Kansas City Gas Company and thereby submitted to state regulation and control.

(d) The Kansas Natural Gas Company and its Receivers have since 1906 furnished gas to the Kansas City Gas Company under contracts voluntarily entered into and assumed providing for a supply of gas by the former to the latter at certain specified prices and thereby aid and contribute to the local public service rendered by the Kansas City Gas Company and submitted to state regulation and control.

(e) The Kansas Natural Gas Company and its Receivers cannot change or modify those contracts and establish and maintain natural gas rates to the consumers of the Kansas City Gas Company without the consent of said Company.

1084 (f) The purchase of gas by consumers, the sale of gas to consumers and the delivery of gas to consumers are all local transactions between the consumer and the Kansas City Gas Company, made, done and consummated locally.

(g) The purchase of gas by the Kansas City Gas Company and the sale of gas by the Kansas Natural Gas Company or Receivers to the Kansas City Gas Company and the delivery of gas to said latter Company are local transactions between the Kansas City Gas Company and said Kansas Natural Gas Company and its Receivers, done and performed in the State of Missouri.

(h) When a consumer elects or determines to buy gas, delivery is made to him in instanter out of the stock on hand stored in the pipes of the Kansas City Gas Company in the State of Missouri.

(i) The maintenance of service pipes on the consumer's premises filled with gas and a meter to record the measurement thereof, constitute an implied standing offer to sell, measure and deliver locally

on the consumer's premises at reasonable, customary or authorized price; the turning of the gas cock by the consumer constitutes an acceptance of that offer and the receipt of the gas on the premises locally and a promise to pay a reasonable, customary or authorized price.

1085 (j) There is no contractual relation existing between the consumer and the Kansas Natural Gas Company or Receivers. The consumer deals exclusively with the Kansas City Gas Company. The consumer gives no advance orders for gas to be delivered in the future, but takes gas instanter from the pipe extending into his premises according to his needs from time to time.

(k) The Kansas Natural Gas Company and Receivers are more than carriers; they are local merchants or dealers constantly offering gas for sale locally and for delivery locally in Missouri to the Kansas City Gas Company. The price as between the Kansas City Gas Company and the Kansas Natural Gas Company or Receivers is fixed by contract or must hereafter be fixed by contract.

(l) The contracts between the Kansas Natural Gas Company and the Kansas City Gas Company under which the business was commenced in 1906, and under which the Receivers have long continued to operate, obligate the Kansas Natural Gas Company and its successors "to supply gas" and "to furnish gas" at Kansas City in the State of Missouri to the Kansas City Gas Company. Transportation was and is merely incident to that undertaking. It was and is a necessity to the business of "furnishing" and "supplying" gas. It is wholly immaterial as between the parties where the gas is found, produced or obtained, whether in Missouri, Kansas, Oklahoma, Texas or Louisiana. The obligation undertaken and the course of business of the Kansas Natural Gas Company and its Receivers always  
1086 was, is and ever must be to "furnish" and "supply" gas to the Kansas City Gas Company at Kansas City in the State of Missouri.

(m) The Kansas City Gas Company has dedicated its properties to a local public use and engaged in a business affected with a local public interest, and undertaken to perform a service to which the general public may resort at will and receive instantaneous, uniform and equal service without discrimination at a uniform, reasonable and compensatory, and authorized rate.

(n) The Kansas Natural Gas Company and Receivers have voluntarily devoted their pipe-lines and their natural gas in aid of the local public service performed by the Kansas City Gas Company and pro tanto have consented and submitted to state regulation and control.

1087 Assignment No. 3. The Court erred in holding, adjudging and decreeing that the following described gas-supply-contracts existing between the Kansas Natural Gas Company and the Kansas City Gas Company are not binding upon the Receivers, John M. Landon and George F. Sharitt, and permanently enjoining the Kansas City Gas Company from enforcing the said supply-contracts or rates fixed or referred to therein against said Receivers, to-wit, the contract dated November 17, 1906, between McGowan, Small and

Morgan, grantees, predecessors of the Kansas City Gas Company and The Kansas City Pipe Line Company, which was assumed by the Kaw Gas Company, predecessors of the Kansas Natural Gas Company by lease dated November 19, 1906, between said Kaw Gas Company and The Kansas City Pipe Line Company; and, the contract dated December 3, 1906, between said McGowan, Small and Morgan and said The Kansas City Pipe Line Company which was assumed by said Kaw Gas Company by agreement dated December 5, 1906, both of which contracts dated November 17, 1906, and December 3, 1906, respectively, were further assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and The Kansas City Pipe Line Company, as appears in paragraph "fifth" sub-division 1, and paragraph "seventh" of said Decree entered August 13, 1917, for the following reasons, to-wit:

1088 (a) That said supply-contracts, among other things, provide and obligate The Kansas City Pipe Line Company and its successors and assigns, the Kansas Natural Gas Company and said Receivers, to supply and deliver to the Kansas City Gas Company at a pressure of 20 pounds at the point of delivery at Kansas City, Missouri, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption for the consideration, at this time, of  $62\frac{1}{2}$  per cent of the gross receipts from the sale of such natural gas at the specified rate of 30 cents net per thousand cubic feet, thereby securing to the Kansas City Gas Company a supply of gas at  $62\frac{1}{2}$  per cent of 30 cents or  $18\frac{3}{4}$  cents, measured at the consumers' meters; that the rate in force at the time of entering the foregoing Decree was 30 cents per thousand cubic feet and the Kansas City Gas Company was paying and had been paying to said Kansas Natural Gas Company and Receivers said agreed consideration, to-wit,  $18\frac{3}{4}$  cents per thousand cubic feet, for said gas, according to the terms and provisions of said contracts; that the order above complained of deprives the Kansas City Gas Company of the benefits of said contracts without a hearing on the validity of said contracts and without any showing that the disapproval, disavowal or cancellation of said contracts is necessary, equitable or proper in the interest of prior contracting parties, lienholders and creditors of the Kansas Natural Gas Company and was made in a proceeding collateral to the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, Equity, pending in said Court, the same being the receivership and foreclosure suit in which such administrative order alone could legally be made.

1089 (b) The Court had no jurisdiction under the pleadings filed and the issues joined in the above entitled cause and the evidence offered to make said order for the reason that said suit was an action in personam and not an action in rem and John M. Landon and George F. Sharitt were not Receivers or in possession of any property by virtue of the above entitled case but were plaintiffs in an independent action and were not entitled to administrative orders affecting the property in their possession or the rights and liabilities

of third parties with reference to said property or the legal or equitable owners thereof.

(c) Plaintiffs' petition and supplemental petition and the evidence offered on the trial do not state or show facts sufficient to constitute a cause of action in favor of plaintiffs John M. Landon and George F. Sharitt and against this defendant the Kansas City Gas Company entitling said plaintiffs to such relief, to-wit, the disapproval, disavowal and cancellation of said supply-contracts by said Receivers or the Court in the interest of creditors or lienholders. The pleadings and record show that the Kansas Natural Gas Company is perfectly solvent; that its assets exceed \$7,000,000, and its total liabilities are approximately \$3,050,000; and that the claim of the plaintiff in the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, Equity, upon which the above entitled cause No. 136-N, Equity, is dependent, is approximately \$350,000; and that no creditors, secured or unsecured, had intervened in the above entitled cause No. 136-N praying the Court to disavow and cancel said contracts in the interest of creditors or lienholders.

1090 (d) That no order disavowing or cancelling said supply-contracts had ever been entered in the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, Equity, the foreclosure case upon which this cause is dependent; and the Kansas City Gas Company had never been cited or brought before said court in said cause No. 1-N, Equity, on any application to disavow and cancel said contracts; but on the contrary the Receivers John M. Landon and George F. Sharitt and their predecessors in possession of said property, George F. Sharitt, Conway F. Holmes and Eugene Mackey, had continued to carry on the business of the Kansas Natural Gas Company under and pursuant to the terms and provisions of said contracts since their original appointment on October 9, 1912.

(e) That the order originally appointing said Receivers or their predecessors in said cause No. 1-N, Equity, continued said contracts, among others, in full force and effect until the further order of the court in said cause No. 1-N, Equity, by providing and ordering as follows:

"Third. That upon the filing and approval of the said bonds, the said Receivers (or each of them as fast as his respective bond is filed and approved) be and they are hereby authorized, empowered and directed to take immediate possession of all and singular the pipe lines, compressor stations, leases and other property above described or referred to, wherever the same may be situate or be found and, until the further order of this Court, to continue the operation of the present pipe line system and natural gas business of the defendant company and every part or portion thereof, and to run, manage, conduct and operate such pipe lines and property as the defendant company holds, controls or operates under leases, contracts, arrangements or otherwise. All of which is to be done, until the further order of the Court, as heretofore done, run or operated by the defendant Company;".



1091 (f) That no order has ever been entered in said cause No. 1-N, Equity, disapproving, disavowing or cancelling said contracts or either of them; that said Receivers have continued to carry on the business of the Kansas Natural Gas Company and deliver gas to the Kansas City Gas Company under said contracts and arrangements and have done, run and operated the business of said defendant company as done, run and operated by said company prior to their appointment in reference to the supply of gas to the Kansas City Gas Company; and said Kansas City Gas Company has never been cited or summoned to appear in said court and cause upon any application to change, modify, disapprove, disavow or cancel said contracts or either of them.

(g) That said contracts were originally executed by The Kansas City Pipe Line Company and later assumed by the Kaw Gas Company, predecessors of the Kansas Natural Gas Company, and later assumed and their obligations undertaken by the Kansas Natural Gas Company under a certain lease dated January 1, 1908, under which the Kansas Natural Gas Company and its Receivers now hold all the properties and pipe-lines of The Kansas City Pipe Line Company constituting approximately 50 percent of the main trunk pipeline system now operated by said Kansas Natural Gas Company and its Receivers; and said The Kansas City Pipe Line Company is perfectly solvent and has no creditors demanding the disapproval, disavowal and cancellation of said gas-supply-contracts.

1092 (h) Neither the Kansas Natural Gas Company nor its Receivers are entitled in law or in equity to the injunction and decree above complained of enjoining the Kansas City Gas Company from enforcing said gas-supply-contracts against said Kansas Natural Gas Company and Receivers upon any alleged or assumed Federal constitutional right to engage in interstate commerce for the reason that their right to sell and market natural gas to the Kansas City Gas Company direct or by the use of the Kansas City Gas Company's distribution plant to the ultimate consumers is a matter of private contract between the Kansas City Gas Company and said Kansas Natural Gas Company and Receivers and the relation cannot be created nor maintained by injunctions and decrees.

(i) Neither the Kansas City Gas Company nor its Receivers are entitled in law or in equity to the injunction and decree above complained of enjoining the Kansas City Gas Company from enforcing said gas-supply-contracts against said Kansas Natural Gas Company and Receivers and authorizing said Receivers to establish and maintain other and different rates for the consumers of the Kansas City Gas Company without its consent upon any alleged or assumed Federal constitutional right to due process of law or just compensation for the reason that the compensation paid to the Kansas Natural Gas Company and its Receivers for said gas is fixed and determined by said supply-contracts voluntarily entered into and said contracts may not be changed or modified and other rates and compensation for said gas established and enforced by said Receivers without the consent of the Kansas City Gas Company.

1093 Assignment No. 4. The Court erred in holding, adjudging and decreeing that the performance by the Kansas Natural Gas Company and its Receivers of certain contracts described in paragraph "fifth," sub-paragraph 2, of its Decree entered on August 13, 1917, and the enforcement of said contracts by the Kansas City Gas Company against said Kansas Natural Gas Company and its Receivers constituted an invasion or denial of the right of the Kansas Natural Gas Company and its Receivers to engage in interstate commerce and resulted in the confiscation of the property of said Kansas Natural Gas Company and Receivers in violation of the Federal constitution.

1094 Assignment No. 5. The Court erred in holding, adjudging and decreeing that the order of the Public Service Commission of Missouri made on the 10th day of August, 1916, in case No. 1050 establishing a net rate for natural gas in Kansas City, Missouri, effective November 19, 1916, for and on the application of the Kansas City Gas Company was an attempt directly and unduly to burden and regulate interstate commerce and was unauthorized and void, as being violative of the Federal constitution, as appears in paragraph "third" of said final judgment and decree entered August 13, 1917, for the reason that said order was made immediately on the application of the Kansas City Gas Company to enable it to charge and collect from its own consumers the net rate of 30 cents per thousand cubic feet for natural gas in conformity with the aforesaid supply-contracts existing between the Kansas City Gas Company and the Kansas Natural Gas Company, its successors and assigns, under which the Receivers had operated since their appointment on October 9, 1912, and by the terms of which said Kansas Natural Gas Company, its successors and assigns, agreed to furnish and sell natural gas to the Kansas City Gas Company for the consideration of 62½ percent of the gross receipts realized from the sale of said gas at said 30-cent rate.

J. W. DANA,

*Solicitor for Kansas City Gas Co.*

Filed in the District Court on Oct. 25, 1917.

MORTON ALBAUGH, *Clerk.*



1095 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Assignment of Errors on Appeal by the Wyandotte County Gas  
Company.*

Now comes The Wyandotte County Gas Company and assigns the following errors in the above entitled cause, to-wit:

Assignment No. 1. The Court erred in holding, adjudging and decreeing that the business transacted by The Wyandotte County Gas Company, to-wit, the distribution and sale of natural gas in Kansas City, Kansas, and Rosedale, Kansas, furnished to it by the Kansas Natural Gas Company and its Receivers, John M. Landon and George F. Sharitt is interstate commerce of a national character and not of a local nature, and enjoining said Wyandotte County Gas Company from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining without the consent & over the objection of The Wyandotte County Gas Company, natural gas rates approved by the Court for the patrons and consumers of The Wyandotte County Gas Company in Kansas City, Kansas, and Rosedale, Kansas, as appears from the Order entered on July 5, 1917, and the final Judgment and Decree entered 1096 on August 13, 1917, in paragraphs "second," "seventh," "ninth," and "tenth" for the following reasons, to-wit:

(a) The Wyandotte County Gas Company is a Kansas corporation, chartered to do a public utility service in Kansas City, Kansas, and Rosedale, Kansas, and is doing a business affected with a local public interest under franchises duly granted by the State of Kansas and its municipalities granting the use of the public streets of said Cities for such purpose.

(b) The Wyandotte County Gas Company has purchased its supply of natural gas from the Kansas Natural Gas Company or its Receivers since 1906 under and pursuant to a written contract dated February 1, 1906, fixing the price that the Wyandotte County Gas Company should pay said Kansas Natural Gas Company, its successors and assigns, for said gas.

(c) There has been no agreement between the Kansas City Gas Company and the Kansas Natural Gas Company or its Receivers pro-

viding for any alteration, modification, change, rescission or cancellation of that contract.

(d) The Kansas Natural Gas Company and its Receivers have no franchise to furnish, sell or distribute gas in Kansas City, Kansas, or Rosedale, Kansas, and no right to lay and maintain pipes in its streets and have, own or control no pipes in said Cities.

1097 (e) The Kansas Natural Gas Company and its Receivers have no right contractual, legal or equitable, to establish and maintain rates for The Wyandotte County Gas Company, without its consent, to be charged by said Company for gas sold to its consumers in Kansas City, Kansas and Rosedale, Kansas.

Assignment No. 2. The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas Natural Gas Company and its Receivers, to-wit, the transportation of natural gas from Oklahoma to Kansas and the distribution and sale of said gas in said state of Kansas by said Kansas Natural Gas Company and its Receivers, is interstate commerce of a national character and not of a local nature, and enjoining The Wyandotte County Gas Company from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining over the objection of said Wyandotte County Gas Company, natural gas rates approved by the Court for the patrons and consumers of The Wyandotte County Gas Company in Kansas City, Kansas and Rosedale, Kansas, as appears from said Order entered on July 5, 1917, and paragraphs "second," "seventh," "ninth," and "tenth" of its final Judgment and Decree entered on August 13, 1917, for the following reasons, to-wit:

(a) The Kansas Natural Gas Company and its Receivers are doing a business affected with a public interest; their participation or interest, if any, in the distribution of natural gas in Kansas City, Kansas, and Rosedale, Kansas, is a local public utility service of and for the State of Kansas.

1098 (b) Said Kansas Natural Gas Company and its Receivers have no franchise upon the public streets of Kansas City, Kansas or Rosedale, Kansas, but deliver, market and sell their natural gas by and through the instrumentality of The Wyandotte County Gas Company, which is a licensed agency of the State of Kansas and a public utility corporation under its laws and rendering a local public service under franchises duly granted by the State and its municipalities, by reason of which said Kansas Natural Gas Company and its Receivers have devoted their property and natural gas to the public use of the State of Kansas and submitted to state regulation and control.

(c) The Kansas Natural Gas Company and its Receivers have voluntarily made and maintained physical connections between their pipe-lines and the distribution plant of The Wyandotte County Gas Company and aid and contribute to the local public service rendered by The Wyandotte County Gas Company and thereby submitted to state regulation and control.

(d) The Kansas Natural Gas Company and its Receivers have since 1906 furnished gas to The Wyandotte County Gas Company under a contract voluntarily entered into and assumed, providing

for a supply of gas by the former to the latter at certain specified prices and thereby aid and contribute to the local public service rendered by The Wyandotte County Gas Company and submitted to state regulation and control.

1099 (e) The Kansas Natural Gas Company and Receivers cannot change or modify that contract and establish and maintain natural gas rates to the consumers of The Wyandotte County Gas Company without the consent of said Company.

(f) The purchase of gas by consumers, the sale of gas to consumers and the delivery of gas to consumers are all local transactions between the consumer and The Wyandotte County Gas Company, made, done and consummated locally.

(g) The purchase of gas by The Wyandotte County Gas Company and the sale of gas by the Kansas Natural Gas Company or Receivers to the Wyandotte County Gas Company and the delivery of gas to said latter Company are local transactions between The Wyandotte County Gas Company and said Kansas Natural Gas Company and its Receivers, done and performed in the State of Kansas.

(h) When a consumer elects or determines to buy gas, delivery is made to him instantan out of the stock on hand stored in the pipes of The Wyandotte County Gas Company in the State of Kansas.

(i) The maintenance of service on the consumer's premises filled with gas and a meter to record the measurement thereof, constitute an implied standing offer to sell, measure and deliver locally on the consumer's premises at a reasonable, customary or authorized price; the turning of the gas cock by the consumer constitutes an acceptance of that offer and the receipt of the gas on the premises locally and a promise to pay a reasonable, customary or authorized price.

1100 (j) There is no contractual relation existing between the consumer and the Kansas Natural Gas Company or Receivers. The consumer deals exclusively with The Wyandotte County Gas Company. The consumer gives no advance orders for gas to be delivered in the future, but takes gas instantan from the pipe extending into his premises according to his needs from time to time.

(k) The Kansas Natural Gas Company and Receivers are more than carriers; they are local merchants or dealers constantly offering gas for sale locally and for delivery locally in Kansas to The Wyandotte County Gas Company. The price as between The Wyandotte County Gas Company and the Kansas Natural Gas Company or Receivers is fixed by contract or must hereafter be fixed by contract.

(l) The contracts between The Kansas Natural Gas Company and The Wyandotte County Gas Company under which the business was commenced in 1906, and under which the Receivers have long continued to operate, obligate the Kansas Natural Gas Company and its successors "to supply gas" and "to furnish gas" at Kansas City and Rosedale in the State of Kansas to The Wyandotte County Gas Company. Transportation was and is merely incident to that undertaking. It was and is a necessity to the business of "furnishing" and "supplying" gas. It is wholly immaterial as between the parties where the gas is found, produced or obtained, whether in Kansas, Missouri, Oklahoma, Texas or Louisiana. The obligation undertaken

and the course of business of the Kansas Natural Gas Company and its Receivers always was, is and ever must be to "furnish" and "supply" gas to The Wyandotte County Gas Company at Kansas City and Rosedale in the State of Kansas.

1101 (m) The Wyandotte County Gas Company has dedicated its properties to a local public use and engaged in a business affected with a local public interest, and undertaken to perform a service to which the general public may resort at will and receive instantaneous, uniform and equal service without discrimination at a uniform, reasonable and compensatory, and authorized rate.

(n) The Kansas Natural Gas Company and Receivers have voluntarily devoted their pipe-lines and their natural gas in aid of the local public service performed by The Wyandotte County Gas Company and pro tanto have consented and submitted to state regulation and control.

Assignment No. 3. The Court erred in holding, adjudging and decreeing that the following described gas-supply-contract existing between the Kansas Natural Gas Company and The Wyandotte County Gas Company is not binding upon the Receivers, John M. Landon and George F. Sharitt, and permanently enjoining The Wyandotte County Gas Company from enforcing the said supply-contract or rates fixed or referred to therein against said Receivers, to-wit, the contract dated February 1, 1906, between The Wyandotte Gas Company, predecessors of The Wyandotte County Gas Company and The Kansas City Pipe Line Company, which contract was assumed by the Kaw Gas Company, predecessors of the Kansas

1102 Natural Gas Company under the lease dated February 2, 1906, between said Kaw Gas Company and The Kansas City Pipe Line Company and again assumed by said Kaw Gas Company under the lease dated November 17, 1906, between the Kaw Gas Company and The Kansas City Pipe Line Company, and which was again assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and The Kansas City Pipe Line Company, as appears from paragraph "fifth" sub-division 2, and paragraphs "seventh" and "eighth" of said final Judgment and Decree entered August 13, 1917, and said Order and Judgment entered in said cause on July 5, 1917, for the following reasons, to-wit: The Wyandotte County Gas Company refers to the reasons set forth in paragraphs lettered A, B, C, D, E, F, G, H, and I of Assignment No. 3 of the Kansas City Gas Company and adopts the same as its reasons and grounds for the foregoing assignment of error as fully and completely as if written at length herein for the reason that said supply-contract existing between The Wyandotte County Gas Company and the Kansas Natural Gas Company, its successors and assigns, is similar in form and identically in substance and terms to the supply-contracts existing between the Kansas City Gas Company and said Kansas Natural Gas Company, its successors and assigns, referred to in the reasons given by said Kansas City Gas Company for its Assignment of Errors No. 3.

1103 Assignment No. 4. The Court erred in holding, adjudging and decreeing that the performance by the Kansas Natural Gas Company and its Receivers of said gas-supply-contract described in paragraph "fifth," sub-paragraph 2 of its Decree entered on August 13, 1917, and the enforcement of said contract by The Wyandotte County Gas Company against said Kansas Natural Gas Company and its Receivers constituted an invasion or denial of the right of the Kansas Natural Gas Company and its Receivers to engage in interstate commerce and resulted in the confiscation of the property of said Kansas Natural Gas Company and Receivers in violation of the Federal constitution.

J. W. DANA,

*Attorney for The Wyandotte County Gas Company.*

Filed in the District Court on Oct. 25, 1917. Morton Albaugh, Clerk.

1104 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Assignment of Errors on Appeal by Fidelity Trust Company and  
The Kansas City Pipe Line Company Jointly.*

Now comes the Fidelity Trust Company and The Kansas City Pipe Line Company and assign the following errors in the above entitled cause, to-wit:

Assignment No. 1. The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas Natural Gas Company and its Receivers and the business transacted by the Kansas City Gas Company and The Wyandotte County Gas Company, to-wit, the transportation of natural gas from Kansas and Oklahoma to Missouri and Kansas and the distribution and sale of said

1105 gas in said states by either the Kansas Natural Gas Company and its Receivers or the Kansas City Gas Company and The Wyandotte County Gas Company is interstate commerce of a national character and not of a local nature, and enjoining the Fidelity Trust Company and The Kansas City Pipe Line Company and their co-defendants from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining without the consent & over the objection of said Trust Company and Kansas City Pipe Line

Company, natural gas rates approved by the Court for the patrons and consumers of the Kansas City Gas Company in Kansas City, Missouri, and the patrons and consumers of The Wyandotte County Gas Company in Kansas City, Kansas, and Rosedale, Kansas, as appears from the order and judgment of said Court entered on July 5, 1917, and the final judgment and decree of said Court entered on August 13, 1917, and particularly from paragraphs "second," "seventh," "ninth," and "tenth" of said final judgment and decree, for all the reasons set forth in Assignments Nos. 1 and 2 in the Assignments of Errors by the Kansas City Gas Company and The Wyandotte County Gas Company, hereby referred to and adopted by these defendants.

1106 Assignment No. 2. The Court erred in holding, adjudging and decreeing that the following described gas-supply-contracts are not binding upon the Receivers John M. Landon and George F. Sharitt and permanently enjoining the Fidelity Trust Company and The Kansas City Pipe Line Company from enforcing the said supply-contracts or rates fixed or referred to therein against said Receivers, to-wit, (1) the contract dated November 17, 1906, between McGowan, Small and Morgan, grantees, predecessors of the Kansas City Gas Company, and the Kansas City Pipe Line Company which was assumed by the Kaw Gas Company, predecessors of the Kansas Natural Gas Company by lease dated November 19, 1906, between said Kaw Gas Company and Kansas City Pipe Line Company; and the contract dated December 3, 1906, between said McGowan, Small and Morgan and said Kansas City Pipe Line Company which was assumed by said Kaw Gas Company by agreement dated December 5, 1906, both of which contracts dated November 17, 1906, and December 3, 1906, respectively, were further assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and the Kansas City Pipe Line Company; and (2) the contract dated February 1, 1906, between the Wyandotte Gas Company, predecessor of The Wyandotte County Gas Company, and The Kansas City Pipe Line Company which contract was assumed by the Kaw Gas Company, predecessor of the Kansas Natural Gas Company, under the lease dated February 2, 1906, between said Kaw Gas Company and the Kansas City Pipe Line Company, and again assumed by said Kaw Gas Company under the lease dated November 19, 1906,

1107 between said Kaw Gas Company and said Kansas City Pipe Line Company and which was again assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and The Kansas City Pipe Line Company, as appears in paragraph "fifth," sub-paragraphs 1 and 2, and paragraphs "second," "seventh," "eighth," "ninth," and "tenth" of said final judgment and decree entered August 13, 1917, and the order and judgment entered on July 5, 1917, for the following reasons:

(a) For all the reasons set forth in Assignment No. 3 in the Assignments of Errors by the Kansas City Gas Company and The Wyandotte County Gas Company.



(b) For the further reason that the gas-supply-contracts above referred to were attached to and made a part of a certain lease dated January 1, 1908, between the Kansas Natural Gas Company and this defendant The Kansas City Pipe Line Company under which the Kansas Natural Gas Company leased and obtained the use of all the properties, compressor stations and pipe-lines owned by this defendant The Kansas City Pipe Line Company, constituting approximately 50 per cent of the main trunk pipe-line system now operated by said Kansas Natural Gas Company or its Receivers under orders of the United States District Court for the District of Kansas in the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, Equity, ordering and directing said Receivers to take over and operate said lease as a part of the Kansas Natural's estate as was done by the Kansas Natural Gas Company until the further order of the Court; and The Kansas City Pipe Line Company has intervened in said court and cause demanding the surrender of said properties or the adoption of said lease and the performance of said supply-contracts attached thereto by said Receivers, their successors and assigns, and said matter is still pending in said court and cause undetermined and said Receivers are still in possession of and using and reaping the benefit of said leased property and contracts.

Assignment No. 3. The Court erred in holding, adjudging and decreeing that the performance of the Kansas Natural Gas Company and Receivers of certain contracts described in paragraphs "fifth" sub-paragraphs 1 and 2 of said Decree entered on August 13, 1917, and the enforcement of said contracts by The Kansas City Pipe Line Company, Kansas City Gas Company or The Wyandotte County Gas Company against said Kansas Natural Gas Company and its Receivers constituted an invasion or denial of the right of the Kansas Natural Gas Company and Receivers to engage in interstate commerce and resulted in the confiscation of the property of said Kansas Natural Gas Company and Receivers in violation of the Federal constitution.

J. W. DANA,  
*Attorney for Fidelity Trust Company  
and The Kansas City Pipe Line Co.*

Filed in the District Court on Oct. 25, 1917. Morton Albaugh,  
Clerk.



1109 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Petition of Kansas City Gas Company, The Wyandotte County Gas  
Company, Fidelity Trust Company and The Kansas City Pipe  
Line Company for Allowance of a Joint Appeal.*

The above named defendants, Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company conceiving themselves aggrieved by the final judgment and decree entered on August 13, 1917, in the above entitled proceeding, do hereby appeal from said judgment and decree to the Supreme Court of the United States and they pray that this appeal may be allowed, and that the transcript of the record and proceedings and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

J. W. DANA,  
*Solicitor for Appellants, Kansas City Gas  
Company, The Wyandotte County Gas Com-  
pany, Fidelity Trust Company and The  
Kansas City Pipe Line Company.*

Filed in the District Court on Oct. 25, 1917 Morton Albaugh,  
Clerk.

1110 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants

*Motion for Severance on Appeal.*

Now comes the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company, defendants in the above entitled cause, and state and show to the Court that they have filed their assignments of errors and petition for allowance of appeal from the final judgment and decree entered in the above entitled cause on August 13, 1917; that demand and notice to join in said appeal have been duly made and served upon each and all of their codefendants; that each and all of said co-defendants have failed, neglected and refused to join in said appeal, and have been duly notified to appear in the above entitled court and cause on November 5, 1917, and appeal or join in said appeal or show cause why an order of severance should not be made against them, barring their right to prosecute an appeal or appeals in the above entitled cause.

1111 Wherefore, the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company, defendant herein, pray the Court for an order of severance from all their co-defendants for the purposes of an appeal to the Supreme Court of the United States from the final judgment and decree entered herein on August 13, 1917; and such other and further orders as may be proper in the premises.

J. W. DANA,  
*Solicitor for Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity  
Trust Company and The Kansas City Pipe  
Line Company.*

Filed in the District Court on Oct. 26, 1917. Morton Albaugh,  
Clerk.

1112 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS,  
The public Service Commission of the State of Missouri, William  
G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and  
Edward Flad, as the Public Service Commission of the State of  
Missouri; Alex. Z. Patterson, as Attorney for the Public Service  
Commission of the State of Missouri; Frank W. McAllister, as  
Attorney General of the State of Missouri; Kansas City Gas Com-  
pany, Wyandotte County Gas Company, Fidelity Trust Company,  
The Kansas City Pipe Line Company, The City of Olathe, Kansas,  
The City of Kansas City, Missouri, City of St. Joseph, Missouri,  
City of Joplin, Missouri, et al., Defendants.

*Motion for Severance.*

Comes now defendant, the City of Kansas City, Missouri, and  
states that as a precautionary measure it has served upon each of  
the other defendants in the above entitled cause a notice to defend-  
ants to join in appeal, a copy of which notice and proof of service  
thereof upon each of said other defendants is filed herewith; and  
each and all of said other defendants have failed and refused to join  
in the appeal in this cause except The Public Service Commission

of the State of Missouri, William G. Busby, Edwin J. Bean,  
1113 David E. Blair, Noah W. Simpson and Edward Flad, as the  
Public Service Commission of the State of Missouri, Alex. Z.  
Patterson, as Attorney for the Public Service Commission of the  
State of Missouri, Frank W. McAllister, as Attorney General of the  
State of Missouri, Kansas City Gas Company, Wyandotte County  
Gas Company, Fidelity Trust Company, The Kansas City Pipe Line  
Company, the City of Olathe, Kansas, the City of Kansas City, Mis-  
souri, City of St. Joseph, Missouri, and City of Joplin, Missouri, but  
pursuant to said notice the defendants above named have indicated  
their desire to take appeals in this cause.

Wherefore, defendant, the City of Kansas City, Missouri, prays for  
an order of severance severing said defendants, to-wit: The Public  
Service Commission of the State of Missouri, William G. Busby,  
Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad,  
as The Public Service Commission of the State of Missouri, Alex. Z.  
Patterson, as Attorney for the Public Service Commission of the  
State of Missouri, Frank W. McAllister, as Attorney General of the

State of Missouri, Kansas City Gas Company, Wyandotte County Gas Company, Fidelity Trust Company, The Kansas City Pipe Line Company, the City of Olathe, Kansas, The City of Kansas City, Missouri, City of St. Joseph, Missouri, and City of Joplin, Missouri, from all other defendants in this cause for the purpose of appeal and that each of said defendants so severed be allowed to prosecute its appeal independently of all others, if it desires.

CITY OF KANSAS CITY,

By J. A. HARZFELD,

*City Counselor of Kansas City, Missouri;*

BENJ. M. POWERS,

*Assistant City Counselor,*

*Its Attorneys.*

The foregoing petition was presented in open court on this 31st day of October, 1917, and after hearing was duly continued for further hearing until Nov. 5, 1917.

WILBUR F. BOOTH, *Judge.*

Filed in the District Court on Oct. 31, 1917. Morton Albaugh, Clerk.

1114 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LONDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS,  
the Public Service Commission of the State of Missouri, the City  
of Kansas City Missouri, the Kansas City Gas Company.

*Notice to Defendants to Join in Appeal.*

To the Public Utilities Commission of the State of Kansas,  
To Joseph L. Bristow, C. F. Foley and John M. Kinkel, as the  
Public Utilities Commission of the State of Kansas;  
To H. O. Caster, as Attorney for the Public Utilities Commission  
of the State of Kansas;  
To S. M. Brewster, as Attorney General of the State of Kansas;  
To Frank W. McAllister, as Attorney General of the State of Mis-  
souri;  
To Alex. Z. Patterson, as Counsel of the Public Service Commission  
of the State of Missouri;  
To the Public Service Commission of the State of Missouri,

To William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri;

To John F. Overfield, as Receiver of the Kansas City Pipe Line Company;

To the Fidelity Title & Trust Company, a corporation,

To the Fidelity Trust Company, a corporation,

To the Delaware Trust Company, a corporation,

To the Kansas City Pipe Line Company, a corporation,

To the Kansas Natural Gas Company,

To George F. Sharritt, as Receiver of the Kansas Natural Gas Company,

To the St. Joseph Gas Company,

To the Fort Scott & Nevada Light, Heat, Water & Power Company,

To the Atchison Railway, Light & Power Company,

To the Leavenworth Light, Heat & Power Company,

To the Tonganoxie Gas and Electric Company,

To the Citizens Light, Heat and Power Company,

To L. C. Treleaven, Receiver of the Consumers Light, Heat & Power Company,

To the Kansas City Gas Company,

To the Wyandotte County Gas Company,

To the Olathe Gas Company,

To O. A. Evans and Company,

To the Parsons Natural Gas Company,

To the Elk City Oil and Gas Company,

To the American Gas Company,

To the Home Light, Heat and Power Company,

To the Carl Junction Gas Company,

To the Oronogo Gas Company,

To the Joplin Gas Company,

To the Kansas Gas and Electric Company,

To the Coffeyville Gas and Fuel Company,

To the Fort Scott Gas and Electric Company,

1115 To the Union Gas and Traction Company,

To the Ottawa Gas and Electric Company,

To the Weir Gas Company,

To the Kansas Farmers Gas Company,

To the Edgerton Gas Company,

To the Gardner Gas Company,

To the Baldwin Gas Company,

To the Richmond and Princeton Gas Company,

To the Wellsville Gas Company,

To the Anderson County Light and Heat Company,

To Weston Gas & Light Company,

To each of the following named cities: St. Joseph, Missouri; Weston, Missouri; Nevada, Missouri; Deerfield, Missouri; Carl Junction, Missouri; Oronogo, Missouri; Joplin, Missouri; Atchison, Kansas; Leavenworth, Kansas; Topeka, Kansas; Lawrence, Kansas; Ottawa, Kansas; Tonganoxie, Kansas; Baldwin, Kansas; Merriam, Kansas; Kansas City, Kansas; Shawnee, Kan-

sas; Lenexa, Kansas; Olathe, Kansas; Gardner, Kansas; Edgerton, Kansas; Wellsville, Kansas; Princeton, Kansas; Scipio, Kansas; Richmond, Kansas; Welda, Kansas; Colony, Kansas; Bronson, Kansas; Moran, Kansas; Fort Scott, Kansas; Thayer, Kansas; Parsons, Kansas; Elk City, Kansas; Independence, Kansas; Coffeyville, Kansas; Liberty, Kansas; Oswego, Kansas; Altamont, Kansas; Columbus, Kansas; Scammon, Kansas; Weir City, Kansas; Cherokee, Kansas; Galena, Kansas; Pittsburg, Kansas; Oakland, Kansas; Rosedale, Kansas, Defendants in the above-entitled cause:

Please take notice, that the City of Kansas City, Missouri, is about to appeal to the Supreme Court of the United States from the order and judgment of the District Court of the United States for the District of Kansas, First Division, made and entered on the thirteenth day of August, 1917, and is about to apply to the District Court of the United States for the District of Kansas, First Division, for the allowance of such appeal; and hereby demands, requests and notifies you, and each of you, to join in such appeal and in the application to said court for the allowance thereof.

Dated at Kansas City, Missouri, September 1, 1917.

By J. A. HARZFELD,  
*City Counselor of Kansas City, Mo.;*

A. F. EVANS,

BENJ. M. POWERS,

*Assistant City Counselor,  
Its Attorneys.*

Service of the above notice is accepted this — day of —, 1917.

1116 STATE OF MISSOURI,  
*County of Jackson, ss:*

Benj. M. Powers, of lawful age, having been first duly sworn, upon his oath states that he served the above notice upon each of the above named defendants to whom said notice is directed, by either personally delivering copies of said notice to such defendants, or by sending copies of said notice through the United States mails and receiving from such defendants acknowledgments evidencing the receipt of said notice by such defendants, or by sending copies of said notice by Registered United States Mail, properly stamped and addressed to such defendants.

BENJ. M. POWERS.

Subscribed and sworn to before me this October 30, 1917. My Commission expires May 11, 1921.

CARRIE M. RUPPELIUS,  
*Notary Public, Jackson County, Missouri.*

Filed in open court this 31st day of October, 1917.

WILBUR F. BOOTH, *Judge.*

Filed in the District Court on Oct. 31, 1917. Morton Albaugh, Clerk.

1117 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

N-, 136-N,

JOHN M. LANIGAN, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS;  
Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public  
Utilities Commission of the State of Kansas;

H. O. Caster, as Attorney for the Public Utilities Commission of the  
State of Kansas;

S. M. Brewster, as Attorney General of the State of Kansas;

John T. Barker, as Attorney General of the State of Missouri (Frank  
W. McAllister was Substituted);

William G. Busby, as Counsel of the Public Service Commission of  
the State of Missouri (Zach D. Patterson was Substituted);

The Public Service Commission of the State of Missouri;

John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw,  
and Eugene McQuillan, as the Public Service Commission of the  
State of Missouri (William G. Busby, David E. Blair, Noah W.  
Simpson, and Edward Flad were Substituted);

John F. Overfield, as Receiver of the Kansas City Pipe Line Com-  
pany;

Fidelity Title & Trust Company, a Corporation;

Fidelity Trust Company, a Corporation;

Delaware Trust Company, a Corporation;

Kansas City Pipe Line Company, a Corporation;

George F. Sharritt, as Receiver of the Kansas Natural Gas Company;

Kansas Natural Gas Company.

Distributing Companies:

St. Joseph Gas Company;

The Union Gas & Traction Company;

The Atchison Railway Light & Power Company;

The Leavenworth Light, Heat & Power Company;

The Tonganoxie Gas & Electric Company;

The Citizens Light, Heat & Power Company;

L. G. Trelleaven, Receiver the Consumer's Light, Heat & Power Co.;

The Kansas City Gas Company;

The Olathe Gas Company;

O. A. Evans & Company;

The Elk City Oil & Gas Company;



The Home Light, Heat & Power Company;  
 The Oronogo Gas Company;  
 The Weir Gas Company;  
 The Coffeyville Gas & Fuel Company;  
 The Fort Scott & Nevada Light, Heat, Water & Power Company;  
 The Kansas Farmers Gas Company;  
 The Gardner Gas Company;  
 The Ottawa Gas & Electric Company;  
 The Wellsville Gas Company;  
 The Wyandotte County Gas Company;  
 The Parsons Natural Gas Company;  
 The American Gas Company;  
 The Carl Junction Gas Company;  
 The Joplin Gas Company;  
 The Kansas Gas & Electric Company;  
 The Fort Scott Gas & Electric Company;  
 The Edgerton Gas Company;  
 The Baldwin Gas Company;  
 The Richmond & Princeton Gas Company;  
 The Anderson County Light & Heat Company;  
 The Weston Gas & Light Company.

Cities:

St. Joseph, Missouri;	Elk City, Kansas;
Weston, Missouri;	Moran, Kansas;
Atchison, Kansas;	Fl. Scott, Kansas;
Leavenworth, Kansas;	Deerfield, Missouri;
Tonganoxie, Kansas;	Nevada, Missouri;
Topeka, Kansas;	Thayer, Kansas;
Baldwin, Kansas;	Parsons, Kansas;
Ottawa, Kansas;	Independence, Kansas;
Kansas City, Missouri;	Coffeyville, Kansas;
Kansas City, Kansas;	Liberty, Kansas;
Merriam, Kansas;	Altamont, Kansas;
Shawnee, Kansas;	Oswego, Kansas;
Lenexa, Kansas;	Columbus, Kansas;
Olathe, Kansas;	Scammon, Kansas;
Gardner, Kansas;	Weir City, Kansas;
Edgerton, Kansas;	Cherokee, Kansas;
Wellsville, Kansas;	Galena, Kansas;
Princeton, Kansas;	Pittsburg, Kansas;
Scipio, Kansas;	Carl Junction, Missouri;
Richmond, Kansas;	Oronogo, Missouri;
Welda, Kansas;	Joplin, Missouri;
Colony, Kansas;	Oakland, Kansas;
Bronson, Kansas;	Rosedale, Kansas;
Lawrence, Kansas;	Defendants,

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*Notice.*

To the Above Named Defendants and Their Attorneys-of Record:

Please take notice that, pursuant to the following telegram received from Hon. Wilbur F. Booth, Judge of the United States District Court, assigned to District of Kansas in the above entitled cause, to-wit:

"272 NA 8V 28 Collect NL

Mankato, Minn., Oct. 23, 1917.

Benjamin Powers, Esq., Law Dept., City Hall, Kas. City., Mo.:

Telegram recd. notice all matters for Oct. thirty-first at Minneapolis. Show opposing attys. this telegram and request their consent. If refused wire me names and reasons.

W. F. BOOTH."

965P.

The City of Kansas City, Missouri, The Kansas City Gas Company, The Wyandotte County Gas Company, The Fidelity Trust Company and The Kansas City Pipe Line Company, and such other parties as may desire to join therein will on said 31st day of October, 1917, at the United States District Court room at Minneapolis, Minnesota, present the following matters:

1. A motion or application for an order of severance severing the above named parties, and such others as may join, from all their co-defendants for the purposes of an appeal of the above entitled cause to the Supreme Court of the United States, either independently of each other or jointly, as they may desire; and for an order fixing a time and place within the district of the United States District Court for the District of Kansas for entering an order allowing said motion of severance.

2. Petitions for the allowance of an appeal, or appeals, of the City of Kansas City, Missouri, The Kansas City Gas Company, The Wyandotte County Gas Company, the Fidelity Trust Company and The Kansas City Pipe Line Company, and such other parties as may desire to appeal, from the final judgment and decree entered in the above entitled cause to the Supreme Court of the United States.

3. For such order, or orders, as may be necessary, in the judgment of the Court, for hearing and entering the orders allowing said appeals pursuant to said petitions, and for such other and further

orders as to the Hon. Wilbur F. Booth may seem necessary in the premises.

THE CITY OF KANSAS CITY, MISSOURI,  
By J. A. HARZFELD,  
A. F. EVANS,  
BENJ. M. POWERS, *Its Solicitors*,  
THE KANSAS CITY GAS COMPANY,  
THE WYANDOTTE COUNTY GAS COM-  
PANY,  
FIDELITY TRUST COMPANY,  
THE KANSAS CITY PIPE LINE COM-  
PANY,  
By J. W. DANA,  
*Their Attorney.*

Filed in open court this 31st day of October, 1917. Wilbur F. Booth, Judge.

1119 STATE OF MISSOURI,  
*County of Jackson, ss:*

Benjamin M. Powers of lawful age being first duly sworn upon his oath states that he served the above notice upon each of the defendants therein to whom said notice is addressed, by sending a copy thereof by registered mail, properly stamped and addressed, to each of said defendants (with the exception of those who are subscribed thereto) or its attorney of record, or officer.

BENJAMIN POWERS.

Subscribed and sworn to before me this 30th day of October, 1917.  
[SEAL.] CARRIE M. RUPPELIUS,  
*Notary Public.*

My Commission expires May 11, 1921.

Filed in the District Court on October 31, 1917. Morton Albaugh, Clerk.

1120 United States District Court, District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order Continuing Hearing.*

This cause came on to be further heard, at Minneapolis, Minnesota, on this 31st day of October, 1917, on the joint motion of The

Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company, and The Kansas City Pipe Line Company, and on the motion of *the* Kansas City, Missouri, and the Public Service Commission of Missouri, for an order of severance on appeal in the above entitled cause, and was argued by counsel. And thereupon, upon consideration thereof

It is ordered, That said matter be continued for further hearing and order to the 5th day of November, 1917, at the court room of the United States District Court, for the District of Kansas, at Kansas City, Kansas, pursuant to notices served upon the co-defendants to appear at said time and place.

WILBUR F. BOOTH, *Judge*.

Filed in the District Court on Nov. 1, 1917. Morton Albaugh, clerk.

1121 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LONDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS;

Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public Utilities Commission of the State of Kansas;

H. O. Caster, as Attorney for the Public Utilities Commission of the State of Kansas;

S. M. Brewster, as Attorney General of the State of Kansas;

John T. Barker, as Attorney General of the State of Missouri (Frank W. McAllister was Substituted);

William G. Busby, as Counsel of the Public Service Commission of the State of Missouri (Zach D. Patterson was Substituted);

The Public Service Commission of the State of Missouri;

John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw, and Eugene McQuillan, as the Public Service Commission of the State of Missouri (William G. Busby, David E. Blair, Noah W. Simpson, and Edward Flad were Substituted);

John F. Overfield, as Receiver of the Kansas City Pipe Line Company;

Fidelity Title & Trust Company, a Corporation;

Fidelity Trust Company, a Corporation;

Delaware Trust Company, a Corporation;

Kansas City Pipe Line Company, a Corporation;

George F. Sharritt, as Receiver of the Kansas Natural Gas Company;  
Kansas Natural Gas Company.

## Distributing Companies:

St. Joseph Gas Company;  
The Union Gas & Traction Company;  
The Atchison Railway Light & Power Company;  
The Leavenworth Light, Heat & Power Company;  
The Tonganoxie Gas & Electric Company;  
The Citizens Light, Heat & Power Company;  
L. G. Treleaven, Receiver the Consumer's Light, Heat & Power Company;  
The Kansas City Gas Company;  
The Olathe Gas Company;  
O. A. Evans & Company;  
The Elk City Oil & Gas Company;  
The Home Light, Heat & Power Company;  
The Oronogo Gas Company;  
The Weir Gas Company;  
The Fort Scott & Nevada Light, Heat, Water & Power Company;  
The Coffeyville Gas & Fuel Company;  
The Kansas Farmers Gas Company;  
The Gardner Gas Company;  
The Ottawa Gas & Electric Company;  
The Wellsville Gas Company;  
The Wyandotte County Gas Company;  
*The Ottawa Gas & Electric Company;*  
The Parsons Natural Gas Company;  
The American Gas Company;  
The Carl Junction Gas Company;  
The Joplin Gas Company;  
The Kansas Gas & Electric Company;  
The Fort Scott Gas & Electric Company;  
The Edgerton Gas Company;  
The Baldwin Gas Company;  
The Richmond & Princeton Gas Company;  
The Anderson County Light & Heat Company;  
The Weston Gas & Light Company.

## Cities:

St. Joseph, Missouri;	Elk City, Kansas;
Weston, Missouri;	Moran, Kansas;
Atchison, Kansas;	Ft. Scott, Kansas;
Leavenworth, Kansas;	Deerfield, Missouri;
Tonganoxie, Kansas;	Nevada, Missouri;
Topeka, Kansas;	Thayer, Kansas;
Baldwin, Kansas;	Parsons, Kansas;
Ottawa, Kansas;	Independence, Kansas;
Kansas City, Missouri;	Coffeyville, Kansas;
Kansas City, Kansas;	Liberty, Kansas;
Merriam, Kansas;	Altamont, Kansas;
Shawnee, Kansas;	Oswego, Kansas;

Lenexa, Kansas;  
 Olathe, Kansas;  
 Gardner, Kansas;  
 Edgerton, Kansas;  
 Wellsville, Kansas;  
 Princeton, Kansas;  
 Scipio, Kansas;  
 Richmond, Kansas;  
 Welda, Kansas;  
 Colony, Kansas;  
 Bronson, Kansas;  
 Lawrence, Kansas;

Columbus, Kansas;  
 Seammon, Kansas;  
 Weir City, Kansas;  
 Cherokee, Kansas;  
 Galena, Kansas;  
 Pittsburg, Kansas;  
 Carl Junction, Missouri;  
 Oronogo, Missouri;  
 Joplin, Missouri;  
 Oakland, Kansas;  
 Rosedale, Kansas;  
 Defendant-.

1122

*Notice.*

To the Defendants Above Named and Their Attorneys, Solicitors,  
 and Counsel of Record:

Please Take Notice That the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company have filed in the above entitled court and cause their separate assignments of errors and their joint petition for the allowance of a joint appeal from the final judgment and decree entered in the above entitled cause on August 13, 1917, to the Supreme Court of the United States; that they have also filed in said court and cause their joint motion for severance on appeal from said final judgment and decree, from you and each of you as co-defendants for the purposes of said appeal; and that said petition and motion will be called up for hearing, allowance and order in said court at the courtroom in Kansas City, Kansas, on November 5, 1917, or as soon thereafter as convenient to the court; and this is to demand of you that you join in said appeal or be and appear in said court at said time and place and show cause why an order of severance should not be made against you barring you and each of you from taking or prosecuting separate appeals in said cause. True copies of said motion for severance and petition for allowance of appeal are hereto attached.

J. W. DANA,  
*Solicitor for Kansas City Gas Company, The  
 Wyandotte County Gas Company, Fidelity  
 Trust Company, and The Kansas City Pipe  
 Line Company.*

Service of the above notice acknowledged and accepted this 29th  
 day of October, 1917.

H. J. SMITH,  
*Solicitor for Kansas City, Kansas.*

1123 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Motion for Severance on Appeal.*

Now comes the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company, defendants in the above entitled cause, and state and show to the court that they have filed their assignments of errors and petition for allowance of appeal from the final judgment and decree entered in the above entitled cause on August 13, 1917; that demand and notice to join in said appeal have been duly made and served upon each and all of their co-defendants; that each and all of said co-defendants have failed, neglected and refused to join in said appeal, and have been duly notified to appear in the above entitled court and cause on November 5, 1917, and appeal or join in said appeal or show cause why an order of severance should not be made against them, barring their right to prosecute an appeal or appeals in the above entitled cause.

Wherefore, the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company, defendants herein, pray the court for an order of severance from all their co-defendants for the purposes of an appeal to the Supreme Court of the United States from the final judgment and decree entered herein on August 13, 1917; and such other and further orders as may be proper in the premises.

J. W. DANA,

*Solicitor for Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity  
Trust Company, and The Kansas City Pipe  
Line Company.*



1124 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Petition of Kansas City Gas Company, The Wyandotte County Gas  
Company, Fidelity Trust Company, and The Kansas City Pipe  
Line Company for Allowance of a Joint Appeal.*

The above named defendants, Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity Trust Company and The  
Kansas City Pipe Line Company conceiving themselves aggrieved by  
the final judgment and decree entered on August 13, 1917, in the  
above entitled proceeding, do hereby appeal from said judgment and  
decree to the Supreme Court of the United States; and they pray  
that this appeal may be allowed, and that the transcript of the record  
and proceedings and papers upon which said judgment and decree  
was made, duly authenticated, may be sent to the Supreme Court of  
the United States.

J. W. DANA,  
*Solicitor for Appellants Kansas City Gas Com-  
pany, The Wyandotte County Gas Company,  
Fidelity Trust Company, and The Kansas  
City Pipe Line Company.*

910 Grand Ave., Kansas City, Mo.

*Order Allowing Appeal.*

This cause came on to be further heard on this — day of  
—, 1917, and it is ordered that the appeal of the Kansas City Gas  
Company, The Wyandotte County Gas Company, Fidelity Trust  
Company and The Kansas City Pipe Line Company be allowed.

*District Judge.*

Filed in the District Court on Nov. 3, 1917. Morton Albaugh,  
clerk.

1125 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS;  
Joseph L. Bristow, C. F. Foley, and John M. Kinkel, as the Public  
Utilities Commission of the State of Kansas;

H. O. Caster, as Attorney for the Public Utilities Commission of the  
State of Kansas;

S. M. Brewster, as Attorney General of the State of Kansas;

John T. Barker, as Attorney General of the State of Missouri (Frank  
W. McAllister was Substituted);

William G. Busby, as Counsel of the Public Service Commission of  
the State of Missouri (Zach D. Patterson was Substituted);

The Public Service Commission of the State of Missouri;

John M. Atkinson, Edwin J. Bean, John Kennish, Howard B. Shaw,  
and Eugene McQuillan, as the Public Service Commission of the  
State of Missouri (William G. Busby, David E. Blair, Noah W.  
Simpson, and Edward Flad were Substituted);

John F. Overfield, as Receiver of the Kansas City Pipe Line Com-  
pany;

Fidelity Title & Trust Company, a Corporation;

Fidelity Trust Company, a Corporation;

Delaware Trust Company, a Corporation;

Kansas City Pipe Line Company, a Corporation;

George F. Sharritt, as Receiver of the Kansas Natural Gas Company;

Kansas Natural Gas Company,

Distributing Companies:

St. Joseph Gas Company;

The Union Gas & Traction Company;

The Atchison Railway Light & Power Company;

The Leavenworth Light, Heat & Power Company;

The Tonganoxie Gas & Electric Company;

The Citizens Light, Heat & Power Company;

L. G. Treleaven, Receiver the Consumer's Light, Heat & Power  
Company;

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The Kansas City Gas Company;

The Olathe Gas Company;

O. A. Evans & Company;  
 The Elk City Oil & Gas Company;  
 The Home Light, Heat & Power Company;  
 The Oronogo Gas Company;  
 The Weir Gas Company;  
 The Fort Scott & Nevada Light, Heat, Water & Power Company;  
 The Coffeyville Gas & Fuel Company;  
 The Kansas Farmers Gas Company;  
 The Gardner Gas Company;  
 The Ottawa Gas & Electric Company;  
 The Wellsville Gas Co.;  
 The Wyandotte County Gas Company;  
*The Ottawa Gas & Electric Company;*  
 The Parsons Natural Gas Company;  
 The American Gas Company;  
 The Carl Junction Gas Company;  
 The Joplin Gas Company;  
 The Kansas Gas & Electric Company;  
 The Fort Scott Gas & Electric Company;  
 The Edgerton Gas Company;  
 The Baldwin Gas Company;  
 The Richmond & Princeton Gas Company;  
 The Anderson County Light & Heat Company;  
 The Weston Gas & Light Company.

Cities:

St. Joseph, Missouri;	Elk City, Kansas;
Weston, Missouri;	Moran, Kansas;
Atchison, Kansas;	Ft. Scott, Kansas;
Leavenworth, Kansas;	Deerfield, Missouri;
Tonganoxie, Kansas;	Nevada, Missouri;
Topeka, Kansas;	Thayer, Kansas;
Baldwin, Kansas;	Parsons, Kansas;
Ottawa, Kansas;	Independence, Kansas;
Kansas City, Missouri;	Coffeyville, Kansas;
Kansas City, Kansas;	Liberty, Kansas;
Merriam, Kansas;	Altamont, Kansas;
Shawnee, Kansas;	Oswego, Kansas;
Lenexa, Kansas;	Columbus, Kansas;
Olathe, Kansas;	Scammon, Kansas;
Gardner, Kansas;	Weir City, Kansas;
Edgerton, Kansas;	Cherokee, Kansas;
Wellsville, Kansas;	Galena, Kansas;
Princeton, Kansas;	Pittsburg, Kansas;
Scipio, Kansas;	Oronogo, Missouri;
Richmond, Kansas;	Carl Junction, Missouri;
Welda, Kansas;	Joplin, Missouri;
Colony, Kansas;	Oakland, Kansas;
Bronson, Kansas;	Rosedale, Kansas;
Lawrence, Kansas;	Defendants.

1127

*Affidavit.*

STATE OF MISSOURI,  
*County of Jackson, ss: .*

J. W. Dana, being first duly sworn, deposes and says that he is counsel and solicitor of record for the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company in the above entitled cause; that on the 27th day of October, 1917, he mailed by registered mail in the Post Office at Kansas City, Missouri, properly addressed, to each, every and all of the parties defendant in the above entitled cause and to their attorneys of record, a notice of the filing and presentation of a motion for severance on appeal in the above entitled cause, together with a copy of the motion for severance and petition for allowance of appeal; true and correct copies of said notice, motion for severance and petition for allowance of appeal being hereto attached and made a part of this affidavit; and that none of the parties defendant above named have indicated a desire to appeal or join in the appeal of the above entitled cause except the following: Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company, The Kansas City Pipe Line Company, City of Kansas City, Missouri, The Public Service Commission of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Edward Flad and Noah W. Simpson, as the Public Service Commission of Missouri, Alex Z. Patterson, as Attorney for said Public Service Commission, Frank W. McAllister as Attorney-General of the State of Missouri, the Cities of St. Joseph and Joplin, Missouri, the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, Commissioners, H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, S. M. Brewster, Attorney-General for the State of Kansas, and the defendant Cities in Kansas; that said parties have either filed petitions for allowance of appeals or have appeared in response to said notice & motion on this 5th day of November, 1917, and in open court prayed for orders of severance for the purposes of appeals to the Supreme Court of the United States.

J. W. DANA.

Subscribed in my presence and sworn to before me this 5th day of November, 1917.

[SEAL.]

WILLIAM SHELDON McCARTHY,  
*Notary Public within and for Jackson County, Missouri.*

My Commission expires January 16, 1918.

Filed in the District Court on November 5, 1917. Morton Albaugh, Clerk.

1129 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order of Severance.*

Now on this 5th day of November, 1917, this cause came on to be heard upon the joint motion of the Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company, and the motion of the City of Kansas City, Missouri, and the motion in open Court of the Public Service Commission of Missouri for an order of severance on appeal in the above entitled cause and was argued by counsel and thereupon, upon consideration thereof;

It is Found by the Court that demand in writing has been duly made by the above named parties upon all their co-defendants to appeal or join in appeals from the final judgment and decree entered in the above entitled case to the Supreme Court of the United States, and that all said co-defendants have been duly notified in writing to appear and show cause why order of severance should not be made, and have failed to appear, or have appeared and have refused to join in the appeals of the parties above named, and,

It is Further Found that the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company, The Kansas City Pipe Line Company, the City of Kansas City, Missouri, the Public Service Commission of the State of Missouri and its members, Frank W. McAllister, Attorney General of the State of Missouri, the City of St. Joseph, Missouri, the City of Joplin, Missouri, and the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, Commissioners, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney General for the State of Kansas, and the defendant cities in Kansas, have indicated their desire to appeal or join in appeals in this cause, and that they are entitled to a severance from their other co-defendants in this cause, therefore;

It is Ordered that the above named defendants be and they are hereby granted a severance from all their co-defendants for the purpose of an appeal, or appeals, from the final judgment and decree

entered in the above entitled cause to the Supreme Court of the United States.

1130 It is Further Found and Ordered That the rights of the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company are so separate from the rights of all their co-defendants that they are entitled to and are hereby granted a severance from all their co-defendants for the purposes of prosecuting a joint appeal from the final judgment and decree of this Court in this cause, entered on August 13th, 1917, to the Supreme Court of the United States.

It is Further Found and Ordered That the rights of the City of Kansas, Missouri, and the Public Service Commission of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Edward Flad and Noah W. Simpson, as the Public Service Commission of Missouri, and Alex Z. Patterson, as Attorney for said Public Service Commission, Frank W. McAllister as Attorney General of the State of Missouri, and the Cities of St. Joseph and Joplin, Missouri, are so separate from the rights of all their co-defendants that they are entitled to and are hereby granted a severance from their co-defendants for the purposes of prosecuting a joint appeal from the final judgment and decree of this Court entered on August 13th, 1917, to the Supreme Court of the United States.

It is Further Found and Ordered That the rights of the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, Commissioners, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Bresster, Attorney General for the State of Kansas, and the defendant cities in Kansas, are so separate from the rights of all their co-defendants that they are entitled to and are hereby granted a severance from their co-defendants for the purposes of prosecuting a joint appeal from the final judgment and decree of this Court entered on August 13th, 1917, to the Supreme Court of the United States.

(Signed)

JOHN C. POLLOCK,

*District Judge.*

Dated: Nov. 5th, 1917.

This order signed by me at request Judge Booth as per his request November 1st, 1917.

POLLOCK.

Filed in the District Court on November 5, 1917. Morton Albaugh, Clerk.

1131 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Petition of The Public Utilities Commission for the State of Kansas,  
Joseph L. Bristow, John M. Kinkel and C. F. Foley, Members of  
said Commission, and H. O. Caster, Attorney for the Public Util-  
ities Commission for the State of Kansas, and S. M. Brewster,  
Attorney-General for the State of Kansas, and the Defendant Cities  
of the State of Kansas.*

The above named defendants, The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-General for the State of Kansas, and the defendant Cities in the State of Kansas, conceiving themselves aggrieved by the order entered on August 13, 1917, in the above entitled proceeding, do hereby appeal from the said order to the Supreme Court of the United States, and they and each of them pray that this, their appeal, may be allowed and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

F. S. JACKSON,

H. O. CASTER,

*Solicitors for the Appellants, The Public Util-  
ities Commission for the State of Kansas,  
Joseph L. Bristow, John M. Kinkel and C. F.  
Foley, Members of said Commission, and  
H. O. Caster, Attorney for the Pub. Util.  
Com. for the State of Kansas, and S. M.  
Brewster, Atty.-Genl. for the State of Kan-  
sas, and the Deflt. Cities in the State of  
Kansas.*

Filed in the District Court on Nov. 8, 1917. Morton Albaugh,  
Clerk.



1132 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order.*

This cause came on to be further heard on the 9th day of November, 1917, on the joint petition of The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-General for the State of Kansas, and the defendant Cities in the State of Kansas, for allowance of a joint appeal, and was argued by counsel, and on consideration thereof;

It is ordered that The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-General for the State of Kansas, and the defendant Cities in the State of Kansas be and they are hereby granted and allowed a joint appeal from the final judgment and decree entered in the above entitled cause on August 13, 1917, as prayed for; that their bond on appeal be and is hereby fixed in the sum of three thousand dollars (\$3,000), to be approved by the Clerk.

JOHN C. POLLOCK, *Judge.*

Signed at request of Judge Booth.

Filed in the District Court on Nov. 9, 1917. Morton Albaugh,  
Clerk.

1133 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Notice.*

To the Kansas Natural Gas Company and John M. Landon and  
George F. Sharrit, Receivers of the Kansas Natural Gas Company,  
and Fidelity Title & Trust Company and Their Attorneys of  
Record:

You and each of you will please take notice that Kansas City Gas  
Company, The Wyandotte County Gas Company, Fidelity Trust  
Company and The Kansas City Pipe Line Company will call up for  
hearing and order their petition for the allowance of an appeal from  
the final order, judgment and decree in the above entitled case to the  
Supreme Court of the United States on November 9, 1917, at ten  
o'clock A. M., or as soon thereafter as counsel can be heard, in the  
courtroom of the United States District Court for the District of  
Kansas, at Kansas City, Kansas.

J. W. DANA,

*Solicitor for Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity  
Trust Company and The Kansas City Pipe  
Line Company.*

Service of the foregoing Notice acknowledged and accepted this  
3rd day of November, 1917.

R. A. BROWN,

*Solicitor for Kansas Natural Gas Company.*

1134 Service of the foregoing Notice acknowledged and accepted  
this 4th day of November, 1917.

CHAS. BLOOD SMITH,

*Solicitor for Fidelity Title & Tr. Co.*

JOHN J. JONES &

CHAS. BLOOD SMITH,

*Solicitor for George F. Sharitt, Receiver,  
for Kansas Natural Gas Co.*

Service of the foregoing Notice acknowledged and accepted this 5th day of November, 1917.

JOHN H. ATWOOD,  
CHESTER I. LONG,  
ROBERT STONE,  
*Solicitors for John M. Landon, Receiver for Kansas Natural Gas Co.*

Service of the foregoing Notice acknowledged and accepted this 6th day of November, 1917.

GEORGE F. SHARITT,  
*Receiver for Kansas Natural Gas Co.*

Filed in the District Court on Nov. 6, 1917. Morton Albaugh, Clerk.

1135 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Assignments of Errors.*

Assignment of Errors by the City of Kansas City, Missouri, Defendant and Appellant in the Above Entitled Cause.

Comes now the City of Kansas City, Missouri, defendant and appellant in the above entitled cause, and says that in the record and proceedings of said court in the above entitled cause and in  
1136 the final decree made and entered therein the court erred in the following particulars:

I.

The court erred in holding that Section 56 of the Judicial Code authorized the issuing and executing of the process of subpoena against Kansas City, Missouri, in this suit.

II.

The court erred in refusing to dismiss the bill of complaint and the supplemental bill for the reason that the court did not have jurisdiction of this cause.

## III.

That the court erred in holding that it had jurisdiction of defendant, Kansas City, Missouri, in said cause and in overruling the motion of said defendant to dismiss the bill of complaint as to it, because:

(a) The writ of subpoena was served upon Kansas City, Missouri, in the State of Missouri, outside of the jurisdiction of the District Court of the United States for the District of Kansas, and without authority of law, and said court did not have jurisdiction of the defendant, Kansas City, Missouri, in said cause.

(b) The facts stated in said bill of complaint do not constitute a cause of action or ground of relief in equity in favor of the plaintiff and against Kansas City, Missouri.

(c) The bill of complaint is multifarious in that it is exhibited against a multitude of defendants for many distinct matters and causes, in many of which, as appears by said bill, Kansas City, Missouri, is in no way interested.

1137

## IV.

That the court erred in denying and overruling each of the defenses in point of law arising upon the face of the bill of complaint, and on the face of the supplemental bill of complaint, pleaded by Kansas City, Missouri, in its answer to the bill of complaint, and in its answer to the supplemental bill of complaint.

(a) That the subpoena in this suit was served upon Kansas City, Missouri, a municipal corporation of said state, in Jackson county, Missouri, outside of the State and District of Kansas, for which reasons said subpoena and service thereof on this defendant was, and is, without authority of law and void, and this court does not have jurisdiction of this defendant in this suit.

(b) That there is a misjoinder of parties defendant in said suit.

(c) That there is a misjoinder of causes of action in said bill of complaint whereby it is multifarious.

(d) That it appears on the face of the bill of complaint that the matters and things therein averred do not constitute a cause of action in favor of the plaintiff or against the defendant, Kansas City, Missouri, and do not entitle the plaintiff to the relief prayed for or to any relief against it.

(e) That the plaintiff, for reasons appearing on the face of the bill, is not without adequate remedy in due course of law for redress of any wrongs complained of.

(f) That it appears on the face of the supplemental bill of complaint that the matters and things therein averred do not constitute a cause of action in favor of plaintiff and against the defendant, Kansas City, Missouri, and do not entitle the plaintiff to the relief prayed for or to any relief against it.

1138

## V.

That the court erred in holding that the bill of complaint and supplemental bill of complaint, or either of them, states a cause for relief in a court of equity against Kansas City, Missouri.

## VI.

That the court erred in holding that the contract dated November 17, 1906, between Hugh J. McGowan, Charles E. Small and Randal Morgan, grantees in Ordinance No. 33887 of Kansas City, Missouri, and The Kansas City Pipe Line Company is not binding on the receivers of the Kansas Natural Gas Company.

## VII.

That the court erred in holding that the contract dated December 3, 1906, between Hugh J. McGowan, Charles E. Small and Randal Morgan, grantees under said Ordinance No. 33887 of Kansas City, Missouri, is not binding on the receivers of Kansas Natural Gas Company.

## VIII.

That the court erred in holding that the indenture of lease dated January 1, 1908, between the Kansas City Pipe Line Company, as lessor, and Kansas Natural Gas Company, as lessee, is not binding on said receivers.

## IX.

The court erred in its final decree in that it granted to plaintiffs rights without requiring them to perform their duties to the public or to perform their duty under said contracts dated November 17, 1906, and December 3, 1906, and under the said lease dated January 1, 1908.

1139

## X.

That the court erred in granting a permanent injunction against Kansas City, Missouri, in said final judgment, after the enlarged court had decided on the application for a temporary injunction that the plaintiff was not entitled to any relief as against Kansas City, Missouri, the evidence at the two said hearings being substantially the same.

## XI.

That the court erred in enjoining Kansas City, Missouri, from enforcing its ordinance contract rates against the Kansas City Gas Company, because in that respect the decree is broader than the issues made by the pleadings in the cause.

## XII.

That the court erred in its final decree in granting a permanent injunction against Kansas City, Missouri, because

(a) The evidence showed that Kansas City, Missouri, had not passed any ordinance or instituted or prosecuted any suit or proceeding against the Kansas Natural Gas Company or its receivers, and had not done or threatened to do any act or thing to impair any right possessed by the Kansas Natural Gas Company and its receivers, or to hinder the exercise of any such right.

(b) The evidence showed that neither the Kansas Natural Gas Company nor its receivers have any right, license or franchise, of any character, to do business within the corporate limits of Kansas City, Missouri, and that neither the Company nor its receivers own any property within the corporate limits of the city.

1140 (c) That the evidence showed that Kansas City Gas Company is an independent dealer in natural gas and is not the agent, for any purpose, of the Kansas Natural Gas Company or of its receivers.

(d) That the supplemental bill of complaint alleges, and the evidence showed, that all natural gas sold by the receivers to the Kansas City Gas Company is delivered at or near the city limits of Kansas City, Missouri, and that thereafter the Kansas City Gas Company has complete and undivided control and direction of the sale, disposition and distribution of said gas.

## XIII.

The court erred in its final decree in holding that the Kansas Natural Gas Company and its receivers, or any of them, are engaged in selling or delivering natural gas to consumers in Kansas City, Missouri.

## XIV.

That the court erred in holding that the sale and delivery of gas to consumers in Kansas City, Missouri, is interstate commerce.

## XV.

That the court erred in holding that the transportation of gas from Oklahoma to Kansas City, Missouri, is interstate commerce of a national and not of a local character.

## XVI.

That the court erred in holding that the business of selling and delivering gas carried on by the Kansas City Gas Company in Kansas City, Missouri, is interstate commerce.

1141

## XVII.

That the court erred in holding that the order made by the Public Service Commission of the state of Missouri, August 10, 1916, in cause No. 1050, on the petition of the Kansas City Gas Company, authorizing new rates for natural gas in Kansas City, Missouri, was an illegal attempt to burden and regulate interstate commerce, because the rates authorized by said order are the rates fixed in said Ordinance Contract No. 33887.

## XVIII.

That the court erred in holding that the order of the Public Service Commission of the State of Missouri, August 10, 1916, authorizing new rates for natural gas in Kansas City, Missouri, was the taking of property without due process of law because said rates are the rates fixed by said Ordinance Contract No. 33887, of Kansas, City, Missouri.

## XIX.

The court erred in its final decree in granting relief to the complainants against defendant, Kansas City, Missouri, because no ground for relief is stated either in the original bill or in the supplemental bill, and no ground for relief was shown by the evidence against said defendant.

## XX.

That the court erred in its final decree in enjoining Kansas City, Missouri, from enforcing against the Kansas City Gas Company the Ordinance Contract rates for natural gas, because thereby the city is deprived of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Wherefore, said defendant, Kansas City, Missouri, prays that the decree may be reversed and the District Court of the United States for the District of Kansas, First Division, be directed to dismiss this suit as to said defendant.

THE CITY OF KANSAS CITY, MISSOURI,  
By J. A. HARZFELD,  
*City Counselor, Kansas City, Mo.*  
BENJ. M. POWERS,  
*Assistant City Counselor, Kansas City, Mo.*  
A. F. EVANS,  
*Of Counsel.*

Filed in the District Court on November 8, 1917. Morton Albaugh, Clerk.



*Assignment of Errors by the City of Joplin, Missouri, Defendant and Appellant in the Above Entitled Cause.*

Comes now the City of Joplin, Missouri, defendant and appellant in the above entitled cause, and says that in the record and proceedings of said court in the above entitled cause and in the final decree made and entered therein the court erred in the following particulars:

I.

The court erred in holding that Section 56 of the Judicial Code authorized the issuing and executing of the process of subpoena against Joplin, Missouri, in this suit.

1143

II.

The court erred in refusing to dismiss the bill of complaint and the supplemental bill for the reason that the court did not have jurisdiction of this cause.

III.

That the court erred in holding that it has jurisdiction of defendant Joplin, Missouri, in said cause, because:

(a) The writ of subpoena was served upon Joplin, Missouri, in the State of Missouri, outside of the jurisdiction of the District Court of the United States for the District of Kansas, and without authority of law, and said court did not have jurisdiction of the defendant Joplin, Missouri, in said cause.

(b) The facts stated in said bill of complaint do not constitute a cause of action or ground of relief in equity in favor of the plaintiff and against Joplin, Missouri.

(c) The bill of complaint is multifarious in that it is exhibited against a multitude of defendant- for many distinct matters and causes, in many of which, as appears by the bill, Joplin, Missouri, is in no way interested.

IV.

The court erred in holding that the bill of complaint and supplemental bill of complaint, or either of them, states a cause for relief in a court of equity against Joplin, Missouri.

V.

The court erred in granting a permanent injunction against Joplin, Missouri, in said final judgment, after the enlarged court had decided on the application for a temporary injunction that the plaintiff was not entitled to any relief as against Joplin, Missouri, the evidence at the two said hearings being substantially the same.

1144

## VI.

That the court erred in enjoining Joplin, Missouri, from enforcing its ordinance contract rates against the Joplin Gas Company, because in that respect the decree is broader than the issues made by the pleadings in the cause.

## VII.

The court erred in its final decree in granting a permanent injunction against Joplin, Missouri, because

(a) The evidence showed that Joplin, Missouri, had not passed any ordinance or instituted any suit or proceeding against the Kansas Natural Gas Company or its receivers, and had not done or threatened to do any act or thing to impair any right possessed by the Kansas Natural Gas Company and its receivers, or to hinder the exercise of any such right.

(b) The evidence showed that neither the Kansas Natural Gas Company nor its receivers have any right, license or franchise of any character to do business within the corporate limits of Joplin, Missouri, and that neither the company nor its receivers own any property within the corporate limits of the city.

(c) The evidence showed that Joplin Gas Company is an independent dealer in natural gas and is not the agent, for any purpose, of the Kansas Natural Gas Company or its receivers.

(d) The evidence shows that all natural gas sold by the receivers to the Joplin Gas Company is delivered at or near the city limits of Joplin, Missouri, and that thereafter the Joplin Gas Company has complete and undivided control and direction of the sale and distribution of said gas.

1145

## VIII.

The court erred in its final decree in holding that the Kansas Natural Gas Company and its receivers, or any of them, are engaged in selling or delivering natural gas to consumers in Joplin, Missouri.

## IX.

That the court erred in holding that the sale and delivery of gas to consumers in Joplin, Missouri, is interstate commerce.

## X.

That the court erred in holding that the transportation of gas from Oklahoma to Joplin, Missouri, is interstate commerce of a national and not of a local character.

## XI.

That the court erred in holding that the business of selling and delivering gas to consumers in Joplin, Missouri, is interstate commerce.

## XII.

The court erred in its final decree in granting relief to the complainants against defendant Joplin, Missouri, because no ground for relief is stated either in the original bill or in the supplemental bill, and no ground for relief was shown by the evidence against said defendant.

## XIII.

The court erred in its final decree in enjoining Joplin, Missouri, from enforcing against the Joplin Gas Company the Ordinance Contract rates for natural gas, because thereby the City is deprived of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

1146

## XIV.

The court erred in its final decree in holding that the rate of twenty-five cents in effect in the City of Joplin was a rate confiscatory of the property of the Kansas Natural Gas Company or the Joplin Gas Company, for the reason that said rate was the rate provided by the franchise contract existing between the City of Joplin and the Joplin Gas Company.

Wherefore, said defendant Joplin, Missouri, prays that the decree may be reversed and the District Court of the United States for the District of Kansas, First Division, be directed to dismiss this suit as to said defendants.

THE CITY OF JOPLIN, MISSOURI,  
By R. H. DAVIS,  
*City Attorney of the City of Joplin, Missouri.*

Filed in the District Court on November 8, 1917. Morton Albaugh, Clerk.

*Assignment of Errors by the City of St. Joseph, Missouri, Defendant and Appellant in the Above Entitled Cause.*

Comes now the City of St. Joseph, Missouri, defendant and appellant in the above entitled cause, and says that in the record and proceedings of said court in the above entitled cause and in the final decree made and entered therein the court erred in the following particulars:

## I.

The court erred in holding that Section 56 of the Judicial Code authorized the issuing and executing of the process of subpoena against St. Joseph, Missouri, in this suit.

1147

## II.

The court erred in refusing to dismiss the bill of complaint and the supplemental bill for the reason that the court did not have jurisdiction of this cause.

## III.

That the court erred in holding that it had jurisdiction of defendant St. Joseph, Missouri, because:

(a) The writ of subpoena was served upon St. Joseph, Missouri, in the State of Missouri, outside of the jurisdiction of the District Court of the United States for the District of Kansas, and without authority of law, and said court did not have jurisdiction of the defendant St. Joseph, Missouri, in said cause.

(b) The facts stated in said bill of complaint do not constitute a cause of action or ground of relief in equity in favor of the plaintiff and against St. Joseph, Missouri.

(c) The bill of complaint is multifarious in that it is exhibited against a multitude of defendants for many distinct matters and causes, in many of which, as appears by said bill, St. Joseph, Missouri, is in no way interested.

## IV.

The court erred in holding that the bill of complaint and supplemental bill of complaint, or either of them, states a cause for relief in a court of equity against St. Joseph, Missouri.

## V.

The court erred in granting a permanent injunction against St. Joseph, Missouri, in said final judgment, after the enlarged court had decided on the application for a temporary injunction that the plaintiff was not entitled to any relief as against St. Joseph, Missouri, the evidence at the two said hearings being substantially the same.

1148

## VI.

The court erred in its final decree in granting a permanent injunction against St. Joseph, Missouri, because

(a) The evidence showed that St. Joseph, Missouri, had not passed any ordinance or instituted any suit or proceeding against the Kansas Natural Gas Company or its receivers, and has not done

or threatened to do any act or thing to impair any right possessed by the Kansas Natural Gas Company and its receivers, or to hinder the exercise of any such right.

(b) The evidence showed that neither the Kansas Natural Gas Company nor its receivers have any right, license or franchise of any character to do business within the corporate limits of St. Joseph, Missouri, and that neither the company nor its receivers own any property within the corporate limits of the city.

(c) The evidence showed that St. Joseph Gas Company is an independent dealer in natural gas and is not the agent, for any purpose, of the Kansas Natural Gas Company, or its receivers.

(d) The evidence shows that all natural gas sold by the receivers to the St. Joseph Gas Company is delivered at or near the city limits of St. Joseph, Missouri, and that thereafter the St. Joseph Gas Company has complete and undivided control and direction of the sale and distribution of said gas.

## VII.

The court erred in its final decree in holding that the Kansas Natural Gas Company and its receivers, or any of them, are engaged in selling or delivering natural gas to consumers in St. Joseph, Missouri.

1149

## VIII.

That the court erred in holding that the sale and delivery of gas to consumers in St. Joseph, Missouri, is interstate commerce.

## IX.

The court erred in holding that the transportation of natural gas from Oklahoma to St. Joseph, Missouri, is interstate commerce of a national and not of a local character.

## X.

The court erred in its final decree in granting relief to complainants against defendant, St. Joseph, Missouri, because no ground for relief is stated either in the original bill or in the supplemental bill, and no ground for relief was shown by the evidence against said defendant.

Wherefore, defendant St. Joseph, Missouri, prays that the decree may be reversed and the District Court of the United States for the District of Kansas, First Division, be directed to dismiss this suit as to said defendant.

THE CITY OF ST. JOSEPH, MISSOURI,  
By CHAS. L. FAUST,  
*City Attorney of the City of St. Joseph, Missouri.*

Filed in the District Court on November 8, 1917. Morton Albaugh, Clerk.

1150

*Assignment of Errors.*

On behalf of the Public Service Commission of the State of Missouri, Wm. G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, Members of the Public Service Commission of Missouri; Alex. Z. Patterson, General Counsel for the Public Service Commission of Missouri, and Frank W. McAllister, Attorney General for the State of Missouri.

Now come Wm. G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, Commissioners of the Public Service Commission for the State of Missouri, for the Public Service Commission for the State of Missouri, and Alex. Z. Patterson, General Counsel for said Public Service Commission, and Frank W. McAllister, Attorney General of the State of Missouri, Appellants, and make and file their Assignment of Errors in their appeal herein.

I. The District Court of the United States for the District of Kansas erred in refusing to dismiss the bill of complaint in this action in said court, for the reason that said court had no jurisdiction in said cause.

II. The District Court of the United States for the District of Kansas erred in refusing to dismiss the bill of complaint and supplemental bill of complaint as to all the parties defendant resident in the State of Missouri, for the reason that said court did not obtain nor have jurisdiction of said defendants.

1151 III. That the said United States District Court for the District of Kansas erred in said cause in holding upon the final hearing thereof, that the business transacted by the plaintiff, that is to say, the transportation of natural gas from Kansas and Oklahoma to Missouri and the distribution and sale of said gas in the State of Missouri by plaintiff, and the distributing companies selling natural gas in the defendant cities of Missouri above mentioned, is interstate commerce of a national character, and not of a local nature.

IV. That the said United States District Court for the District of Kansas erred in the trial of said cause below upon the final hearing thereof, in holding that the following orders of the Public Service Commission of Missouri, suspending rates and schedules for natural gas, to-wit the order of suspension of rates and charges of the Weston Gas & Light Company entered on the 18th day of September, 1916, in case No. 1083; the order suspending the rates and charges of the Joplin Gas Company, entered on the 17th day of August, 1916, in case No. 1055; the order entered on the 13th day of September, 1916, in case No. 1075 suspending the rates and charges of the Fort Scott & Nevada Light, Heat, Water & Power Company; the order suspending the rates of the Carl Junction Gas Company entered on August 17th, 1916, in case No. 1057, and the subsequent orders made by said Commission extending the periods of suspension; and the order made on the 10th day of August, 1916, in case No. 1050 establishing a new rate for natural gas in Kansas City, Missouri, effective Novem-

ber 19th, 1916; and the threats, expressed purposes and intentions of said Commission and the statements made in open court 1152 by counsel for the Commission that other similar orders will be entered whenever plaintiff or the distributing companies above mentioned shall attempt to establish new schedules of rates for the sale and distribution of natural gas in any of the cities in Missouri, are attempts directly and unduly to burden and regulate interstate commerce, and are therefore, unauthorized and void.

V. That the District Court of the United States for the District of Kansas erred in the trial of said cause below upon the final hearing thereof in holding that the Public Service Commission Act of the State of Missouri and particularly Section 69, subdivision 12, and Section 70 thereof authorizing said Commission to suspend the enforcement of natural gas rate schedules filed with said Commission, and defer the use of rates, charges, forms of contract and agreements for a period of 120 days beyond the time when such rates, charges, forms of contract and agreements would otherwise go into effect; and further authorizing said Commission to extend the time of suspension for a further period of six months, and further providing that no change shall be made in rates, charges, forms of contract or agreements established after thirty days' notice to the Commission and publication thereof for 30 days by order of the Commission, together with the construction placed upon said Public Service Commission Act by said Commission, and the acts and proceedings of said Commission thereunder, in suspending schedules filed by local distributing companies in the defendant Missouri cities fixing the price of natural gas to consumers, constitute the taking of the property of the plaintiff and the distributing companies above named without due process of law and without just compensation and deny to the plaintiff and said distributing companies the equal protection of 1153 the laws, all in contravention of the Constitution of the United States.

VI. That the said District Court of the United States for the District of Kansas in the trial of the case below, upon the final hearing thereof, erred in enjoining these appellants from interfering with the plaintiff, or any of the said defendant distributing companies in the State of Missouri, in establishing and maintaining such rates as the said District Court has approved or may hereafter approve for consumers of natural gas in the State of Missouri.

VII. That the District Court of the United States for the District of Kansas erred in the trial of the case below upon the final hearing of the case thereof in granting the prayer of the Kansas Natural Gas Company, defendant herein, for a permanent injunction against the Public Service Commission of Missouri upon the ground of interference by said Public Service Commission of Missouri with interstate commerce in the sale of natural gas in Missouri.

VIII. That the said District Court of the United States for the District of Kansas erred in the trial of the case below upon a final hearing thereof in granting to the defendant, Geo. F. Sharitt, the Receiver of the Kansas Natural Gas Company, a permanent injunction against the defendants, appellants herein, to the same extent



and effect as the injunction granted to plaintiff against these defendants, appellants herein.

ALEX. Z. PATTERSON,  
*General Counsel for Public Service Commission of Missouri;*  
JAMES D. LINDSAY,  
*Assistant Counsel for Public Service Commission of Missouri,*  
*Attorneys for Appellants.*

Filed in the District Court on November 2, 1917. Morton Albaugh, Clerk.

1154 *Amended Assignment of Errors.*

On behalf of the Public Service Commission of the State of Missouri, Wm. G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, members of the Public Service Commission of Missouri; Alex. Z. Patterson, General Counsel for the Public Service Commission of Missouri, and Frank W. McAllister, Attorney General for the State of Missouri.

Now come Wm. G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, Commissioners of the Public Service Commission for the State of Missouri, for the Public Service Commission for the State of Missouri, and Alex. Z. Patterson, General Counsel for said Public Service Commission, and Frank W. McAllister, Attorney General of the State of Missouri, Appellants, and in support of their appeal herein, jointly made and filed with the City of Kansas City, the City of Joplin and the City of Saint Joseph, Missouri, and under and pursuant to the order of severance entered herein on November 5th, 1917, make and file this their Assignment of Errors in their appeal herein, amendatory of and in substitution for the Assignment of Errors heretofore filed herein by these Appellants.

I.

The said District Court for the District of Kansas erred in said cause in holding upon the final hearing thereof, that the business transacted by the plaintiff, that is to say, the transportation of  
1155 natural gas from Kansas and Oklahoma to Missouri and the distribution and sale of said gas in the State of Missouri by plaintiff and the distributing companies selling natural gas in the defendant cities of Missouri above mentioned, is interstate commerce of a national character and not of a local nature, for the reason that the sale of natural gas in Missouri is a business of a local nature and not of a national character, and is not interstate commerce.

II.

The said District Court for the District of Kansas erred in the trial of said cause below upon the final hearing thereof, in holding that

the orders of the Public Service Commission of Missouri suspending rates and schedules for natural gas filed by local distributing companies, and the order approving and establishing a new rate for natural gas in Kansas City, and the threats of said Public Service Commission and of its Counsel to make other and similar orders, are attempts directly and unduly to burden and regulate interstate commerce, and therefore unauthorized and void; for the reason that said orders are a regulation of and affect intrastate commerce within the State of Missouri, only, and are within the powers of the Public Service Commission of Missouri to make.

### III.

The said District Court for the District of Kansas erred in the trial of said cause below upon the final hearing thereof in holding that the Public Service Commission Act of the State of Missouri and particularly Section 69, subdivision 12, and Section 70 1156 thereof authorizing said Commission to suspend the enforcement of natural gas rate schedules filed with said Commission, and defer the use of rates, charges, forms of contract and agreements for a period of 120 days beyond the time when such rates, charges, forms of contract and agreements would otherwise go into effect; and further authorizing said Commission to extend the time of suspension for a further period of six months, and further providing that no change shall be made in rates, charges, forms of contract on agreements established after thirty days' notice to the Commission and publication thereof for 30 days by order of the Commission, together with the construction placed upon said Public Service Commission Act by said Commission, and the acts and proceedings of said Commission thereunder, in suspending schedules filed by local distributing companies in the defendant Missouri cities fixing the price of natural gas to consumers, constitute the taking of the property of the plaintiff and the distributing companies above named without due process of law, and without just compensation, and deny to the plaintiff and said distributing companies the equal protection of the laws, all in contravention of the Constitution of the United States, for the reason that the provisions of said Public Service Commission Act allow to plaintiff and the distributing companies an opportunity to be heard in due course of law, and said business is intrastate and within the jurisdiction of said Commission.

### IV.

The said District Court for the District of Kansas in the trial of the case below, upon the final hearing thereof, erred in en- 1157 joining these appellants from interfering with the plaintiff, or any of the said defendant distributing companies in the State of Missouri, in establishing and maintaining such rates as the said District Court has approved or may hereafter approve for consumers of natural gas in the State of Missouri, for the reason that natural gas is sold to consumers in Missouri only by local companies

incorporated under the laws of the State of Missouri, operating under franchises granted by the cities in said State and occupying the streets and public places in such cities under ordinances and permits of the municipal authorities, and conducting, in the sale of natural gas to the consumers, a business of a local character, over which the Public Service Commission of the State of Missouri has exclusive jurisdiction and power of regulation.

## V.

The said District Court for the District of Kansas erred in the trial of the case below upon the final hearing of the case thereof in granting the prayer of the Kansas Natural Gas Company, defendant herein, for a permanent injunction against the Public Service Commission of Missouri upon the ground of interference by said Public Service Commission of Missouri with interstate commerce in the sale of natural gas in Missouri, for the reason that the sale of natural gas in the State of Missouri is intrastate commerce and within the exclusive jurisdiction of appellants' Public Service Commission of Missouri.

## VI.

The said District Court for the District of Kansas erred  
1158 in the trial of the case below upon a final hearing thereof in granting to the defendant, Geo. F. Sharitt, the Receiver of the Kansas Natural Gas Company, a permanent injunction against the defendants, appellants herein, to the same extent and effect as the injunction granted to plaintiff against these defendants, appellants herein, for the reason that said Receiver is not engaged in the business of interstate commerce, nor in the sale of natural gas in the State of Missouri.

Wherefore, appellants pray that said decree be reversed, and plaintiff's bill be ordered dismissed.

ALEX Z. PATTERSON,  
*General Counsel for Public Service  
Commission of Missouri;*  
JAMES D. LINDSAY,  
*Assistant Counsel for Public Service  
Commission of Missouri,  
Attorneys for Appellants.*

Filed in the District Court on November 8, 1917, Morton Albaugh, Clerk.

1159 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Appeal and Allowance.*

The City of Kansas City, Missouri, the Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson, and Edward Flad, as the Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, defendants in the above entitled cause, conceiving themselves aggrieved by the final order and decree in the above entitled proceeding, entered on August 13, 1917, do hereby appeal from said final order and decree to the Supreme Court of the United States and they pray that this, their appeal, may be allowed and that a transcript of the record and proceedings and papers, upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

THE CITY OF KANSAS CITY, MISSOURI,

By J. A. HARZFELD,

*City Counselor of Kansas City Missouri.*

A. F. EVANS,

BENJ. M. POWERS,

*Assistant City Counselor.*

THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI AND

WILLIAM G. BUSBY,

EDWIN J. BEAN,

DAVID E. BLAIR,

NOAH W. SIMPSON, AND

EDWARD FLAD,

*As the Public Service Commission*

*of the State of Missouri, and*

ALEX. Z. PATTERSON,

*As Attorney for the Public Service Com-*

*mission of the State of Missouri, and*

FRANK W. McALLISTER,  
*As Attorney General of the  
State of Missouri,*

By ALEX. Z. PATTERSON,  
*Counsel for the Public Service Com-  
mission of the State of Missouri.*

JAMES D. LINDSAY,  
*Assistant Counsel.*

1161

THE CITY OF JOPLIN, MISSOURI,

By R. H. DAVIS,  
*City Attorney of Joplin, Missouri.*

THE CITY OF ST. JOSEPH, MIS-  
SOURI,

By CHAS. L. FAUST,  
*City Attorney of St. Joseph, Missouri.*

Filed in the District Court on November 8, 1917, Morton Albaugh,  
Clerk.

1162 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LONDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order.*

This cause came on to be further heard on the 8th day of Novem-  
ber, 1917, on the joint motion of The City of Kansas City, Missouri,  
The Public Service Commission of the State of Missouri, William G.  
Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Ed-  
ward Flad, as the Public Service Commission of the State of Mis-  
souri, Alex. Z. Patterson, as Attorney for the Public Service Com-  
mission of the State of Missouri, Frank W. McAllister, as Attorney  
General of the State of Missouri, the City of Joplin, Missouri.

1163 and the City of St. Joseph, Missouri, for allowance of a joint  
appeal, and was argued by counsel, and on consideration  
thereof:

It is ordered that the City of Kansas City, Missouri, the Public  
Service Commission of the State of Missouri, William G. Busby,  
Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad,  
as the Public Service Commission of the State of Missouri, Alex. Z.  
Patterson, as Attorney for the Public Service Commission of the State

of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, be and they are hereby granted and allowed a joint appeal from the final judgment and decree entered in the above entitled cause on August 13, 1917, to the Supreme Court of the United States, as prayed for; that their bond on appeal be and is hereby fixed in the sum of three thousand (\$3,000.00) dollars.

JOHN C. POLLOCK,

*Judge United States District Court for  
the District of Kansas, First Division.*

Done at request — Judge Booth.

Filed in the District Court on November 8, 1917. Morton Albaugh,  
Clerk.

1164 UNITED STATES OF AMERICA:

To John M. Landon, Receiver of the Kansas Natural Gas Company,  
The Kansas Natural Gas Company, and George F. Sharritt, as  
Receiver of the Kansas Natural Gas Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington in the District of Columbia, on the eighth day of December, A. D. 1917, pursuant to an order allowing an appeal from the final order and decree in the District Court of the United States for the District of Kansas, First Division, entered on August 13, 1917, in that certain cause In Equity numbered No. 136-N, wherein John M. Landon, Receiver of the Kansas Natural Gas Company is plaintiff and The Public Utilities Commission of the State of Kansas and others *we* are defendants and The City of Kansas City, Missouri, The Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Joplin, Missouri and the City of St. Joseph, Missouri are appellants and you and each of you are respondents, to show cause, if any there be, why the said decree rendered against the said appellants as aforesaid should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America this eighth day of November, A. D. 1917.

JOHN C. POLLOCK,

*Judge of the District Court of the United States  
for the District of Kansas, First Division.*

Ordered on request Judge Booth.

1165 I hereby accept and acknowledge service this First day of December, 1917, of the Citation issued pursuant to the appeal of the Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex Z. Patterson as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Kansas City, Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, from the final decree in that cause in the District Court of the United States for the District of Kansas, First Division, entitled John M. Landon, Receiver of the Kansas Natural Gas Company, plaintiff, vs. The Public Utilities Commission of the State of Kansas, et al., Defendants, No. 136-N, In Equity, having received a true copy thereof.

KANSAS NATURAL GAS COMPANY,  
By T. S. SALATHIEL AND  
ROBERT A. BROWN,  
*Its Attorneys of Record.*  
JOHN M. LANDON,  
*Receiver of Kansas Natural Gas Company,*  
By CHESTER I. LONG,  
JOHN H. ATWOOD,  
ROBERT STONE,  
*His Attorneys of Record.*  
GEORGE F. SHARRITT,  
*Receiver of Kansas Natural Gas Company,*  
By JOHN J. JONES &  
CHAS. BLOOD SMITH, *His Attys.*

Filed in the District Court on December 11, 1917. Morton Albaugh, Clerk.

1166 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Bond.*

Know all men by these presents:

That we, the City of Kansas City, Missouri, the Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the



Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, as principals, and the Massachusetts Bonding and Insurance Company and R. Stephenson, as sureties, acknowledge ourselves to be indebted to John M. Landon, Receiver of the Kansas Natural Gas Company, the Kansas Natural Gas Company and George F. Sharritt, Receiver of the Kansas Natural Gas Company, appellees in the above cause, in the sum of Three Thousand (\$3,000.) Dollars, for the payment of which well and truly to be made to the said John M. Landon, Receiver of the Kansas Natural Gas Company, the Kansas Natural Gas Company and George F. Sharritt, Receiver of the Kansas Natural Gas Company, their successors and assigns, we jointly and severally bind ourselves, our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 10th day of November, 1917.

The condition of this bond is as follows:

1167 Whereas, on the 13th day of August, 1917, in the District Court of the United States for the District of Kansas, First Division, in a suit pending in that court wherein John M. Landon was plaintiff and the Public Utilities Commission of the State of Kansas and others were defendants, numbered on the Equity Docket as No. 136-N, a final decree was rendered against the said above named principals and the said named principals having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the clerk of the court to reverse the said decree and a citation directed to the said John M. Landon, Receiver of the Kansas Natural Gas Company, the Kansas Natural Gas Company and George F. Sharritt, as Receiver of the Kansas Natural Gas Company, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden in the City of Washington, in the District of Columbia, on the 8th day of December, 1917.

Now if the said City of Kansas City, Missouri, the Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

CITY OF KANSAS CITY, MISSOURI, \*

By GEO. H. EDWARDS, *Mayor*.

[Seal of Kansas City, Missouri.]

CHAS. B. TRIMMER,

*City Clerk,*

By DENNIS P. CAREY, *Deputy*.

THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI,By WM. G. BUSBY,  
EDWIN J. BEAN,  
DAVID E. BLAIR,  
NOAH W. SIMPSON,  
EDW. FLAD,*Members of the Public Service Com-  
mission of the State of Missouri.*

Attest:

[Seal of Public Service Commission of the State of Missouri.]

T. M. BRADBURY, *Secretary.*

1168

ALEX. Z. PATTERSON,

*Attorney for the Public Service Com-  
mission of the State of Missouri.*

FRANK W. McALLISTER,

*Attorney General of the State  
of the State of Missouri.*

THE CITY OF JOPLIN, MO.,

By C. S. POOLE, *Mayor.*

[Seal of the City of Joplin, Missouri.]

CITY OF ST. JOSEPH, MISSOURI,

By ELLIOTT MARSHALL, *Mayor.*

Attest:

[Seal of the City of St. Joseph, Missouri.]

JOEL E. GATES,

*City Clerk.*

[Seal of Massachusetts Bonding and Insurance Company.]

MASSACHUSETTS BONDING & IN-  
SURANCE COMPANY,

By PHILIP S. BROWN, JR.,

*Attorney-in-fact.*

Attest:

HOMER B. MANN,

*Attorney-in-fact.*

R. STEPHENSON.

Approved this 16th day of November, 1917.

JOHN C. POLLOCK,

*Judge of the United States District Court  
for the District of Kansas.*Filed in the District Court on November 17, 1917. Morton Al-  
baugh, Clerk.

1169 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Assignment of Errors on Behalf of the Public Utilities Commission  
for the State of Kansas, Joseph L. Bristow, John M. Kinkel, and  
C. F. Foley, Members of the Public Utilities Commission for the  
State of Kansas, and H. O. Caster, Attorney for the Public Utilities  
Commission for the State of Kansas, and S. M. Brewster, Attorney  
General of the State of Kansas.*

And now come Joseph L. Bristow, John M. Kinkel and C. F.  
Foley, Commissioners of the Public Utilities Commission for the  
State of Kansas, for the Public Utilities Commission for the State of  
Kansas, and H. O. Caster, Attorney for said Commission, and S. M.  
Brewster, Attorney General of the State of Kansas, appellants, and  
make and file this their assignment of errors in their appeal herein.

I.

The District Court of the United States for the District of Kansas  
erred in holding that the sale and distribution of gas in the manner  
in which the complainant receiver was engaged therein within the  
States of Kansas and Missouri constituted interstate commerce and  
the engagement therein by the complainant receiver in the trans-  
actions involved in said case, and that the acts and conduct of said  
receiver involved in the transportation and sale of said natural gas to  
his patrons in the towns and cities of the States of Kansas and  
1170 Missouri, and in other places therein, constituted interstate  
business, and that the said business of transporting and selling  
natural gas to his patrons in the States of Kansas and Missouri was  
not subject to the control of the Public Utilities Commission of the  
State of Kansas or the Public Service Commission of the State of  
Missouri within their respective states and under the local laws of  
the said states.

II.

That the said United States District Court for the District of Kan-  
sas erred in the court below in holding that the contracts entered into

between the various distributing companies located in Kansas were not binding upon the complainant receiver.

### III.

The United States District Court for the District of Kansas erred in the court below in enjoining the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as the Public Utilities Commission for the State of Kansas, and H. O. Caster as Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster as Attorney General of the State of Kansas, and the defendant cities in Kansas, from enforcing the aforesaid supply contracts or rates fixed or referred to therein against said complainant receiver and said distributing companies, and from interfering with the plaintiff or any of said defendant distributing companies in establishing and maintaining such rates as the said court had approved or might thereafter approve for consumers of natural gas in the state of Kansas.

### IV.

The United States District Court for the District of Kansas erred in the court below in enjoining the mayors and common council and governing officials, city attorneys, city counselors, or representatives of the defendant cities, and their successors in office from commencing, instituting, or prosecuting in any other court or tribunal  
1171 any suit or proceeding to litigate any matters determined by the United States District Court for the District of Kansas without leave of said court first having been obtained.

F. S. JACKSON,  
H. O. CASTER,  
*Attorneys for Appellant.*

Filed in the District Court this November 8, 1917. Morton Albaugh, Clerk.

1172 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Bond of the Public Utilities Commission on Appeal.*

(Bond No. —.)

Know all men by these presents: That the Public Utilities Commission for the state of Kansas and the Fidelity and Casualty Company of New York is held and firmly bound unto John M. Landon, receiver of the Kansas Natural Gas Company, in the full and just sum of three thousand dollars to be paid to the said John M. Landon, his successors and assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally by these presents. Sealed with our seal and dated this 8th day of November, A. D. 1917.

Whereas, Lately, and on the 13th day of August, A. D. 1917, in the District Court of the United States for the District of Kansas, First Division, in a suit pending in such court between John M. Landon, receiver of the Kansas Natural Gas Company, vs. the Public Utilities Commission for the state of Kansas, and Joseph L. Bristow, John M. Kinkel, and C. F. Foley, members of said Commission, and H. O. Caster, its attorney, et al., judgment was rendered against the defendants, and the said defendants, The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M.

1173 Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, its attorney, has obtained an order of the said court allowing an appeal from the decision of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John M. Landon, the Kansas Natural Gas Company, George F. Sharritt, receiver of the Kansas Natural Gas Company, and the Fidelity Title and Trust Company, citing and admonishing them to be and appear in the supreme court of the United States, at the city of Washington, sixty days from and after the date of said citation:

Now the condition of the above obligation is such, that if the said The Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of said Commission, and H. O. Caster, its attorney, shall prosecute said appeal

to effect, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

Signed and sealed by the Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of the said Commission.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF KANSAS,

By H. O. CASTER,

*Their Attorney.*

H. O. CASTER,

*Their Attorney.*

THE FIDELITY AND CASUALTY COM-  
PANY OF NEW YORK,

By ROBERT STONE, *Its Attorney-in-fact.*

Foregoing bond and surety thereon approved.

Signed request Judge Booth.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on Nov. 17, 1917, Morton Albaugh, Clerk.

1174 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendant.

*Order.*

This cause came on to be further heard on the 9th day of November, 1917, on the joint petition of Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company for allowance of a joint appeal, and was argued by counsel, and on consideration thereof;

It is ordered that the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company be and they are hereby granted and allowed a joint appeal from the final judgment and decree entered in the above entitled cause on August 13th, 1917, as prayed for; that their bond

on appeal be and is hereby fixed in the sum of Three Thousand Dollars (\$3,000), to be approved by the Clerk.

JOHN C. POLLOCK, *Judge*.

Nov. 9, 1917.

Order made at request — Judge Booth.

POLLOCK, *J.*

Filed in the District Court on Nov. 9, 1917. Morton Albaugh, clerk.

1175 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Appeal Bond.*

1176 *Bond of Kansas City Gas Company, The Wyandotte County Gas Company, The Kansas City Pipe Line Company, and Fidelity Trust Company.*

Know all men by these presents: That Kansas City Gas Company, The Wyandotte County Gas Company, The Kansas City Pipe Line Company and Fidelity Trust Company and the American Surety Company of New York are held and firmly bound unto John M. Landon, Receiver of the Kansas Natural Gas Company in the full and just sum of Three Thousand Dollars (\$3,000.00) to be paid to said John M. Landon, his successors and assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally by these presents. Sealed with our seals and dated this 9th day of November, 1917.

Whereas, lately and on the 13th day of August, 1917, in the District Court of the United States for the District of Kansas, First Division, in a suit pending in said court between John M. Landon, Receiver of Kansas Natural Gas Company, plaintiff, vs. The Public Utilities Commission for the State of Kansas et al., defendants, judgment was rendered against the defendants, and the defendants Kansas City Gas Company, The Wyandotte County Gas Company, The Kansas City Pipe Line Company and Fidelity Trust Company have



obtained an order of said court allowing an appeal from the decision of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John M. Landon and George F. Sharitt, Receivers of the Kansas Natural Gas Company and the Kansas Natural Gas Company and the Fidelity Title & Trust Company  
1177 citing and admonishing them to be and appear in the Supreme Court of the United States at the City of Washington thirty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Kansas City Gas Company, The Wyandotte County Gas Company, The Kansas City Pipe Line Company and Fidelity Trust Company shall prosecute said appeal to effect, and answer all costs if they fail to make good their appeal, then the above obligation to be void, else to remain in full force and effect.

Signed and sealed by

KANSAS CITY GAS COMPANY,  
By E. L. BRUNDRETT, *President, Principal.*  
THE WYANDOTTE COUNTY GAS  
COMPANY,  
By E. L. BRUNDRETT, *President, Principal.*  
THE KANSAS CITY PIPE LINE  
COMPANY,  
By J. W. DANA, *Vice-President, Principal.*  
FIDELITY TRUST COMPANY,  
By J. W. DANA, *Attorney, Principal.*

[Seal American Surety Co.]

AMERICAN SURETY COMPANY OF  
NEW YORK,  
By A. I. ZIMMERMAN,  
*Resident Vice-Pres.*

Attest:

M. WIER,  
*Resident Asst Sec., Surety.*

The foregoing bond and surety thereon is approved.

MORTON ALBAUGH,  
*District Clerk.*

Filed in the District Court Nov. 9, 1917. Morton Albaugh, clerk.

1178 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

To Kansas Natural Gas Company, John M. Landon and George F.  
Sharitt, Receivers of the Kansas Natural Gas Company, and Fi-  
delity Title & Trust Company, Greetings:

You are hereby cited and admonished to be and appear at the Su-  
preme Court of the United States to be holden at Washington on the  
8th day of December, 1917, pursuant to an appeal filed in the Clerk's  
office of the District Court of the United States for the District of  
Kansas, First Division, wherein Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity Trust Company and The  
Kansas City Pipe Line Company are appellants, and Kansas Natural  
Gas Company, John M. Landon and George F. Sharitt, Receivers of  
the Kansas Natural Gas Company, and Fidelity Title & Trust Com-  
pany are respondents, to show cause, if any there be, why the judg-  
ment in said appeal mentioned should not be corrected and speedy  
justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of  
the United States, this 9th day of November, the year of our Lord  
one thousand nine hundred and seventeen.

JOHN C. POLLOCK,  
*District Judge.*

1179 Service of the foregoing Citation is acknowledged and ac-  
cepted this 14th day of November, 1917.

T. S. SALATHIEL,  
R. A. BROWN,

*Solicitors for Kansas Natural Gas Co.*  
ROBERT STONE,

*Solicitor for John M. Landon, Receiver of*  
*Kansas Natural Gas Company.*

Service of the foregoing citation is acknowledged and accepted this 15th day of November, 1917.

CHAS. BLOOD SMITH,  
*Solicitor for Fidelity Title & Trust Company.*

Service of the foregoing Citation is acknowledged and accepted this 20th day of November, 1917.

GEORGE F. SHARITT,  
*Receiver of Kansas Natural Gas Co.*

Filed in the District Court on November 24, 1917. Morton Albaugh, clerk.

1180

Filed 11/15/17.

Called for in Par. 68.

In the District Court of the United States for the District of Kansas,  
First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS; Joseph L. Bristow, C. F. Foley and John M. Kinkel, as the Public Utilities Commission of the State of Kansas; H. O. Caster, as Attorney for the Public Utilities Commission of the State of Kansas; S. M. Brewster, as Attorney-general of the State of Kansas; John T. Barker, as Attorney-general of the State of Missouri; William G. Busby, as Counsel for the Public Service Commission of the State of Missouri; The Public Service Commission of the State of Missouri; John M. Atkinson, Edwin J. Bean, John Kenish, Howard B. Shaw and Eugene McQuillan, as the Public Service Commission of the State of Missouri; John F. Overfield, as Receiver of the Kansas City Pipe Line Company, Fidelity Title & Trust Company, a corporation; Fidelity Trust Company, a corporation; Delaware Trust Company, a corporation; Kansas City Pipe Line Company, a corporation; George F. Sharitt, as Receiver of the Kansas Natural Gas Company; Kansas Natural Gas Company; St. Joseph Gas Company; The Union Gas and Traction Company; The Atchison Railway, Light & Power Company; The Leavenworth Light, Heat and Power Company; The Tonganoxie Gas and Electric Company; The Citizens Light, Heat and Power Company; L. G. Treleven, Receiver; The Consumers Light, Heat and Power Company; The Kansas City Gas

Company; The Wyandotte County Gas Company; The Olathe Gas Company; The Ottawa Gas and Electric Company; O. A. Evans and Company; The Parsons Natural Gas Company; The Elk City Oil and Gas Company; The American Gas Company; The Home Light, Heat and Power Company; The Carl Junction Gas Company; The Oronogo Gas Company; The Joplin Gas Company; The Weir Gas Company; The Cities of St. Joseph, Missouri; Weston, Missouri; Atchison, Kansas; Leavenworth, Kansas; Tonganoxie, Kansas; Topeka, Kansas; Lawrence, Kansas; Baldwin, Kansas; Ottawa, Kansas; Kansas City, Missouri; Kansas City, Kansas; Merriam, Kansas; Shawnee, Kansas; Lenexa, Kansas; Olathe, Kansas; Gardner, Kansas; Edgerton, Kansas; Wellsville, Kansas; Princeton, Kansas; Scipio, Kansas; Richmond, Kansas; Welda, Kansas; Colony, Kansas; Bronson, Kansas; Moran, Kansas; Ft. Scott, Kansas; Deerfield, Missouri; Nevada, Missouri; Thayer, Kansas; Parsons, Kansas; Elk City, Kansas; Independence, Kansas; Coffeyville, Kansas; Liberty, Kansas; Altamont, Kansas; Oswego, Kansas; Columbus, Kansas; Seamon, Kansas; Weir City, Kansas; Cherokee, Kansas; Galena, Kansas; Pittsburg, Kansas; Carl Junction, Missouri; Oronogo, Missouri; Joplin, Missouri, Defendants.

1181

*Citation on Appeal.*UNITED STATES OF AMERICA, *ss.*:

To John M. Landon, as Receiver of the Kansas Natural Gas Company, The Kansas Natural Gas Company, George F. Sharitt, as Receiver of the Kansas Natural Gas Company, The Fidelity Title and Trust Company, and to each of the above named defendants, except The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of said Commission, and H. O. Caster, its Attorney:

You, and each of you, are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 15th day of December, nineteen hundred and seventeen, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the District of Kansas, First Division, wherein The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, its Attorney, and S. M. Brewster, Attorney General, are appellants, and John M. Landon, as Receiver of the Kansas Natural Gas Company, The Kansas Natural Gas Company, George F. Sharitt, as Receiver of the Kansas Natural Gas Company, and The Fidelity Title and Trust Company, are respondents, and the above named defendants not joining in this appeal, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Edward Douglass White, Chief Justice of the United States, this 15th day of November, in the year of our Lord one thousand nine hundred and seventeen.

Request Judge Booth.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on Dec. 17, 1917. Morton Albaugh, Clerk.

1182 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order.*

This cause came on further to be heard upon the thirty-first day of October, 1917, upon the application of the defendant, the City of Kansas City, Missouri, for an order making a part of and incorporating into the record of this cause the transcript of the evidence taken in shorthand by Mr. H. Harcourt Horn during the hearings of this cause and by him transcribed in typewriting, together with the memoranda filed with him in connection with such evidence, and upon consideration thereof

It is ordered that the transcript of the evidence taken in shorthand by Mr. H. Harcourt Horn during the hearings of this cause and by him transcribed into typewriting, together with the memoranda filed with him as a part of such testimony, be and they hereby are made a part of and incorporated into the record of this cause.

W. F. BOOTH,  
*United States District Judge.*

Filed in the District Court on Oct. 31, 1917. Morton Albaugh, Clerk.

1183 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LONDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order.*

This cause came on for further hearing on the application of all the appellants from the order entered herein on August 13, 1917, for an order of enlargement of the time for filing their respective records with the Clerk of the Supreme Court and upon consideration thereof

It is ordered, That the appellants do have and are hereby given an extension of time to and including the 27th of December, 1917, to docket their several cases and file their several records thereof with the clerk of the Supreme Court of the United States.

JOHN C. POLLOCK, *Judge.*

At request Judge Booth.

Filed in the District Court on December 1, 1917. Morton Albaugh, Clerk.

1184 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LONDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiffs,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Statement of Evidence by Appellants.*

J. A. Harzfeld, Benj. M. Powers, A. F. Evans, Alex. Z. Patterson, James D. Lindsay, R. H. Davis, Charles L. Faust, F. S. Jackson, H. O. Caster, J. W. Dana, Attorneys for Appellants.

1184½ In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiffs,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Statement of Evidence by Appellants.*

Come now the undersigned appellants and file this their statement of the evidence and request the clerk to include it in the record on appeal of the above entitled cause to the Supreme Court of the United States, to-wit:

1. The appellants William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad are the duly appointed, qualified and acting Public Service Commission of the State of Missouri, Alex Z. Patterson is the duly appointed, qualified and acting general counsel for said Commission and Frank W. McAllister is the duly qualified and acting attorney general for the State of Missouri.

1185 2. Appellant, the City of Kansas City, Missouri, is a municipal corporation duly organized and existing under the constitution and laws of the State of Missouri by special charter and has a population exceeding 100,000 inhabitants, and appellants, the City of St. Joseph, Missouri, and the City of Joplin, Missouri, are municipal corporations duly organized and existing under the laws of said State.

3. Appellants Joseph L. Bristow, John M. Kinkel and C. F. Foley are the duly appointed, qualified and acting Public Utilities Commission of the State of Kansas, H. O. Caster is the duly appointed, qualified and acting general counsel for said Commission, S. M. Brewster is the duly elected, qualified and acting attorney general of the State of Kansas, and the appellants, the Cities of Kansas are duly organized municipal corporations of said State.

4. Appellant The Kansas City Pipe Line Company is a corporation duly organized under the laws of the State of New Jersey and licensed to do business in Kansas. The description of its lines and properties will be found in the Intervening Petition of Kansas City Pipe Line Company in case of Fidelity Title & Trust Co. v. Kansas Natural Gas Co., No. 1-N, in Equity, which is made a part hereof. And appellant Fidelity Trust Company, a corporation of New Jersey, is the trustee of the mortgage of The Kansas City Pipe Line Company.

5. Appellant Kansas City Gas Company is a corporation organized



in 1906 under the laws of Missouri doing business in Kansas City, Missouri.

6. Appellant The Wyandotte County Gas Company is a corporation organized in 1908 under the laws of Kansas doing business in Kansas City, Kansas, and Rosedale, Kansas.

7. Respondent Kansas Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and from 1904 to October 9, 1912, was engaged 1186 in the business of producing, purchasing, transporting, distributing and selling natural gas. That it has been duly admitted to do business in the State of Kansas as a foreign corporation. That it owns and operates a system, by lease and otherwise, of pipe-lines extending from the counties of Roger, Wagoner and Tulsa in the State of Oklahoma, northerly to the Kansas-Oklahoma state line, and through the State of Kansas into the State of Missouri, with terminals at Joplin, Oronogo, Neck City, Nevada, Kansas City and St. Joseph in the State of Missouri, and Atchison, Leavenworth, Topeka, Galena, Pittsburg and Kansas City in the State of Kansas, and other points; a map of which is incorporated herein, paragraph 85. That since October 9, 1912, said system of pipe-lines has been in the control of and operated by Receivers of said Kansas Natural Gas Company.

Respondent Fidelity Title & Trust Company is a Pennsylvania corporation and the trustee of the first mortgage of the Kansas Natural Gas Company.

8. That said John M. Landon and R. S. Litchfield at the commencement of this suit were in the possession and control of the property of the Kansas Natural Gas Company and the property under lease to it in the State of Kansas, and the leased lines and other property located in the States of Oklahoma and Missouri, as Receivers of said company, under orders as follows: Order of the District Court of Montgomery County, Kansas, in case of the State of Kansas v. Independence Gas Company et al., No. 13476, entered February 15, said company, under orders as follows: Order of the District Court of Kansas in the case of John L. McKinney et al. v. Kansas Natural Gas Company et al., No. 1351, and in the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, Equity, entered January 24, 1914, September 22, 1914, and 1187 January 9, 1915 (see par. 85 hereof for said orders); that

Eugene Mackey and Conway F. Holmes having been permitted to resign, George F. Sharitt remained the Federal Receiver under the orders of October 9, 1912 (see par. 26), October 19, 1912 (see par. 28), February 3, 1913 (see par. 32), and September 22, 1914 (see par. 85 hereof for said orders).

9. That the respondents John M. Landon and George F. Sharitt, at the time of final judgment, August 13, 1917, were the duly appointed, qualified and acting Receivers of the property and business of the Kansas Natural Gas Company; that said John M. Landon was on the 5th day of June, 1917, duly appointed by this court as managing Receiver of said Kansas Natural Gas Company, and ever since that time has been and still is, such managing Receiver, and in the

actual possession and control of the property and business of the Kansas Natural Gas Company within the States of Kansas, Oklahoma and Missouri. Copy of said order is incorporated herein, par. 85.

10. Kansas City, Mo., is a municipal corporation organized under Article IX, Sec. 16, of the Constitution of Missouri, 1875, which authorizes cities having a population of more than 100,000 inhabitants to frame their own charter, said section being as follows:

"Sec. 16. Large Cities May Frame Their Own Charters, How Adopted and Amended.—Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election; which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board or a majority of them.

1188 Within thirty days thereafter, such proposed charter shall be submitted to the qualified voters of such city, at a general or special election, and if four-sevenths of such qualified voters voting thereat shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city, and supersede any existing charter and amendments thereof. A duplicate certificate shall be made, setting forth the charter proposed and its ratifications, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other, after being recorded in the office of the recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter, so adopted, may be amended by a proposal therefor, made by the lawmaking authorities of such city, published for at least thirty days in three newspapers of the largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the State."

11. The Revised Statutes of Missouri, 1909, contain the following provisions which have been in force and effect at all the times since 1887, to-wit:

"Sec. 3367. Gas, Electricity and Water Companies, Powers of.—Any corporation formed under the provisions of this article, for the purpose of supplying any town, city or village with gas, electricity or water, shall have full power to manufacture and sell, and to furnish such quantities of gas, electricity or water as may be required in the city, town or village, district or neighborhood where located, for public or private buildings or for other purposes; and such corporations shall have the power to lay conductors for conveying gas, electricity or water through the streets, lanes, alleys and

1189 squares of any city, town or village, with the consent of the municipal authorities thereof, and under such reasonable regulations as said authorities may prescribe." (R. S., 1899, sec. 1341.)

"Sec. 9703. City of Over 100,000 May Frame Charter—Procedure—Amendments.—(This section is the exact words of Sec. 16 Article IX of the Constitution above set forth with the addition of the following):

"A duplicate certificate shall be made, setting forth such amendment and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other after being recorded in the office of the Recorder of Deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof." (R. S., 1899, sec. 6359.) (Laws 1887, p. 42.)

"Sec. 9704. Takes Effect Thirty Days After Adoption.—After the expiration of said thirty days after the ratification and adoption of such charter as aforesaid, such charter shall be and constitute the entire organic law of such city, and shall supersede all laws of this state then in force in terms governing or appertaining to cities having one hundred thousand inhabitants or more." (R. S., 1899, Sec. 6360.)

"Sec. 9752. City Has Exclusive Control of Public Highways.—Such city shall have exclusive control over its public highways, streets, avenues, alleys and public places, and shall have exclusive power, by ordinance, to vacate or abandon any public highway, street, avenue, alley or public place, or part thereof, any law of this state to the contrary notwithstanding." (R. S., 1899, sec. 6408.) (Laws 1887, p. 51.)

"Sec. 9753. Regulation of Public Franchises.—It shall be lawful for any such city in such charter or by amendment thereof, to provide for regulating and controlling the exercise by any person or corporation of any public franchise or privilege in any streets or public places of such city, whether such franchises or privileges have been granted by said city or by or under the State of Missouri, or any other authority." (R. S., 1899, sec. 6408.) (Laws 1887, p. 51.)

12. The Public Service Commission Act of Missouri (Laws 1913, pp. 556-651, as amended by Laws, 1917, pp. 432-441) contains the following provisions:

"Sec. 1. Short Title.—This act shall be known as the 'public service commission act,' and shall apply to the public services herein described and the commission herein created, and to the public service corporation, persons and public utilities mentioned and referred to in this act." (Laws 1913, p. 557.)

"Sec. 2, Sub-div. 10. The terms 'gas plant,' when used in the act, includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas

(natural or manufactured) for light, heat or power." (Laws 1913, p. 558.)

"Sec. 2, Sub-div. 11. The term 'gas corporation,' when used in this act, includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or any political sub-division, county, or municipality thereof." (Laws 1913, p. 558.)

"Sec. 2, Sub-div. 25. The term 'public utility,' when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation and heat or refrigerating corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act." (Laws 1913, p. 560.)

1191 "Sec. 2, Sub-div. 26. The term 'service,' when used in this act, is used in its broadest and most inclusive sense and includes not only the use and accommodation afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility, and to the use and accommodation of consumers or patrons." (Laws 1913, p. 560.)

"Sec. 2, Sub-div. 27. The term 'rate,' when used in this act, shall mean and include every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof." (Laws 1913, p. 560.)

"Sec. 67. Application of Article.—This article shall apply to the manufacturing and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power and the generation, furnishing and transmission of electricity for light, heat or power, and the supplying and distributing of water for any purpose whatsoever." (Laws 1913, p. 602.)

"Sec. 69. General Powers of Commission in Respect to Gas, Water and Electricity. The commission shall: \* \* \* 12.—Have power to require every gas corporation, electrical corporation, water corporation and municipality to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established and enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all gen-

1192 eral privileges and facilities granted or allowed by such gas corporation, electrical corporation, water corporation or municipality; but this subdivision shall not apply to state, municipal or federal contracts. Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge of service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation or municipality in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe. No corporation or municipality shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation or municipality refund or remit in any manner or by any device any portion of the rates or charges so specified, not to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations, to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time." (Laws 1913, p. 607.)

"Sec. 70. Power of Commission to Stay Increased Rate.—Whenever there shall be filed with the commission by any gas corporation, electrical corporation, water corporation or municipalities any 1193 schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested gas corporation, electrical corporation, water corporation or municipality, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation, or practice, and pending such hearing and the decision thereon, the commission upon filing with such schedule, and delivering to the gas corporation, electrical corporation, water corporation or municipality affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice, but not

for a longer period than one hundred and twenty days beyond the time when such rate, charge, form of contract or agreement, rule, regulation or practice, would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, form of contract or agreement, rule, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, form of contract or agreement, rule, regulation or practice as would be proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule, regulation or practice had become effective: Provided, that if any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation, or municipality, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible." (Laws 1913, p. 608.)

1194 13. The special charter of Kansas City, Missouri, which went into effect May 9, 1889, and has been in force at all times since then, contains the following provisions:

"Article III, Sec. 1. The mayor and common council shall have \* \* \* power by ordinance:

"Twenty-eighth. To regulate the prices to be charged by telephone, telegraph, gas and electric light companies, and to compel them and all persons and corporations using, controlling or managing electric wires for any purpose whatever to put and keep their wires under ground, and to regulate the manner of doing the same and the use of all such wires and all connections therewith."

"Thirty-first. To pass, publish, amend and repeal all such ordinances, rules and police regulations not inconsistent with the provisions of this charter or the laws of the State, as may be expedient in maintaining the peace, order, good government, health and welfare of the city, its trade, commerce and manufactures, or that may be necessary and proper for carrying into effect the provisions of this charter."

"Article XIV, Sec. 1. The city shall have power to construct and operate gas works or electric light works, or any other kind of works for the purpose of lighting streets and public buildings and premises and property of private persons, and also to purchase any kind of such works heretofore or hereafter erected, and to operate the same for such purpose."

"Article XIV, Sec. 12. The City may grant to any person or corporation the right or franchise to conduct the material or means for lighting from any kind of works specified in the first section of this article, under or along or over any of the streets, avenues, alleys or public highways, or public grounds of the city for the purpose of lighting streets, avenues, alleys and public highways of the city and public buildings and private premises; but no franchise or



1195 grant for any such purpose shall confer an exclusive right nor be made for a longer period than thirty years, nor be renewed or extended except within the last two years of such term, and then not beyond thirty years: provided, that no such person or corporation shall in any event charge more for light for the city or private parties than the price specified from time to time by ordinance of the city, and that the city shall also have power to regulate and fix from time to time the prices such person, or company may charge for the renting of meters or apparatus for ascertaining the quantity of material or means consumed for lighting: and provided further, that the city shall not, in making the original grant, nor in any manner subsequent thereto, ever agree or bind itself to pay any fixed price for lighting streets, avenues, public highways, alleys, public grounds or public buildings of the city for a longer period than one year at a time. In case of any such grant to a person or corporation the city shall always have the right to designate the kind of meter or apparatus to be used for the correct measurement of the material or means furnished for lighting under such grant, and to provide for inspecting and regulating same, and to compel an exact compliance with the provisions made by ordinance in that regard; and the city shall also have the right to appoint one or more measurers, whose duty it shall be to inspect all such meters and apparatus and certify to the correctness of all bills made against the consumers of the material or means for lighting, and perform such other duties as may be prescribed by ordinance. Every person or corporation using a grant or franchise under this section shall in using or occupying the streets, avenues, public highways, alleys, public grounds and public buildings of the city, conduct work and operations as may be from time to time prescribed by ordinance, as so as to avoid unnecessary injury or inconvenience to the public and all citizens, and so as to avoid injury and damage to all persons and parties and private property, and shall use at least the same care to avoid such injury and damage that the city would be bound to use if it was conducting such work and business, and shall save the city harmless

1196 from all loss, costs and expense on account of any such injury or damage, and on account of anything done in the prosecution of any such work, and the use of any such grant or franchise, and when any street, avenue, public highway or alley, or public ground shall be opened or disturbed in the construction of any such work, shall repair the same to the satisfaction and approval of the board of public works, and so as to leave the same in as good condition for ordinary public use as it was at the time of opening or disturbing the same, and no such opening or disturbance shall be continued longer than necessary. Whenever the city may grant any right or franchise under this section it shall have the right to purchase the works, and all the appurtenances belonging thereto for furnishing the material and means for lighting, at any time during the term for which such grant may be made, whether such right be reserved expressly in the grant or not. The city may exercise all power conferred by this section by ordinance, and may, by ordinance,



from time to time, make provisions for accomplishing the results herein contemplated, and enforce the same."

"Article XVI, Sec. 1. The city shall have exclusive control of all its public highways, streets, avenues, alleys and public places, and shall have exclusive power to vacate or abandon any public highway, street, avenue, alley or public place, or any part thereof."

"Article XVII, Sec. 20. It shall be lawful for the city to regulate and control the exercise by any person or corporation of any public franchise or privilege in any of the streets or public places of the city, whether such franchise or privilege has been or may be granted by the city or by or under the State of Missouri, or any other authority."

14. On September 27, 1906, the common council of Kansas City, Missouri, passed Ordinance No. 33887, entitled "An Ordinance authorizing Hugh J. McGowan, Charles E. Small and Randell Morgan, the survivors or survivor of them, and their or his assigns, to lay, acquire and maintain pipes in Kansas City for the purpose of supplying natural gas to said city and its inhabitants," (Exhibit 1009 in evidence) granting a certain franchise to McGowan, Small and Morgan, which was approved by the mayor on said date and accepted by the grantees and on September 28, 1906, and has since been assigned and transferred to and is now held by the Kansas City Gas Company. On November 19, 1906, said grantees commenced distributing and selling to Kansas City, Missouri, and its inhabitants natural gas and ever since said date said grantees and their successors have distributed and sold and said City and its inhabitants have received natural gas at the prices named in said ordinance. Said ordinance is incorporated herein, par. 85.

15. On December 14, 1904, the council of Kansas City, Kansas, passed Ordinance No. 6051, (Exhibit 106 in evidence) granting a certain franchise to the Wyandotte Gas Company, which was approved by the mayor and thereafter accepted by the grantee and has since been assigned and transferred to and is now held by The Wyandotte County Gas Company. On August 10, 1905, said grantee commenced distributing and selling to the City and its inhabitants natural gas and ever since said date said grantees and their successors have distributed and sold and said City and its inhabitants have received natural gas at the prices named in said ordinance. Said ordinance is incorporated herein, par. 85.

16. All the other local defendant companies distributing and selling natural gas in the various defendant cities, towns and communities in eastern Kansas and western Missouri occupy the streets of their respective cities under and pursuant to ordinances of said cities, duly granted to said distributing companies.

1198 17. On November 17, 1906, said McGowan, Small and Morgan, grantees, predecessors of the Kansas City Gas Company, duly entered into a certain written contract (Exhibit 1001-C in evidence) with The Kansas City Pipe Line Company, which was assumed by the Kaw Gas Company, predecessor of the Kansas Nat-

ural Gas Company by lease dated November 19, 1906, between the Kaw Gas Company and The Kansas City Pipe Line Company; and on December 3, 1906, said McGowan, Small and Morgan duly entered into a certain contract in writing (Exhibit 1001-B in evidence) with said The Kansas City Pipe Line Company which was assumed by said Kaw Gas Company by an agreement dated December 5, 1906, both of which said contracts dated November 17, and December 3, 1906, respectively, were further assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, (Exhibit 1013) between the Kansas Natural Gas Company and the Kansas City Pipe Line Company, said contracts of November 17, and December 3, 1906, are substantially the same in form and substance and only the latter need be included. Said contract in writing, dated December 3, 1906, is incorporated herein, par. 85.

18. The Kansas Natural Gas Company and its predecessors furnished and delivered and the Kansas City Gas Company and its predecessors accepted and received natural gas from November 19, 1906, until the appointment of Receivers of the Kansas Natural Gas Company, October 9, 1912, under and pursuant to the terms and provisions of said contracts dated November 17, and December 3, 1906; and its Receivers, have ever since continued to furnish gas in conformity with the orders of court appointing them and their predecessors, to the Kansas City Gas Company and other companies, and have continued to collect therefor upon the ratio of

the division of rates fixed by said contracts; and there has been no agreement between the parties thereto or between the Receivers and the Kansas City Gas Company for the modification or cancellation of said contracts and prior to the final decree in this case there has been no orders entered either by the state court of Montgomery county or by this court specifically adopting said contracts, nor by this court specifically disavowing the same.

19. On February 1, 1906, the Wyandotte Gas Company, predecessor of The Wyandotte County Gas Company duly entered into a certain written contract (Exhibit 108 in evidence) with The Kansas City Pipe Line Company, which contract was assumed by the Kaw Gas Company, predecessor of the Kansas Natural Gas Company under the lease dated February 2, 1906, between the Kaw Gas Company and The Kansas City Pipe Line Company, and again assumed by said Kaw Gas Company under the lease dated November 19, 1906, between the Kaw Gas Company and The Kansas City Pipe Line Company and said contract was again assumed by the Kansas Natural Gas Company under said lease dated January 1, 1908, between the Kansas Natural Gas Company and The Kansas City Pipe Line Company; and there has been no agreement for the modification or cancellation of said contract, and prior to the final decree in this case there has been no orders entered either by the state court of Montgomery county or by this court specifically adopting said contracts, nor by this court specifically disavowing the same. Said contract in writing, dated February 1, 1906, is incorporated herein, par. 85.

20. In 1905 and 1906 the Kansas Natural Gas Company entered into certain contracts with all the other local companies defendants in the above entitled cause, providing for the furnishing of gas to said local companies by the Kansas Natural Gas Company, under which contracts said Kansas Natural Gas Company continued to furnish gas until October 9, 1912, from which time its Receivers have continued the business under the orders of the court and have continued to furnish gas to said various local companies and to collect therefor upon the ratio of the division of receipts fixed by said contracts. Certain of said contracts material here are in evidence as exhibits:

Exhibit 1004 for the Joplin Gas Company;

Exhibit 1005 for the St. Joseph Gas Company;

Exhibit 1006 for the Oronogo Gas Company;

Exhibit 1007 for the Carl Junction Gas Company;

Exhibit 1008 for the Ft. Scott & Nevada Light, Heat, Water and Power Company.

21. On January 1, 1908, the Kansas Natural Gas Company and The Kansas City Pipe Line Company duly entered into a certain lease in writing (Exhibit 1013 in evidence) under which the Kansas Natural Gas Company acquired the use of certain pipe lines and properties of The Kansas City Pipe Line Company; which properties constitute about one-half of the main trunk pipe-line system; and the terms and provisions of said lease were duly carried out by the parties thereto until the appointment of Receivers as recited in par. 8 hereof, since which time said receivers have continued in the possession of the properties of The Kansas City Pipe Line Company and operate the pipe line system of the Kansas Natural Gas Company, including said leased lines, and carried on the business in conformity with the orders of the court. Said lease is incorporated herein, par. 85.

22. On August 10, 1916, Kansas City Gas Company filed with the Public Service Commission of Missouri a "New Schedule of Rates for Gas" and an application to said Commission for the allowance and approval of said schedule; that on said 10th day of August, 1916, said Commission made an order approving said schedule, said schedule and application and order are in evidence as Exhibits 1010 and 1011; thereupon and in conformity therewith the Kansas City Gas Company put said new schedule of rates into effect and has maintained the same to date of decree herein; which are the rates named in Ordinance No. 33887 of Kansas City, Mo. Said schedule, application and order are incorporated herein, par. 85.

23. On January 5, 1912, the attorney-general of Kansas commenced an action in nature of quo warranto, entitled State of Kansas v. Independence Gas Company, The Consolidated Gas, Oil & Manufacturing Company and Kansas Natural Gas Company, No. 13476, in the District Court of Montgomery county, Kansas. The petition in said case, omitting exhibits, is incorporated herein, par. 85.

24. On October 7, 1912, a second mortgage bondholder commenced a suit in the United States District Court for the District of Kansas, entitled John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity. The bill in said suit, omitting exhibits, is incorporated herein, par. 85.

25. On October 9, 1912, Eugene Mackey, President of the Kansas Natural Gas Company and C. S. James, its Secretary, filed answer confessing the bill, as follows:

"That it is advised of the contents, purport and effect of each and every, all and singular the averments, statements, recitals and declarations made, contained and recited in the said bill of complaint, and also with the several charges therein made, and also with the several prayers for relief therein contained, and

1202 Further answering says that each and every, all and singular the averments, statements, recitals, declarations and charges made and contained in the said bill of complaint are true, and that this respondent has no answer or defense to make thereto, and

Further answering the said bill of complaint avers and says that the complaint in the above entitled cause is entitled to each and every, all and singular the relief asked for by him, and that it is right and just that the same should be granted to him by this Honorable Court, and waives any and all notice of the application of the said complainant for the appointment of a receiver *here* herein; and joins in the prayer of the complainant and consents that the Court may forthwith appoint the receiver or receivers applied for for the Kansas Natural Gas Company."

26. On October 9, 1912, Eugene Mackey, Conway F. Holmes and George F. Sharitt were appointed Receivers of the Kansas Natural Gas Company in said creditors' suit by orders, as follows:

"And now, October 9th, 1912, this cause came on for further hearing upon the bill of complaint filed and upon the answer of the respondent, under its corporate seal and sworn to by its President and Secretary, admitting and confessing the truth of all statements, averments and charges in the bill contained, and also the right of the complainant to the relief prayed for, and joining in the prayer of the complainant for the appointment of a Receiver, and waiving all notice of the application therefor; the complainant appearing by his solicitor Charles Blood Smith, Esq., of Topeka, Kansas, and the respondent by its solicitor, John J. Jones, of Chanute, Kansas. And the Court being fully advised of the premises,

It is now ordered, Adjudged and Decreed:

First. That Conway F. Holmes, George F. Sharitt, and Eugene Mackey be and they are now and hereby appointed Receivers of all and singular the assets, lands, tenements and hereditaments of the respondent, the Kansas Natural Gas Company, and all of its  
1203 property, real, personal and mixed, of every nature and kind, wheresoever situated in this Eighth Judicial Circuit, including all pipe lines, compressor stations, pumps, machinery, appliances, fittings and equipment belonging to or connected therewith; and all

oil and gas mining lands, leases and leaseholds and the wells, derricks, drain pipe, casing, tubing, machinery, appliances and equipment thereon connected therewith or belonging thereto; and all leases, contracts, stocks, bonds, obligations, choses in action, accounts and rights, owned by, belonging to, or due to the defendant company; and all rights, franchises, income and profits granted to, acquired by or belonging to the defendant company.

Second. That each of the Receivers shall, before entering upon his duties hereunder give and file with the Court a bond in the penal sum of \$25,000.00, with surety or sureties approved by this Court or the Clerk thereof, and conditioned that he will faithfully perform his duty as Receiver herein and in any ancillary proceedings wherein he may be appointed and well and truly account for any and all moneys or property coming into his hands as such Receiver, and abide and perform all things, which he is herein or may hereafter be directed to perform in this cause or in any ancillary proceedings wherein he is ancillary Receiver.

Third. That upon the filing and approval of the said bonds, the said Receivers (or each of them as fast as his respective bond is filed and approved) be and they are hereby authorized, empowered and directed to take immediate possession of all and singular the pipe lines, compressor stations, leases and other property above described or referred to, wherever the same may be situate or be found and, until the further order of this Court, to continue the operation of the present pipe line system and natural gas business of the defendant company and every part or portion thereof, and to run, manage, conduct and operate such pipe lines and property as the defendant company holds, controls or operates under leases, contracts arrangements or otherwise. All of which is to be done, until the further order of the Court, as heretofore done, run or operated by the defendant Company;

1204 But

The Court expressly reserves to itself the right to pass upon, approve, disapprove, disavow and cancel any and all leases, arrangements and contracts of every nature, kind and description, under or by virtue of which, the defendant company has been or is now operating any of its leased lines and property; or selling or furnishing any of its gas for distribution and sale; or buying and acquiring any gas for use and transportation through its operated lines; and no such lease, arrangement or contract shall be regarded as binding or taken by the Receivers, until expressly ordered by this Court in these proceedings; and nothing herein contained shall be considered or taken as in any way accepting, approving, satisfying or adopting any such lease, arrangement or contract.

The Receivers shall exercise all such powers as are usually exercised by Receivers and all such as are necessary or convenient to the proper conduct by them of the business of the [defendant] corporation and they shall discharge all such duties as are within the line, scope or purpose of their appointment.

Fourth. That the defendant corporation and each and every of its officers, directors, agents and employees and all other persons, associa-

tions and corporations are now and hereby ordered, commanded and directed to turn over and deliver to such Receivers or their duly constituted representatives any and all of the pipe lines, compressor stations, books of account, records, vouchers, deeds, leases, contracts, agreements, notes, accounts, moneys, stock, bonds, obligations and property of every nature and kind, real, personal and mixed, now in or which may hereafter come into his or their hands, control or possession; And

That the defendant corporation and each and every of its said officers, directors, agents and employes and all other persons, associates and corporations are now and hereby ordered, commanded and directed to obey and conform to such orders as may be given to them from time to time by such Receivers (or their duly constituted representatives), in conducting the operations of the said business, and in discharging their labors and duties as such Receivers;

And

1205 That the defendant corporation and each and every of its said officers, directors, agents and employes and all other persons, associations and corporations be and they are now and hereby restrained and enjoined during the pendency of this cause and the administration of the said Receivers, from transferring, selling, disposing of or [interferring] with any of the said pipe lines, compressor stations, and property of the defendant corporation; and from taking possession of or in any way interfering with the same or any part thereof; and from disturbing, preventing or in any way interfering with the Receivers in the possession, control, operation or management of the property, or any part thereof, of the defendant company over which the said Receivers are hereby appointed as such; and from disturbing, preventing or in any way interfering with the Receivers in the discharge of their duties hereunder.

Fifth. The Receivers, in operating, conducting and managing the pipe line system and business of the defendant company are (until the further order of this Court) hereby authorized and empowered:

(a) To manage and operate the said lines and business of the company in such manner as will, in their judgment, produce the most satisfactory results.

(b) To collect and receive all income from the property and business and all debts, accounts, choses in action and revenue, due the defendant company or its business.

(c) To employ and discharge and fix the compensation of all such officers, counsel, attorneys, accountants, managers, superintendents, auditors and employes as are in the judgment of the Receivers deemed necessary to aid in the discharge of their duties.

(d) To institute and prosecute such suits as may be necessary, in the judgment of the Receivers, to protect the property and trusts hereby vested in them and to likewise defend all such suits and actions as may be instituted against them as such Receivers and also to assume and take the prosecution or defense of any and all suits now pending against the defendant company, the prosecution or defense of which will, in the judgment of the said Receivers, be



1206 necessary for the proper protection of the property placed in their charge.

(e) To keep the property of the defendant company, hereby placed in their possession and control, insured in the same manner and to the same extent as it was insured by the company itself or in the judgment of the Receivers may deem fit and proper.

(f) To preserve the trust property in good order and condition, making all needed repairs thereon.

(g) To vote or cause to be voted any and all stock owned by the company in any underlying or subsidiary corporation.

(h) To have the record herein printed, at the expense of the trust, \* \* \* copies the bill, answer and this decree to be for distribution among the bondholders and stockholders of the defendant company.

Sixth. That, until further order of this Court, the Receiver shall out of and from the income and revenue coming into their hands, pay and discharge:

(a) All the expenses of the receivership and of the operation and maintenance of the pipe lines, leases and properties, including all taxes and charges in the nature thereof lawfully imposed upon the property.

(b) All debts lawfully contracted by the defendant company for current operating expenses, material and supplies, since September 1, 1912, including the wages, salaries and expenses of officers, attorneys, managers, superintendents, agents, servants and employees.

Seventh. That the Receivers prosecute and complete the laying and construction of all pipe lines of the company now under way; the removal and re-construction of all pipe lines and compressor stations now under way; the drilling of all oil and gas well- now being drilled; the taking and securing of oil and gas mining leases, now being negotiated for the making of contracts for the purchase of natural gas from producers thereof, to the end that as full a supply of gas, as possible, may be secured for the coming winter; but no contract for the purchase of gas shall be finally entered into and

signed by the Receivers, until first presented to and approved  
1207 by this Court. Out of and from the income and revenue coming into their hands, the Receivers shall pay all cost and expenses of such betterments and improvements, including therein any balances due contractors, laborers, workmen, employes and material men falling due before or after the appointment of the Receivers.

Eighth. That the Receivers take and acquire such new oil and gas mining leases and drill such new wells and enter into such new contracts for the purchase of gas as in their judgment they may deem best and proper, but before any such contracts for the purchase of gas shall become effective, they shall be first submitted to and be approved by this Court.

Ninth. That the Receivers acquaint themselves at once with the extent and condition of the company's affairs, suits and property and within two weeks from the date hereof make and file with this court a full and detailed report, in triplicate, giving:



(a) The size, number, length, character, cost and condition of the company's owned and leased lines.

(b) The number, area, character and location of the company's oil and gas mining leases.

(c) The conditions under which the company secures its supply of gas and the cost thereof.

(d) The prices which it realizes for the gas it sells and copies of the contracts with the distributing companies.

(e) The terms and conditions under which it operates its leased lines and property and copies of operating leases.

(f) Any and all other information, which the Court should have for a full understanding of the company's affairs and business.

(g) A list of the Company's officers, managers, superintendents, auditors and major [employees], showing the services and duties of each and the salaries received.

(h) The supply of gas which is available to the company from all sources.

(i) A review of the Kansas and Oklahoma gas fields, showing their extent, size, condition and worth.

(j) The Receivers' suggestions as to the value of the company's leases and contracts, both for operating lines and furnishing gas to the local distributing companies in the several cities reached by the operated lines of the defendant company and the advisability of disapproving and disavowing any or all of them.

(k) The nature, extent and cost of the betterments now being carried on by the company and the probable ability of the Receivers to pay for the same out of the receipts from the sale of gas and the suggestions of the Receivers as to the advisability of issuing receivers' certificates to complete the said work.

Tenth. That a person selected by the Receiver be and he is hereby appointed the attorney and counsel for the Receivers, at such salary as may be hereafter allowed him by the Court.

Eleventh. That the Receivers on January 1, 1913, and quarterly thereafter until the further order of this court, file itemized reports showing their receipts and disbursements.

Twelfth. That any bondholder or creditor of the defendant company, now or hereafter represented by complainant's counsel, may by hereafter filing herein a pleading so to do, become a party complainant herein, with the same force and effect as if he had joined in the original bill.

Thirteenth. Full right and power are hereby expressly reserved by the Court to make such other and further orders herein as it may hereafter from time to time deem necessary or proper.

Fourteenth. The bill herein having been filed for and on behalf of all bondholders of the company, and these proceedings being instituted for the benefit of all creditors of the company, the costs of this proceeding, including the bill of the solicitor for the complainant, shall be paid by the Receivers out of the trust funds. The bill of the said solicitor to be first approved and allowed by this Court.

Fifteenth. That a copy of the Bill of complaint filed herein be by the parties to this suit exhibited to and filed with each and every

Trustee in any trust deed or mortgage now existing on any property of defendant and file proof of same in this case also file herein a certified copy of any and all such trust deeds and mortgages within 7 days from this date.

1209 Done this 9th day of Oct., 1912, at Kansas City, Kansas.

JOHN C. POLLOCK,

RALPH E. CAMPBELL,

*Judges."*

27. On October 19, 1912, the Fidelity Title & Trust Company, trustee of the first mortgage of the Kansas Natural Gas Company filed (as of October 7, 1912) its bill of intervention in the case of John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity, in which it repeated and alleged all the allegations of the plaintiff's bill, and prayed the same relief.

28. On October 19, 1912, the court entered the following order:

"And now, October 19th, 1912, this cause came on for further hearing upon the bill of complaint filed and upon the answer of the respondent thereto, and upon the petition and bill of complaint of the intervenor, Fidelity Title and Trust Company of Pittsburgh, Pennsylvania, and upon the answer of the defendant, Kansas Natural Gas Company, thereto under its corporate seal and sworn to by its president and secretary, admitting and confessing the truth of all statements, averments and charges in the said petition and bill of complaint of the intervenor, and also the right of the intervenor to the relief prayed for and joining in the prayer of the intervenor for the appointment of a receiver, and waiving all notice of the application therefor, the intervenor appearing by its solicitor, Charles Blood Smith, Esq., of Topeka, Kansas, and the respondent by its solicitor, John J. Jones, Esq., of Chanute, Kansas, and the court being fully advised as to the premises,

It Is Now Ordered, Adjudged And Decreed:

That the prayer of the Fidelity Title and Trust Company, the intervenor, be granted and that it be and now is hereby made a party plaintiff on the record in the above entitled cause nunc pro tunc as of October 7, 1912, and as fully to all intents and purposes as though such from the beginning: And

1210 That the order of this court entered October 9, 1912, with all its appointments, requirements, injunctions and directions, be and the same is now re-ordered, re-adjudged and re-decreed; And

The presentation of the petition of intervention and the filing of the bill of complaint of the intervenor, and all proceedings thereof, being for the common good of all stockholders, bondholders and creditors of the defendant, the costs and expenses thereof, including the bill of the solicitor, are directed to be paid by the receivers out of the common fund, but such bill of the solicitor shall be first presented to and approved by this court.

JOHN C. POLLOCK, *Judge."*

29. On October 19, 1912, Eugene Mackey, President, and C. S. James, Secretary of the Kansas Natural Gas Company, confessed the bill of intervention of the Fidelity Title & Trust Company and made the same answer as above set forth to the bill of John L. McKinney.

30. The Receivers duly qualified, took possession of said properties, and the business of the Kansas Natural Gas Company and thereafter operated the same under the order of the court.

31. On February 3, 1913, the trustee of the first mortgage bonds of the Kansas Natural Gas Company commenced a foreclosure suit in the District Court of the United States for the District of Kansas, entitled Fidelity Title & Trust Company v. Kansas Natural Gas Company, No. 1-N, Equity, alleging default on its mortgage bonds and praying the appointment of Receivers of the Kansas Natural Gas Company and foreclosure of its mortgages; and on the same day the Kansas Natural Gas Company confessed the bill. Said bill and answer, omitting exhibits, are incorporated herein, par. 85.

32. On February 3, 1913, the court extended the receivership in the McKinney case to the foreclosure suit by order as follows:

"On motion of complainant, the defendant, The Kansas Natural Gas Company, herein appearing and consenting thereto;

It Is Ordered, That the Receivership heretofore existing by order of this Court in a certain suit, No. 1351, wherein John L. McKinney and The Fidelity Title & Trust Company were complainants, and The Kansas Natural Gas Company defendant, be and the same hereby is extended on the same terms and conditions to this suit, and the Receivers, Conway F. Holmes, George F. Sharitt, and Eugene Mackey, be and they are hereby appointed Receivers of all and singular the property described in the bill of complainant herein.

JOHN C. POLLOCK,  
*United States District Judge.*"

33. On February 15, 1913, the state court entered judgment in State of Kansas v. Independence Gas Company et al., No. 13476, pending in the District Court of Montgomery County, Kansas, as follows:

*"Journal Entry, Restraining Order, Injunction and Decree.*

"Now to-wit, on this fifteenth day of February, 1913, the same being one of the regular judicial days of the January, 1913, term of the District Court of Montgomery County, Kansas, this cause coming on for hearing upon the abstract, briefs and oral argument of plaintiff and defendants, the plaintiff appearing by John S. Dawson, its attorney general, and O. P. Ergenbright, T. S. Salathiel and Chester L. Long, its attorneys, and the defendant Kansas Natural Gas Company appearing by Eugene Mackey, J. J. Jones and F. J. Fritch, its attorneys, and the defendants, The Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company [appearing] by Stanford & Stanford, their attorneys, and the

court being fully advised in the premises, upon the finding  
1212 of fact and conclusions of law this day made, finds that judgment should be awarded to the plaintiff, and further finds that the Independence Gas Company has forfeited its right to exist as a corporation in the state of Kansas and that its dissolution should be decreed; that the Consolidated Gas, Oil and Manufacturing Company has unlawfully perverted and abused its corporate privileges and that it has been a willing and active participant in a combination in restraint of trade with the defendant, The Kansas Natural Gas Company, in the business of producing, transporting and selling natural gas, an article of domestic raw material and an article and commodity of trade and commerce and an aid to commerce within the state of Kansas, which combination was made with a view to prevent and tended to prevent free competition in the production, purchase, distribution and selling of natural gas and which combination likewise tended to fix and did fix and control the price of natural gas within the state of Kansas; the court further finds that the defendant, The Consolidated Gas, Oil and Manufacturing Company, has disabled itself from performing its corporate functions under its charter and discharging its duty to the public of producing, transporting and distributing natural gas and has subjected itself illegally to the dominion and control of the Kansas Natural Gas Company; the court further finds that the Kansas Natural Gas Company, a Delaware corporation, duly authorized and licensed to do business in the state of Kansas, is a trust and monopoly, and secured a monopoly in the business of producing, distributing and selling natural gas in the state of Kansas, that it has effected a combination in restraint of trade in the gas business and has acquired control and dominion over the gas fields of Kansas and has illegally acquired the power to dictate the price to the producer and to the consumer of natural gas, an article of domestic raw material, and an article and commodity of trade and commerce and an aid to commerce within the state of Kansas; the court further finds that receivers for the gas business and gas property of the Consolidated  
1213 Gas, Oil and Manufacturing Company should be appointed and the business thereof taken charge of by the court through such receivers and that the defendant, The Consolidated Gas, Oil and Manufacturing Company, should be restrained from any further participation in any illegal combination in restraint of trade between the said company and the Kansas Natural Gas Company and that the Consolidated Gas, Oil and Manufacturing Company should be required to resume and restore its corporate functions of owning leases for gas, producing, transporting, delivering and selling the same; the court further finds that the defendant, Consolidated Gas, Oil and Manufacturing Company should resume possession and control of its properties which it has heretofore illegally and in violation of its corporate power and in violation of the anti-trust laws of the state of Kansas transferred to the Kansas Natural Gas Company; the court further finds that under the evidence a complete forfeiture of the charter and right of the Kansas Natural Gas Company, the defendant, to transact business within

the state of Kansas would be just so far as the defendant itself is concerned, but that it does not deem such an order necessary or advisable at this time because of the large number of people throughout the state of Kansas and parts of Missouri who are or might be injured by a judgment of complete ouster against the said defendant the Kansas Natural Gas Company, and that therefore a judgment of limited ouster would better serve the necessities of the people of Kansas and all those dependent upon the Kansas Natural Gas Company for public service; the court further finds that the Kansas Natural Gas Company the defendant, should be ousted, prohibited and enjoined from any meddling or interfering with the corporate powers of the Consolidated Gas, Oil and Manufacturing Company, its co-defendant, and that receivers should be appointed for the Kansas Natural Gas Company defendant here, so that this court through its receivers, may take charge of and manage the corporate property and business of the said defendant until the perversions and abuses of privileges by the said defendant are corrected and so as to protect the rights of all parties, especially all the gas consumers of the defendant company and all parties interested in the property of the Kansas Natural Gas Company, whether as bondhold-

1214 ers, trustees of bondholders, distributors of gas or otherwise;

the court further finds that a receivership of each of the defendant companies is especially necessary to bring about a separation of the corporate property of the Consolidated Gas, Oil and Manufacturing Company and its distributing plant at the city of Independence from the control and dominion and commingling with the property of the Kansas Natural Gas Company and for furnishing said Consolidated Gas, Oil and Manufacturing Company a sufficient supply of gas to discharge its corporate and public duties without injury to the gas consumers supplied by the Kansas Natural Gas Company; and the court further finds that such separation should be brought about in such a gradual manner as to protect all interests involved and all consumers of gas throughout the pipe line system; the court further finds that in order to properly protect the public and the consumers of gas throughout the pipe line system of the Kansas Natural Gas Company, each and all of the distributors of gas throughout the system should be brought into this court and made parties hereto and that pending an ultimate determination of this matter or at least until the further order of this court or the judge thereof, each and — of them should be enjoined from [appearing] in any other court for the determination of any and all matters in connection with their contracts with the defendant The Kansas Natural Gas Company, for the furnishing them with a supply of gas and that in the meantime each and all of them should be enjoined from discontinuing the supply of gas to any of their consumers or in any manner raising or increasing the price of gas to their consumers without the express order and permission of the Public Utilities Commission of the state of Kansas or until all questions involved herein with reference to the conduct of the business between the defendant Kansas Natural Gas Company and such distributors is finally disposed of or until this court relinquishes control

of the property and business of the said defendant, The Kansas Natural Gas Company.

Now, therefore, it is ordered and decreed, that the charter 1215 and corporate privileges of the Independence Gas Company, one of the defendants herein, are hereby forfeited, and said corporation is dissolved and any assets which it may have, real, personal or mixed, are hereby ordered to be delivered into the possession of the Consolidated Gas, Oil and Manufacturing Company.

It is further ordered and adjudged that the Consolidated Gas, Oil and Manufacturing Company forthwith proceed to resume its corporate business of producing, purchasing, distributing, delivering and selling natural gas according to the terms of its corporate charter and according to the methods and customs used in its corporate business before it disabled itself so to do through the transfer of its gas properties and gas business to the Kansas Natural Gas Company.

It is further ordered that George T. Guernsey and A. W. Shulthis be, and they now are hereby appointed receivers of all and singular, the assets, lands, tenements, and hereditaments of the defendant, The Consolidated Gas, Oil and Manufacturing Company, used in connection with its gas business and all of its property real, personal and mixed of every nature and kind [wheresocere] situate and belonging to the defendant, Consolidated Gas, Oil and Manufacturing Company and used or necessary for its use in connection with its gas business; that each of said receivers shall, before entering upon his duties hereunder, give and file with the court a bond in the sum of fifteen thousand dollars, with surety or sureties approved by the court or the clerk thereof, conditioned that he will faithfully perform his duty as receiver and well and truly account for any and all property or moneys coming into his hands and [-bide] and perform all things which he is herein or may hereafter be directed to perform in this case or in any ancillary proceedings wherein he may be ancillary receiver.

It is further ordered that R. S. Litchfield and John M. Landon be and they are now hereby appointed receivers of all and singular the assets, lands, tenements and hereditaments of the defendant, The Kansas Natural Gas Company and all of its property, real, personal and mixed, of every nature and kind wheresoever situate in- 1216 cluding all pipe lines, compressor stations, pumps, machinery, appliances, fittings and equipment connected with or belonging thereto; and any and all gas and oil mining lands, leases and leaseholds and the wells, derricks, drain pipes, casing, tubing, machinery, appliances and equipment therein connected therewith or belonging thereto and all leases, contracts, stocks, bonds, obligations, choses in action, accounts and rights owned by, belonging to or due to the defendant company and all rights, franchises, income and profits granted to, acquired by or belonging to the defendant company; that each of said receivers shall, before entering upon his duties hereunder, give and file with the court a bond in the sum of fifty thousand dollars with surety or sureties, approved by this court or the clerk thereof, and conditioned that he will faith-



fully perform his duty as receiver herein and in any ancillary proceedings wherein he may be appointed, and well and truly account for any and all moneys or property coming into his hands as such receiver and abide and perform all things which he is herein or may hereafter be directed to perform in this cause or in any ancillary proceedings where he is ancillary receiver;

It is further ordered that said receivers shall exercise all such powers as are usually exercised by receivers and all such as are necessary or convenient to the proper conduct by them of the business of the defendant corporations, and they shall discharge all such duties as are within the line, scope or purpose of their appointments.

It is further ordered that the defendant corporations and each and every of its officers, directors, agents and employees and all other persons, associations and corporations be and now are hereby ordered, commanded and directed to turn over and deliver to such receivers of the Kansas Natural Gas Company, or their duly constituted representatives, any and all of the pipe lines, compressor stations, books of account, records, vouchers, deeds, leases, contracts, agreements, notes, accounts, moneys, stocks, bonds, obligations and property of every nature and kind, real, personal and mixed, now in or which may hereafter come into his or their hands, control

1217 or possession; it is further ordered that the defendant corporation, the Kansas Natural Gas Company and also the defendant corporation, the Consolidated Gas, Oil and Manufacturing Company, and each and every of their said officers, directors, agents and employees, and all other persons, associations and corporations, obey and conform to such orders as may be given to them from time to time by such receivers (or their duly constituted representatives) in conducting the operations of the said business and in discharging their duties as such receivers.

It is further ordered, for the purpose of temporary relief, that the receivers herein appointed for the business and property of the Kansas Natural Gas Company, deliver to the receivers of the Consolidated Company, the franchise known as the Nickerson franchise, giving the right to occupy the streets and alleys of the city of Independence for the distribution of natural gas, and also deliver the distributing system of the city of Independence, transferred by the said Consolidated Company to the said Kansas Natural Gas Company and also deliver to said receivers of the Consolidated Company a sufficient supply of gas to carry out the said Consolidated Company's duties to the public; and it appearing that the receivers of the District Court of the United States for the District of Kansas have taken physical possession of all the property of the Kansas Natural Gas Company, the receivers herein appointed by this court for the Kansas Natural Gas Company are hereby ordered and directed in conjunction with the Attorney General of the state of Kansas to appear in the said United States Court and they are directed to urge the prior jurisdiction of this court over the subject matter and the parties and the rights of the state of Kansas herein, and petition a discharge of the receivers appointed at the instance of the bond holders and pray a delivery of the property to the receivers appointed



by this court. Upon obtaining such possession this court will then by its further orders of injunction, and otherwise, protect the interests of all parties, the public, the gas consumers throughout the pipe line system, the bond holders and everyone interested.

1218 It is further ordered that the following firms, persons, companies and corporations are necessary defendants for the full and complete determination of all matters involved herein and are hereby ordered to be made parties defendant herein and the Clerk of this court is hereby ordered to issue proper process therefor, to-wit:

The Kansas City Pipe Line Company, a corporation of New Jersey.

The Marnet Mining Company.

The Kaw Gas Company, a corporation of West Virginia.

The Olathe Gas Company, a corporation of West Va.

The Leavenworth Light & Heat & Power Company, a Kansas corporation.

The Wyandotte Gas Company, a corporation of New York.

The Central Gas Company, a corporation of Missouri.

The Fort Scott Gas & Electric Company, a corporation of Kansas.

C. H. Pattison.

The Elk City Oil & Gas Company, a corporation of Kansas.

The Farmers Gas Company, a corporation of Kansas.

The Weir Gas Company, a corporation of Kansas.

The Prairie Oil & Gas Company, a corporation of Kansas.

The Parsons Natural Gas Company, a corporation of Kansas.

The United Gas and Improvement Company, a corporation.

The Thayer Gas Company, a corporation.

The American Gas Company, a corporation of West Va.

The Liberty Gas Company, a corporation of Kansas.

The Douglas County Gas and Oil Company.

The Consumers Light, Heat & Power Company, a corporation of Delaware.

1219 The Peoples Gas Company, a corporation of Kansas.

The Coffeyville Gas and Fuel Company, a corporation of Kansas.

The Home Gas Company, a corporation of Kansas.

Atchison Ry. Light & Power Company.

Citizens Light, Heat & Power Company.

Ottawa Gas & Electric Company.

Moran Gas Company.

Thayer Gas Company.

Union Gas & Traction Company.

Home Light, Heat & Power Company.

And they and each of them are ordered to be served with copies of this decree and they and each of them are hereby enjoined and restrained from participating in any combination in restraint of trade in the buying, selling, transporting or distributing of natural gas and from shutting off or limiting their supply of gas and from advancing the price of gas or participating in any attempt to advance the price of gas to the consumers of gas within the state of Kansas, without the express order and permission of the Public Utilities Com-

mission of the state of Kansas, or of this court, until the final disposition of this action or the further order of this court or the judge thereof.

And it is further ordered that said parties, each and every of them, are enjoined and restrained from appearing in any other court for the determination of any matter in connection with their contracts with the defendant The Kansas Natural Gas Company, for the furnishing of a supply of gas or concerning any of the other matters involved in this action or affecting the corporate property, assets or liabilities of the Kansas Natural Gas Company.

It is further ordered that each and every of the parties mentioned in this decree, and all other persons, are hereby enjoined and restrained from taking, withholding or concealing from the receivers of this court any assets or property of any kind whatsoever which by the terms of this decree are temporarily vested in the receivers of this court, and all parties mentioned in this decree and all  
1220 other persons are hereby ordered to deliver over to the receivers of this court any and all assets and property of whatsoever sort belonging to the Kansas Natural Gas Company or the Consolidated Gas, Oil and Manufacturing Company.

It is further ordered that the receivers of this court, for the Kansas Natural Gas Company and the Consolidated Gas, Oil and Manufacturing Company, as rapidly as they can familiarize themselves with the details of the business and properties of the defendants, work out a tentative plan for the segregation of the properties of said defendants and to report to the court the feasibility of such plan to the end that these receiverships be terminated and the corporate abuses of these defendants be speedily corrected, and the corporate management of these corporate properties, if possible, returned to its owners and officers thereof as contemplated by law.

And the court for the time being hereby retains jurisdiction and control of each of the above named defendants and their properties until the terms of this decree are finally, fully and completely established; and it is further ordered and adjudged that the defendants pay the costs of this proceeding; and jurisdiction is further retained for the purpose of hereafter fixing and determining the allowance of attorneys' fees for plaintiff's attorneys and jurisdiction is further retained by the court to make such other and further orders as may seem meet and proper and as the progress of the proceedings demands.

THOMAS J. FLANNELLY, *Judge.*"

34. On February 18, 1913, the attorney-general of Kansas filed a petition in John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity, pending in the United States District Court of Kansas, praying for the possession of the properties of the Kansas Natural Gas Company, as follows:

"Come now John S. Dawson, Attorney General of the State of Kansas, and John M. Landon and R. S. Litchfield, citizens

1221 of Independence, Montgomery County, Kansas, and appearing for the purposes of this application and petition only, and not in subordination to or recognition of the propriety of this main proceeding, but as the duly authorized officers and representatives of the District Court of Montgomery County, Kansas, present this petition and show to this Honorable Court the following facts and matters, to the end of making plain the propriety of this request and prayer of the District Court of Montgomery County, Kansas, here and now presented through its said officers to yield to said last named court the physical control of the properties over which said last named court alone has legal dominion, but which is now in the possession of certain officers of this, the United States District Court for the District of Kansas.

(1) On January 5th, 1912, the State of Kansas by its Attorney General brought an action in the nature of quo warrants in the District Court of Montgomery County, Kansas, against the Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company, Kansas Corporations, and Kansas Natural Gas Company, a Delaware corporation authorized to do business in Kansas, charging said corporations with misuse, perversion and abuse of their corporate privileges, and with having contrived and engaged in an illegal combination in restraint of trade in violation of the anti-trust laws of the State of Kansas and in violation of the national anti-trust laws which are a part of the civil jurisprudence of the State of Kansas, by which unlawful combination the said Kansas Natural Gas Company had secured a monopoly of the sources of gas supply and a monopoly of the sale and distribution of gas to the people of Kansas, and by which unlawful combination the selling price of gas, a product of domestic raw material, an article of commerce, and an aid to commerce, had been advanced and controlled by the said Kansas Natural Gas Company. A true copy of the petition of the State of Kansas in said action is contained in an abstract filed herewith, but not physically attached hereto on account  
1222 of its size and bulk, but which is marked "Kansas Petition Exhibit A," and made a part hereof.

(2) The said petition prayed for such relief as is sanctioned by the laws of the State of Kansas, and which is in part as follows:

Section 1728, General Statutes 1909, provides:

'Any corporation which is insolvent or which perverts or abuses its corporate privileges may be dissolved by order of the District Court having jurisdiction, on petition of the attorney general, supported by positive affidavit; and if the court finds that the petition is true, it may appoint a receiver to wind up the affairs of the corporation and decree its dissolution; provided that the court may at its discretion appoint a receiver at the time of the filing the petition by the attorney general; provided also that if the dissolution of any such corporation is not considered by the court to be either necessary or advisable and that the corporate abuses can be corrected without dissolution, receivers may be appointed to manage the corporate property and business under the supervision of the court until fully

corrected, after which the corporate management and property may be returned to the owners and managers thereof; and the court may remove any officers responsible for the abuse and mismanagement of the corporate property and business and may order the calling of an election of the stockholders to fill such vacancies.'

(3) Issues were joined by the filing of demurrers by the defendants on February 12th, 1912, and February 19th, 1912, which demurrers were overruled by the court on April 29th, 1912; and on May 21st, 1912, answers in the nature of general denials to all the allegations of the petition of the State of Kansas were filed by each of the defendants.

(4) Said demurrers and the rulings thereon and the answers of defendants appear in the abstract entitled 'Kansas Petition Exhibit A,' filed herewith.

(5) Evidence was taken and heard by the court in the said action in conformity with the laws of the State of Kansas and a trial had before the Montgomery County, Kansas, District Court, T. J. Flannelly, District Judge presiding, on September 30th, 1912, and 1223 on October 1st, 1912, and on said October 1st, 1912, it was agreed in open court between counsel for the State of Kansas and for the defendants and with the approval of the court, that owing to the importance of the action its gravity and the public and property interests therein, and the voluminous record thereof, that time should be taken to abstract the record and print such abstract and to submit printed briefs to aid the court in summarizing the facts and determining the law pertaining thereto, and the State of Kansas by its attorney general and counsel, set about with due diligence the preparation of such abstract and brief, a copy of which abstract is filed herewith, marked 'Kansas Petition Exhibit A.'

(6) Some time thereafter plaintiff's abstract and brief were duly filed and the brief of defendants was likewise filed, and on February 3rd, 1913, the court heard the arguments of counsel for plaintiff and defendants, and on February 15th, 1913, the District Court of Montgomery County, Kansas, delivered its opinion and rendered judgment in said action, made findings of fact, conclusions of law, and issued certain restraining orders, injunctions and rendered its decree, all of which are filed herewith, marked 'Kansas Petition Exhibit B' and made a part hereof, but not physically attached owing to its size, and for the greater convenience of this court.

(7) Said opinion and judgment, findings of fact, conclusions of law, restraining order, injunction and decree held that evidence introduced sustained all the material allegations of the plaintiff's petition, declared the Kansas Natural Gas Company an illegal combination in restraint of trade, and that each and all of the defendants had perverted, misused and abused their corporate privileges, had violated the Kansas anti-trust laws and the federal anti-trust laws, which federal anti-trust laws are a part of the civil jurisprudence of the State of Kansas; and the said court appointed two of these petitioners, John M. Landon and R. S. Litchfield, as receiver for the Kansas Natural Gas Company, fixing their bonds in the sum of Fifty Thousand Dollars Each, and on the same date, February 15th, 1913,

said petitioners, duly qualified as such, and gave said bonds, which bonds were duly approved by the court, and now appear before this Honorable Court in obedience to the order of the District Court of Montgomery County, Kansas, which order is filed herewith as part hereof, marked 'Kansas Petition Exhibit B,' at pages 36 to 42, inclusive, and at page 50 thereof, and which order is in part as follows:

'The relationship of these companies to the public is such that a complete judgment of dissolution and ouster would punish the public rather than the offending companies. A dissolution of the Consolidated Gas, Oil and Manufacturing Company is not advisable, nor would a complete ouster of the Kansas Natural Gas Company be advisable, so that the court will take charge of all the gas business of the Consolidated Company and all the business of the Kansas Natural Gas Company, by its receivers, and manage the corporate property and business, protecting all gas consumers and the public until the abuses are fully corrected.

And here is presented a question of conflicting jurisdiction. It is brought to the attention of this court on the argument on February 3, 1913, that receivers have been appointed for all the property of the Kansas Natural Gas Company in the Federal Court for the District of Kansas, and that such receivers are now in charge. It seems that on October 9, 1912, after the trial of this case on October 1, 1912, a suit was brought in the Federal Court at Kansas City, Kansas, by one John L. McKinney, a bond holder, against the Kansas Natural Gas Company, and that the President of the Kansas Natural Gas Company who was also attorney and of counsel for the defendant company in the case in this court, appeared with the complainant in the federal court, admitted all the allegations of the complaint, confessed insolvency, waived notice of the application for a receiver and receivers were appointed; he himself being one of three receivers appointed by the court. This court cannot enjoin the receivers of the Federal Court or render any effective judgment, because the Kansas Natural Gas Company is not in the possession of the property—in a word, this court is powerless to execute its decrees herein. \* \* \*

The receivers herein appointed will be directed in conjunction with the Attorney General of the state to appear in the federal court, urge the prior jurisdiction of this court and the rights of the state of Kansas herein and petition the discharge of the receivers appointed at the instance of the bond holders and pray a delivery of the property to the receivers appointed by this court.

\* \* \*

It is further ordered, (that) \* \* \* the receivers herein appointed by this court for the Kansas Natural Gas Company are hereby ordered and directed in conjunction with the Attorney General of the state of Kansas to appear in the said United States Court and they are directed to urge the prior jurisdiction of this court over the subject matter and the parties and the rights of the state of Kansas, herein; and petition a discharge of the Receivers appointed at the instance of the bond holders and pray a delivery of the property to the receivers appointed by this court. \* \* \*

Wherefore, and in obedience to the order of the Montgomery County District Court as above, and having disclosed to this Court facts and circumstances which if made known to this court at the time of the application for the appointment of receivers in this cause was made to this court, would have caused this court to refuse such application, and which demonstrates the prior jurisdiction of the District Court of Montgomery County, Kansas, and the present right of said last named Court to alone exercise dominion over the properties hereinbefore referred to, these petitioners respectfully appear before this Honorable Court and urge the prior jurisdiction of the Montgomery County District Court and respectfully show that the State of Kansas is without adequate power to enforce its laws and vindicate its offended authority, and that the District Court of Montgomery County, Kansas, is powerless to enforce its judgment because the property of the Kansas Natural Gas Company is now in the control of this Honorable Court through its receivers heretofore appointed, and these your petitioners respectfully petition the discharge of the receivers of this court and pray a delivery of the property of the Kansas Natural Gas Company to the receivers of the Montgomery County, Kansas, District Court. And this your petitioners, as in duty bound, will ever pray.

JOHN S. DAWSON,

*Attorney General of the State of Kansas.*

JOHN M. LANDON,

R. S. LITCHFIELD,

*Petitioners,*

By JOHN H. ATWOOD,

*Their Solicitor."*

35. On March 24, 1913, The Kansas City Pipe Line Company filed with leave of court its intervening petition in case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, Equity, consolidated with No. 1351, Equity, demanding the payment of certain pipe-line rentals. Said intervening petition and the answers thereto, omitting certain exhibits, are incorporated herein, par. 85.

36. On June 5, 1913 (Honorable John A. Marshall, J.), assigned to said case, sustained the petition of the attorney general of Kansas and ordered the delivery of the properties within the State of Kansas to Landon and Litchfield, Receivers, appointed by the District Court of Montgomery County, Kansas, in said quo warranto suit. (206 Fed., 772.)

37. On December 17, 1913, the United States Circuit Court of Appeals sustained said order. (209 Fed., 300.) A further order touching the administration of this property will be found in 219 Fed., 614.

38. On December 23, 1913, the attorney general of Kansas filed a further motion for the surrender to the State Receivers of all moneys in the hands of the Federal Receivers accumulated during the receivership, and in open court asked the surrender of all the



properties of the Kansas Natural Gas Company owned and leased in the states of Kansas, Missouri and Oklahoma.

1227 39. On January 24, 1914, the United States District Court (Honorable Smith McPherson, J.) in the McKinney and foreclosure suits ordered the delivery of all moneys and properties in the hands of the Federal Receivers to the State Court Receivers. Said order is incorporated herein, par. 85.

40. From this order The Kansas City Pipe Line Company appealed to the Circuit Court of Appeals, which court modified and affirmed said order. (217 Fed., 187.)

41. On September 22, 1914, the United States District Court entered an order delivering to the State Receivers all the properties of the Kansas Natural Gas Company owned and leased in the States of Kansas, Missouri, and Oklahoma and all moneys accumulated during the receivership; thereupon said properties, moneys and business were turned over to said State Receivers and retained and operated by them until discharged as State Receivers by the State Court. Said order is incorporated herein, par. 85.

42. On December 29, 1914, certain parties in interest filed a "stipulation" in said quo warranto suit known as "Creditors' Agreement." Said stipulation is incorporated herein, par. 85.

43. On January 9, 1915, John M. Landon and R. S. Litchfield were appointed ancillary Receivers in the McKinney and foreclosure suits. Said order is incorporated herein, par. 85.

44. The proceedings before the Public Utilities Commission of Kansas appear in the statement of the evidence prepared by said Commission on file. Said statement is incorporated herein, par. 85.

45. On October 19, 1914, the Public Service Commission of Missouri suspended a schedule of rates filed by the St. Joseph Gas 1228 Company and entered upon a hearing as to the reasonableness of said schedule, and thereafter suspended said schedule for a further period of six months pending such hearing, and thereafter, upon a hearing, on November 27, 1915, held said schedule to be unreasonable and unjust and ordered the same to be canceled. That said schedule of rates was for natural gas furnished by the Receiver to the local distributing company at St. Joseph, Missouri.

46. On August 17, 1916, upon the filing of a schedule of rates by the Joplin Gas Company, the Public Service Commission of Missouri, pending a hearing as to the reasonableness of said rates, and for the purpose of an investigation, on its own motion made an order suspending said schedule of rates for a period of 120 days; and thereafter, pending a hearing, and pending the trial of this case, it made a further order suspending said schedule for the further period of six months. On September 13, 1916, and thereafter, the same orders were made respecting the Fort Scott & Nevada Light, Heat, Water & Power Company; and on September 18, 1916, and thereafter, the same orders were made respecting The Weston Gas & Light Company. Said orders of suspension were permitted to expire by the Public Service Commission without a hearing. That said schedules of rates were for natural gas furnished by the Receiver to said local distributing companies.



47. The Public Service Commission of Missouri claims jurisdiction over the distribution and sale of natural gas by the companies doing business in the Cities of Missouri and the right and power to fix and regulate the rates thereof to be paid by consumers in the Cities of Missouri to the local companies doing business in said Cities of said State.

1229 48. The Public Service Commission of Missouri claims jurisdiction over the distribution and sale of natural gas in Missouri by the Kansas Natural Gas Company and its Receivers and the right and power to fix and regulate the price therefor to be paid by the local companies doing business in Missouri to the Kansas Natural Gas Company or its Receivers.

49. The Public Service Commission of Missouri, through its counsel, in open court threatened to make, enter and enforce all orders that are or may become necessary or proper in the exercise of the jurisdiction, rights and powers of the Commission claimed in the last two preceding paragraphs and various orders were shown exercising those rights, powers and jurisdiction.

50. Neither the Kansas Natural Gas Company nor its Receivers were ever given or granted or have, own or hold any franchise, right or license to occupy or use the streets of any of the defendant Cities of Missouri or Kansas, except Alba, Neck City and Purcell, small villages in Missouri, and Independence, Kansas, where said Kansas Natural Gas Company holds franchises to use the public streets and distribute and sell gas direct to consumers.

51. Neither the Kansas Natural Gas Company nor its Receivers have, own or hold any interest in any of the defendant distributing companies' properties doing business in the cities of Kansas or Missouri.

52. The Receivers have continued to operate the pipe-line system and the natural gas business of Kansas Natural Gas Company under the direction of the District Court of Montgomery County, Kansas, and under the direction of this court, and to run, manage, conduct, and operate said pipe-line property and business in  
1230 substantially the same manner, in so far as the transportation, distribution and sale of gas is concerned as the same was done, run and operated by the defendant Kansas Natural Gas Company, prior to their appointment, except in the Cities of Kansas City, Missouri, and Kansas City, Kansas, where the two distributing companies refused to put in force and effect the rate made by the Receivers under direction of the state court on or about September 1, 1916; by reason whereof the Receiver then billed said distributing companies at the rate of 18 cents per thousand cubic feet of gas delivered to said distributing companies at their gates, which bills are now being contested in the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., No. 1-N, Equity, consolidated with No. 1351, Equity, still pending in the United States District Court for the District of Kansas; and the order of the state court approving said rates fixed by the Receiver of said court is now pending on appeal in the Supreme Court of the State of Kansas undetermined. The demands of said Receiver for 18 cents at the city gates and the

distributing companies' refusals to pay the same are in writing, incorporated herein, par. 85.

53. The Receivers are now operating the pipe-line system described and shown in plaintiff's bill and the intervening petition of The Kansas City Pipe Line Company filed in case No. 1351, Equity.

54. None of the natural gas furnished by the Receiver is produced in Missouri, a small percentage not exceeding 6% thereof is produced in Kansas and the greater portion thereof is produced in Oklahoma. Approximately 44% of the gas furnished by the Receiver is sold in Kansas and 56% is sold in Missouri.

1231 55. On the trial V. A. Hays, President of the Kansas Natural Gas Company and auditor for the Receiver was asked to furnish a statement of the bonds outstanding at the time of appointment of Receivers, October 1, 1912, amounts paid during the receivership and the amounts outstanding on July 10, 1917, as per the mortgages, which statement is as follows:

Name of issue.	Outstanding Oct. 1, 1912.	Redeemed & canceled.	Outstanding July 10, '17.
K. N. G. Co., 1st Mtg. . .	1,600,000.00	1,171,200.00	428,800.00
K. N. G. Co., 2nd Mtg. . .	2,267,000.00	None	2,267,000.00
Marnet 1st Mtg. . .	765,000.00	474,000.00	291,000.00
K. C. P. L. Co., 1st Mtg. .	2,545,000.00	1,162,000.00	1,383,000.00
	<hr/> 7,177,000.00	<hr/> 2,807,200.00	<hr/> 4,369,800.00

56. On July 10, 1917, the outstanding indebtedness of the Kansas Natural Gas Company and its leased lines as per the "Creditors' Agreement" was as follows:

K. N. G. Co. 1st Mtg. . . . .	428,000.00
K. N. G. Co. 2nd Mtg. . . . .	1,700,000.00
Marnet Mining Co., 1st Mtg. . . . .	291,000.00
K. C. P. L. Co. 1st Mtg. . . . .	585,000.00
	<hr/> 3,005,050.00

57. The Kansas Natural Gas Company has no general or unsecured creditors; there having been no receivers' certificates issued and the Receivers have used the current income for current working capital and operating expenses and to pay bonds and interest as above shown.

1232 58. The value of the Kansas Natural Gas Company's pipe-lines and properties owned and leased is between \$8,000,000 and \$14,000,000. The court found the fair value of the physical properties used in transportation to be at least \$7,000,000.

59. Henry L. Doherty & Company of 60 Wall Street, New York City, have, during the progress of the trial of this case, purchased or contracted to purchase certain stocks and bonds of the Kansas Natural Gas Company and its leased lines, as shown by statements in evidence (Exhibits 2000, 2001, and 2020 and letters attached).

60. On the trial Mr. Doherty was asked to furnish the court a statement of the stocks and bonds so purchased or contracted for by Henry L. Doherty & Company or the Cities Service Company on the various properties and their gas pipe-lines in the Mid-Continent gas field, to which he replied as follows:

Henry L. Doherty & Company,

Sixty Wall Street,

New York,

August 20th, 1917.

Mr. H. Harcourt Horn, Federal Building, Minneapolis, Minn.

DEAR SIR: The following is, as nearly as we can check it, the information asked for in your favor of August 9th:

Kansas Natural Gas Co. Stock.....	113,048	shares
Kansas Natural Gas Co. 2nd Mtg. 6's.....	1,561,000	par value
Kansas Natural Gas Co. 1st Mtg. 6's at 268 per bond .....	70,216	face value
Marnet Mining Company 1st Mtg. 6's.....	291,000	par value
Marnet Mining Company Capital Stock.....	214,500	par value
Kansas City Pipe Line Co. Capital Stock.....	2,249,600	par value
1233 Kansas City Pipe Line Co. 1st Mtg. 6's.....	1,383,000	par value
Quapaw Gas Company Stock.....	2,996,300	par value
Wichita Natural Gas Co. Stock.....	2,997,300	par value
Wichita Pipe Line Co. Stock.....	1,997,300	par value
Empire Gas & Pipe Line Co. Stock.....	5,000	par value
Claim Against Kansas Natural.....	105,239	par value

Very truly yours,  
(Signed)

HENRY L. DOHERTY.

H. L. D.-H.

61. The production, transportation, distribution and sale of natural gas was and is accomplished in the following manner:

The Kansas Natural Gas Company and its receivers acquire the gas by drilling, purchase and otherwise in southern Kansas and in Oklahoma and collect it into pipe lines. The gas is caused to flow from the wells into the gathering lines of the Kansas Natural Gas Company by the force of "rock pressures" which are the pressures at which gas is found in place in the earth, varying from 15 pounds to 500 pounds per square inch. These initial pressures carry the gas along in the pipe lines for some distance and then the pressures become lower and in order to carry the gas farther it is necessary to pass it into compressor stations where, by means of engines, the gas is compressed and raised to a pressure of approximately 300 pounds per square inch. Emerging from the compressors, the gas flows

along the pipe lines by reason of the increased pressure, toward the next compressor station which it reaches at a reduced pressure; it is again compressed and sent forward, which process continues till the gas reaches the distributing system or gas holders of the Kansas City Gas Company, or other local gas company. The whole process is merely the application of the law of flowing gases from a given pressure or density to a lower pressure or density.

The plaintiff offered in evidence over defendants' objections an excerpt from the opinion of the Supreme Court of Kansas in 1234 the case of State of Kansas ex rel. H. O. Caster, as Attorney for Public Utilities Commission of the State of Kansas et al., plaintiff, v. Thomas J. Flannelly, as Judge of the District Court of Montgomery County, and John M. Landon et al., as Receivers of the Kansas Natural Gas Company, defendants, (96 Kan., 372, 377) reading as follows:

"The gas sold by the receivers is produced in both Kansas and Oklahoma. It is transported from the wells through pipe lines beginning in Oklahoma, entering the State of Kansas near Coffeyville, at which place gas is first distributed and sold to consumers. The remainder is transported north through pipe lines into which gas from wells in Kansas is conveyed, and the gas from Oklahoma and Kansas is then transported through the same pipe lines and through compressing stations to Independence and north and east throughout this state, and after supplying the consumers in this state it is transported into the State of Missouri, where it is sold to other consumers. After the gas from this state is discharged into the pipe lines with the gas from Oklahoma, it is impossible to distinguish one from the other or to separate one from the other. About 85 per cent of the gas sold is produced in Oklahoma, and 15 per cent is produced in Kansas. About 60 per cent of the gas sold is sold in Missouri, and 40 per cent is sold in Kansas. The gas sold in Kansas is delivered to the consumers thereof in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities, fixing the rates to be charged customers for gas. These distributing companies act as the agents of the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Company, under the control of the Receivers, into the pipe lines 1235 of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers. The gas is consumed as fast as it is sold, and is consumed immediately after passing through the meter measuring the gas to the consumers."

The respondents the Public Service Commission of Missouri, the Cities of Missouri, the Kansas City Gas Company of Kansas City, Missouri, and the Wyandotte County Gas Company of Kansas City, Kansas, were not parties to that case.

62. There is a permanent physical connection between the pipe-

lines operated by the Kansas Natural Gas Company and its Receivers and the distribution mains of the local companies at or near the corporate limits of the various cities in which said companies are doing business, through which natural gas passes from said pipeline system into said distributing systems.

63. Gas is constantly moving from the wells into the gathering mains and along the pipe-line system night and day; and the compressors are constantly at work night and day compressing gas into the trunk main system; during the night and certain hours of the day and during certain warm days more gas passes into and is compressed into the trunk main system than is being taken out for use. The amount of gas in the pipe-line system at any particular time depends upon pressure and is proportional to absolute pressure, which absolute pressure is atmospheric pressure, 14.4 plus pressure produced by mechanical processes. The process of filling the lines in excess of demand during the night time and on warm days and certain hours of the day is called "packing the lines."

1236 64. Mr. Alfred Hurlburt, Engineer for the Kansas City Gas Company testified that the pipe-line system of the Kansas Natural Gas Company constitutes not only a transportation system but a great storage reservoir by means of this packing of the lines; that the storage capacity of the lines of the Kansas Natural Gas Company from Graham, Kansas, to Kansas City, Missouri, amounts to 12 million cubic feet in addition to the carrying capacity of the lines; that both the carrying capacity and the storage capacity of this system are requisite and necessary for the proper supply of gas by the Kansas Natural Gas Company and its Receivers to the Kansas City Gas Company; that if it were not for the storage capacity of the Kansas Natural Gas Company's lines, the Kansas Natural Gas Company and its Receivers would not be able to supply the instantaneous demands of the consumers upon the Kansas City Gas Company at times when the demands are greatest for the reason that such instantaneous demands at maximum-demand-hours of the day always exceed the carrying capacity of the lines and the storage capacity must be drawn upon; that all gas is in constant motion and even if inclosed in a holder it cannot be held still, that is, the nature of gas is constant molecular motion; that there is a constant movement of gas in the pipe-lines, the general direction of which is from the gas sands of the wells toward the consumers' appliances; and that gas, unlike solids, oils and other liquids, can be greatly compressed.

65. S. S. Wyer, Consulting Engineer, who made an affidavit in the preliminary hearing known as plaintiff's Exhibit No. 2, and made a report to the Federal Receivers in suit No. 1351, Equity, and several other affidavits that were used both in the preliminary and final hearings, testified for the plaintiff in substance, as follows:

1237 Gas passes from the well tubing, where found, out to the conveying lines, then to the measuring stations and to the various compressing stations, through the main line measuring stations at the gates of the town and then through the medium of the pressure lines of the town; then through the low pressure line of the town to the gas service cocks and the gas service lines to the con-

sumers' pipe and ultimately fixing its final destination at the burner of the consumers' fixtures. It requires all of these pipe lines, those of the Kansas Natural, the distributing company and the consumer to complete the system. All of them are essential to the transmission of gas from Kansas or Oklahoma to the consumers in Missouri. Gas is a fluid composed of a large number of molecules which are vehicles of energy continually in motion, and having an inherent tendency to get farther and farther apart. The range of motion of the molecules is limited only by the volume of the closed containing vessel in which they constantly move to and fro. The most distinguishing characteristic of gas is its universal property of completely filling an enclosed space.

Natural gas is a highly combustible gas made by a secret process of nature. It is not a chemical compound but is a mechanical mixture of several gases, the number and proportion of the various constituents varying somewhat with different localities and at individual wells. Gas pressure is the result of the combined efforts of all of the moving molecules in the mass trying to get further and farther apart. Being restrained in the container it exercises a pressure against the walls of the vessel. The pressure is the same in all directions on equal areas of surface. With a given mass of gas any increase in the volume of the containing vessel will give the molecules  
1238 more range of motion and thereby lower the pressure. So if part of a given mass of gas is removed from a reservoir the remaining mass of gas will expand instantaneously and keep the reservoir filled, but at a lower pressure.

In the transportation of natural gas from the gas stand to the ultimate consumer the gas is never at rest but is a constantly seething, moving mass between the gas stands in the fields and the consumers' fixtures in the various cities.

When the line is operated at its fullest capacity the gas will move at a greater velocity than the fastest express train. The gas can only go in one direction at the same time when flowing through a given pipe. The gas is compressed at compressor stations and is thus forced from the field to the point of consumption. At the intake of the line the pressure must be large and at the discharging end of the line the pressure should be relatively low. There is no delivery until the gas has not only passed through the consumer's meter but is burned at the consumer's fixtures. Each distributing plant is simply one of the integral transportation system as a whole. There is no delivery beginning at the consumer's pipe line to the service pipe.

In making a comparison between the transportation of railroad and the transportation of natural gas by pipe lines, the receiver of the goods in the railroad shipment corresponds to the ultimate consumer of the natural gas. There is no other feasible way of transporting natural gas except by this system or method of pipe lines. The continuous movement of gas in the pipes is caused by the expansive power of the gas produced originally by natural rock pressure and as that pressure declines, it is supplemented by gas compressors along the main transportation line. In the system of the Kansas



Natural Gas Company the movement is always from Oklahoma north through Kansas into Missouri.

1239 The demands on the pipe line vary very largely with the different hours of the day. Gas being compressible, if the compressor stations are operated practically uniformly, that is, with a practical uniform rate, then during certain periods of the day when the consumption is less than the output at the compressing station the station may be made to do what in the natural gas man's parlance is known as "packing the lines," which will result in a limited storage capacity in the line. This is inevitably connected with the transportation of gas and if it were not present transportation of gas could not be made with the present size of the Kansas Natural pipe line system.

During such periods of the day as the natural gas flow is below the normal, service gas may be by-passed into a storage holder, and then it may be removed from the holder during the peak-load-demand in order to take care of the peak-load-demand at the distributing plant. This is not necessary so far as the transportation of gas is concerned, but is useful to improve the service rendered by the distributing company. Ordinarily the percentage of gas thus flowing through a holder is relatively small. Such holders are not generally used in the transportation and delivery of natural gas. Such holder is not a part of the transportation of gas but is a mere incident and is merely a part of the distribution. Storage might be compared to the milling of grain in transit, or the feeding of cattle in transit, or the compressing of cotton in transit. It might also be compared to water standing in an irrigation ditch.

The Kansas Natural has a 16 inch main running from Petrolia to Kansas City, 110 miles long. The mean pressure is 250 pounds. The storage capacity of that would be 14,634,620 cubic feet. If there is a delivery of 70 million cubic feet a day from this pipe line it would have to be filled and emptied five times during the day.

1240 On cross examination by Mr. Dana, Mr. Wyer was asked and made answer as follows:

"(Mr. Dana:)

"Q. Mr. Wyer, assuming that the natural gas lines are full of gas and that the lines of the distributing system are full of gas and the consumer's house pinings are connected, how long after the consumer decides to buy a thousand feet of gas does he get it?

"(Mr. Wyer:)

"A. He gets it instanter, that is, if the service is operating and the gas is going. He gets it by simply turning a cock.

"(Mr. Dana:)

"Q. He gets it instanter?



"(Mr. Wyer:)"

"A. Yes, sir."

On redirect examination by Mr. Long, Mr. Wyer was asked and made answer as follows:

"(Mr. Long:)"

"Q. That is incidental to the transportation of natural gas?"

"(Mr. Wyer:)"

"A. Yes, sir."

66. The gas passes into the mains of the distributing plant of the Kansas City Gas Company at 25th Street in Kansas City, Missouri, about 600 feet east of the Missouri-Kansas state line and at 39th Street in Kansas City, Missouri, about one foot east of the said state line. After the gas enters the mains of the Kansas City Gas Company, that company has the actual physical possession and complete control over it and over its distribution and sale. After reaching the main system of the Kansas City Gas Company, the gas is passed through governor stations which reduce its pressure to a uniform pressure of about 8 inches water column, necessary for convenience and safety in distribution and sale. No gas is ever returned from the Kansas City Gas Company to the Kansas Natural Gas Company.

67. When a surplus of gas is available in the lines of the Kansas Natural Gas Company, the Kansas City Gas Company fills its own gas holders, having a capacity of 7,000,000 cubic feet, from the mains, and holds this gas in storage until such time as the Kansas Natural Gas Company cannot deliver enough gas to supply the demand, at which time the gas in the holders is pumped by the Kansas City Gas Company through its mains into its governor stations, and thence into and through its low pressure distributing system to its consumers. The period during which the gas remains in the holders thus stored, varies from a few hours to several days or weeks, according to the demand and supply. During the present hearing of this case, gas has thus been used from the holders in Kansas City, Mo. (Transcript, p. 75, 76.)

68. Nearly half the gas distributed by the Kansas City Gas Company in June, 1917, went into the holders and was pumped out again by the Kansas City Gas Company. The holders were used during every month of the year 1917 up to the time of the hearing of this case (July). The storage holders are not a necessary part of the pipe-line system for the transportation of gas from the Kansas Natural wells to the consumers (Transcript, 137, 138). When the gas comes from the holders of the Kansas City Gas Company it has to be compressed by that company in order to put it through the mains (Transcript, 115).

69. A consumer in Kansas City, Mo., who wishes to procure natural gas makes written application therefor to the Kansas City Gas Company and complies with certain reasonable rules prescribed by that

Company. If accepted within a few hours or within a day or two, according to circumstances, the gas is turned on for the consumer by the Kansas City Gas Company. The consumers' meters are read, bills made and presented to them and, if not paid, gas is turned off, all by the Kansas City Gas Company without consultation  
1242 with the Kansas Natural Gas Company or with its Receivers.

The form of such application is incorporated herein, par. 85.

70. The "consumer's meter" belongs to the Kansas City Gas Company and is generally located in the cellar or basement of the consumer's premises. The consumer is charged by the Kansas City Gas Company for all gas that passes through that meter whether it reaches the burner tip or not, and the consumer is required to pay for it except only in the event that he is insolvent and cannot be made to pay. If, after gas passes the consumer's meter, any of it escapes through leaks in the consumer's pipes, the consumer must pay for it.

71. The consumer receives gas for approximately thirty days before his meter is read. Ten days thereafter he is presented with a bill (Exhibit 1015) and ten days thereafter he makes payment therefor in cash or by check, to the Kansas City Gas Company at 910 Grand Avenue, Kansas City, Missouri. The form of bill is incorporated herein, par. 85.

72. The Kansas City Gas Company exercises its own judgment and discretion as to extending credit to consumers, without consultation with the Kansas Natural Gas Company or its Receivers (Transcript, p. 81). It requires a cash deposit from some; it accepts guarantees from others and those having credit it supplies without either deposit or guarantee. It discontinues the supply of gas to consumers who default in payment of bills for a certain period of time and for certain other violations of its rules and regulations according to its own discretion.

73. There are no relations or dealings between the consumer in Kansas City, Missouri, and the Kansas Natural Gas Company  
1243 or its Receivers; or between the City of Kansas City, Mo., and the Kansas Natural Gas Company or its Receivers, except such, if any, as might be construed to arise or to be created by operation of law from the terms of said supply-contracts and franchise-ordinances and the course of dealing herein stated or any or all of the same.

74. The Kansas City Gas Company does not forward to the Kansas Natural Gas Company any list of the names of consumers or the amount of gas required by all or any of them at any future time. The Kansas City Gas Company has paid to the Kansas Natural Gas Company, or its Receivers  $61\frac{1}{2}$  per cent of its gross receipts from the sale of gas. When bills were not collectible the amount of such bills was not figured in determining the payment due the Kansas Natural Gas Company or Receivers. It has been the practice for the Kansas City Gas Company to furnish the Kansas Natural Gas Company or Receivers annually a list of the names and amount due from delinquent consumers; and if later they paid their bills, the names of such consumers thus paying, were furnished to the Kansas Natural Gas Company, to enable that company

to check up the two lists and thus determine whether or not it was receiving the amount due it.

75. Payments by the Kansas City Gas Company and The Wyandotte County Gas Company to the Kansas Natural Gas Company and Receivers have been made on the 15th day of each month for the gas sold to consumers and collected for prior to about the tenth day of the preceding month. Since September 1, 1916, the Receiver has rendered bills to The Wyandotte County Gas Company and the Kansas

City Gas Company for gas claimed to have been delivered by 1244 the Receiver at the points of connection at or near the city limits, between the mains of The Wyandotte County Gas Company and the Kansas City Gas Company and pipe-line system operated by the Receiver, and the Kansas City Gas Company, and The Wyandotte County Gas Company have not paid said bills, but has paid on the basis of the supply-contracts and the Receiver is now prosecuting claims against said companies for gas on the basis of measurements and deliveries at the city limits, as shown by the allegations and exhibits to plaintiff's supplemental bill and the Kansas City Gas Company's and The Wyandotte County Gas Company's answers and amended and supplemental answers on file.

76. The Kansas City Gas Company and The Wyandotte County Gas Company have carried on their business in substantially the same manner in all material respects and have pursued the same course in their dealings, transactions and communications to and with the Kansas Natural Gas Company, the Receivers and their respective consumers.

77. The demands of the consumers of the Kansas City Gas Company during the summer months are approximately 10,000,000 cubic feet per day and during the winter months for lighting and cooking approximately 13,000,000 cubic feet per day and for all purposes, if demands were met, approximately 70,000,000 cubic feet per day. During the winter of 1916-17 the greatest available supply on maximum-demand-days for Kansas City, Missouri, was 12,000,000 cubic feet for all purposes.

78. The rates charged by the Kansas City Gas Company and paid by its consumers prior to November 19, 1916, and at all times thereafter up to the time of the fixing of a rate by Judge Booth were those named in Ordinance No. 33887 of Kansas City, Missouri (Exhibit 1009).

1245 79. On or about March 20, 1916, R. S. Litchfield, co-Receiver with John M. Landon, appointed by the District Court of Montgomery County, Kansas, died, and that court on March 28, 1916, entered an order continuing John M. Landon, sole Receiver of the Kansas Natural Gas Company in State of Kansas v. Independence Gas Co. et al., No. 13476. On December 12, 1916, said court entered an order modifying its judgment entered February 15, 1913, and on June 2, 1917, said Receiver was ordered to deliver said properties to the Receivers of the Federal Court, said state case was dismissed and said Receiver was discharged; said orders are incorporated herein, par. 85.

80. By agreement it was stated into the record, by Mr. Stringfel-

low, Attorney for the defendant, St. Joseph Gas Company, that natural gas is delivered at St. Joseph in pursuance of a contract between the Kaw Gas Company, (predecessor of the Kansas Natural Gas Company), and the St. Joseph Gas Company. That the St. Joseph Gas Company filed its schedule of rates for natural gas with the Missouri Public Service Commission, and said Commission suspended the same, and that suits are now pending between the Public Service Commission of Missouri and the said St. Joseph Gas Company, involving the issue of the enforcement of the rates fixed by said Commission, or the restraining of said Commission from interfering with the rates filed by said St. Joseph Gas Company.

81. The St. Joseph Gas Company maintains a manufacturing plant for the manufacture of artificial gas for the purpose of supplying any deficiency in the supply of natural gas. The natural gas delivered by the Kansas Natural Gas Company to the St. Joseph Gas Company is mixed with the artificial gas which that company produces and the mixture is sold at a higher rate than that charged

1246 for natural gas alone, the rate depending upon the percentage of artificial gas which is, in any given month, put into the mains with the natural gas. That settlements by said St. Joseph Gas Company with the Kansas Natural Gas Company or the Receiver are based on the readings of the consumers' meters. That said City of St. Joseph passed no ordinance governing the sale of natural gas and is not a party to the contract between the St. Joseph Gas Company and the Kansas Natural Gas Company.

82. The Kansas City Gas Company has filed with the Public Service Commission of the State of Missouri a petition for authority to supplement natural gas with manufactured gas and fix the price thereof. Said petition is incorporated herein, par. 85.

83. The foregoing statement as to the manner of the transportation, distribution, delivery and sale of natural gas applies in all substantial respects to the defendant Cities of Missouri.

84. This cause No. 136-N is ancillary to the suit of John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity, pending in the District Court of the United States for the District of Kansas, and was commenced on the 29th day of December, 1915, and chancery subpoenas were issued on the application of the plaintiff not only against the defendants residing in Kansas but also against the City of Kansas City, Missouri, Public Service Commission of Missouri, its members and attorney, the attorney-general of the State of Missouri, Kansas City Gas Company of Missouri, the City of Joplin, Missouri, the City of St. Joseph, Missouri, and other Missouri defendants, said service being made outside of the State of Kansas and within the State of Missouri, as more fully appears from the Marshal's returns.

85. The following instruments, pleadings, documents and  
1247 papers, together with the endorsements thereon, were introduced in evidence and are hereby incorporated into this statement of the evidence and were made a part of the record by order of the court and the clerk will include the same in the transcript of the record, to-wit:

Referred to in paragraph—	Subject.	Filed or dated—
15.	Ordinance No. 6051 of Kansas City, Kansas, "Natural Gas Franchise".....	12/14/04
19.	Supply-contract, Kansas City Pipe Line Com- pany to Wyandotte Gas Company.....	2/ 1/06
14.	Ordinance No. 33887 of Kansas City, Missouri, "Natural Gas Franchise" .....	9/27/06
17.	Supply-contract, Kansas City Pipe Line Com- pany to McGowan, Small & Morgan.....	11/17/06
	(Same in form and substance as contract of 12/3/06 and may be omitted from tran- script.)	
17.	Supply-contract, Kansas City Pipe Line Com- pany to McGowan, Small & Morgan.....	12/ 3/06
21.	Lease, Kansas City Pipe Line Company to Kan- sas Natural Gas Company.....	1/ 1/08
23.	Petition in State of Kansas v. Independence Gas Company et al., No. 13476, in District Court of Montgomery County, Kansas.....	1/ 5/12
24.	Bill of Complaint in John L. McKinney v. Kan- sas Natural Gas Company, No. 1351, Equity, in United States District Court for District of Kansas .....	10/ 7/12
31.	Bill of Complaint in Fidelity Title & Trust Company v. Kansas Natural Gas Company, No. 1-N, Equity, in U. S. District Court for District of Kansas.....	2/ 3/13
31.	Answer of Kansas Natural Gas Company to Bill of Complaint of Fidelity Title & Trust Com- pany .....	2/ 3/13
35.	Intervening Petition of Kansas City Pipe Line Company in Fidelity Title & Trust Company v. Kansas Natural Gas Co. et al., No. 1-N, Equity, consolidated with No. 1351, Equity.	3/24/13
36.	Opinion of U. S. District Court (Judge Mar- shall) on Petition of Attorney General of Kansas for an Order Directing Federal Court Receivers to Surrender Possession of Prop- erty to State Court Receivers, in the cases of John L. McKinney et al., v. Kansas Natural, No. 1351, Equity, and Fidelity Title & Trust Company v. Kansas Natural et al., No. 1-N, Equity, (206 Fed., 772.) (Referred to, not to be printed .....	6/ 5/13

1248

Referred to in paragraph—	Subject.	Filed or dated—
35.	Answer of John L. McKinney and Fidelity Title & Trust Company to Intervening Petition of The Kansas City Pipe Line Company in Fidelity Title & Trust Company v. Kansas Natural Gas Co. et al. No. 1-N, Equity, consolidated with No. 1351, Equity.....	6/17/13
8, 39.	Order of U. S. District Court (Judge McPherson) in cases of John L. McKinney et al. v. Kansas Natural, No. 1351, Equity, and Fidelity Title & Trust Company v. Kansas Natural et al., No. 1-N, Equity, directing delivery of property to State Court Receivers..	1/24/14
8, 41.	Order of U. S. District Court directing Mandate of Circuit Court of Appeals be Spread and Modifying Order of 1/24/14, in case of Fidelity Title & Trust Company v. Kansas Natural et al., No. 1-N, Equity.....	9/22/14
41.	Receipts of State Court Receivers to Federal Court Receivers for Property of Kansas Natural Gas Company located in Kansas, Missouri and Oklahoma.....	1/ 1/14 1/24/14
38.	Motion of Attorney General of Kansas for surrender of money in hands of Federal Receivers. (By subsequent oral motions in open court he asked for possession of all properties in Kansas, Missouri and Oklahoma) .....	12/23/14
42.	"Creditors' Agreement," so-called.....	12/29/14
8, 43.	Order appointing John M. Landon and R. S. Litchfield ancillary Receivers in cases of John L. McKinney et al., v. Kansas Natural Gas Company, No. 1351, Equity, and Fidelity Title & Trust Co. v. Kansas Natural Gas Company et al., No. 1-N, Equity.....	1/ 9/15
79.	Order of District Court of Montgomery county, Kansas, in State of Kansas v. Independence Gas Co. et al., No. 13476, continuing John M. Landon as sole Receiver.....	3/28/16
22.	Schedule and Application of Kansas City Gas Company to Public Service Commission of Missouri .....	8/10/16
22.	Order of Public Service Commission of Missouri approving Schedule of Kansas City Gas Company filed.....	8/10/16
52, 75.	Correspondence, demands and refusals, between Kansas City Gas Co. and The Wyman-	



Referred to in paragraph—	Subject.	Filed or dated—
	dotte County Gas Co. and Kansas Natural Gas Co. and John M. Landon, Receiver, attached to K. C. Gas Co.'s and W. C. Gas Co.'s Answers filed herein.....	10/18/16
52.	Report and Application of John M. Landon, Receiver, for instructions with reference to supply-contracts, together with exhibits there- to attached, filed herein.....	10/18/16
	(The Kansas City Pipe Line Company and The Wyandotte County Gas Company have taken appeals from this order to the Supreme Court of the State of Kansas, which appeals are still pending.)	
1249		
79.	Order of District Court of Montgomery county, Kansas, in case of State of Kansas v. Independence Gas Company et al., No. 13476, modifying the judgment of 2/15/13.....	12/12/16
79.	Order of District Court of Montgomery county, Kansas, in State of Kansas v. Independence Gas Company et al., No. 13476, dismissing case and directing Receiver to Return Property to Federal Court.....	6/ 2/17
9.	Order of U. S. District Court for District of Kansas appointing John M. Landon managing Receiver of Kansas Natural.....	6/ 5/17
82.	Petition of Kansas City Gas Company Supporting New Schedule, and for Authority to Acquire Properties, Construct Works and Issue Stock, filed with Public Service Commission of Missouri .....	6/21/17
7.	Map of gas fields in Kansas and Oklahoma.... Order of U. S. District Court in cases of John L. McKinney et al. v. Kansas Natural Gas Co., No. 1351, Equity, and Fidelity Title & Trust Company v. Kansas Natural Gas Company et al. No. 1-N, Equity, fixing 60-cent rate. (Referred to in the order appealed from.) .....	7/ 1/17
69.	Copy of application for gas service used by Kansas City Gas Company .....	8/13/17
71.	Copy of bill issued by Kansas City Gas Company .....	
75.	Copy of Voucher of Kansas City Gas Company, being from NG106 (same form used by The Wyandotte County Gas Company).....	



Referred  
to in  
paragraph—

Subject.

Filed  
or  
dated—

75. Copy of Blank Check as issued by Kansas City Gas Company (same form used by The Wyandotte County Gas Company).....
44. Statement of the Evidence on behalf of the Public Utilities Commission of Kansas on file...

86. The above and foregoing is a full, true and complete statement of the evidence in the above entitled cause and contains all parts essential to the decision of the questions presented by the appeal therein, and is made under the terms and requirements of Equity Rule 75, for the purpose of perfecting the record on appeal.

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*City Counselor, Kansas City, Missouri.*

BENJ. M. POWERS,  
*Assistant City Counselor Kansas City, Missouri.*

A. F. EVANS,  
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JAMES D. LINDSAY,  
*Attorneys for Public Service Commission of Missouri and for Wm. G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson, and Edward Flad, Members of said Commission; Alex. Z. Patterson, General Counsel to said Public Service Commission and Frank W. McAllister, Attorney-General of Missouri.*

R. H. DAVIS,  
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CHARLES L. FAUST,  
*Attorney for St. Joseph, Missouri.*

F. S. JACKSON,  
H. O. CASTER,

*Attorneys for Public Utilities Commission for the State of Kansas, H. O. Caster, Its Attorney; S. W. Brewster, Attorney-General, and the Defendant Cities of Kansas.*

J. W. DANA,  
*Attorney for Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company.*

1251 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order.*

Now on this 15th day of December, 1917, this cause came on to be further heard upon the statement of the evidence filed by appellants on December 1, 1917, and the respondents' objections thereto, and was presented and argued by counsel and thereupon, upon consideration thereof, after modifying the same;

It is Ordered, That the foregoing statement of the evidence, including and incorporating therein all the instruments, pleadings, documents and papers together with the endorsements thereon specified in paragraph 85 of said statement is hereby approved and ordered filed as part of the record for the purpose of appeals in the above entitled case, this 15th day of December, 1917.

WILBUR F. BOOTH, *Judge.*

Filed in the District Court on December 17, 1917. Morton Albaugh, clerk.

1252 EXHIBIT 106.

*Ordinance No. 6051.*

Kansas City, Kansas.

An Ordinance relating to, and providing for the supplying of the City of Kansas City, Kansas, and its inhabitants, with natural gas by the Wyandotte Gas Company, its successors and assigns.

Be it Ordained by the Mayor and Councilmen of the City of Kansas City, Kansas:

Section 1. For and in consideration of the benefits to the City of Kansas City, Kansas, and its inhabitants, and upon the terms and conditions hereinafter prescribed, there is hereby granted unto the Wyandotte Gas Company, its successors and assigns, the permission, right, privilege and authority, for the period of twenty (20) years

from and after the passage and publication of this ordinance, within the present or any future corporate limits of the City of Kansas City, Kansas, to supply, sell and furnish natural gas for the purpose of supplying the City and its inhabitants with natural gas for lighting, heating, power and manufacturing purposes, and the use of the streets, avenues, alleys, public grounds, public bridges and viaducts of the City for the purpose of laying mains, pipes, regulators and appliances and erecting and maintaining lamp posts and illuminating devices to be used in the furnishing or supplying said City and its inhabitants with natural gas for lighting, heating, power and manufacturing purposes, upon the conditions specifically provided for herein.

Section 2. Said grantee (which term whenever used in this ordinance shall mean and include the Wyandotte Gas Company, 1253 its successors and assigns, shall, during the term of the aforesaid grant, have the right and privilege of establishing, constructing, maintaining and operating within the City of Kansas City, Kansas, their works, holders and other apparatus necessary and sufficient in size and capacity to supply the City and its inhabitants with natural gas, and shall also have the right and privilege of attaching their mains and pipes, under the direction and control of the City Engineer, to any bridge or viaduct over which the City has or may hereafter acquire the power to grant such right and privilege.

Section 3. Said grantee, its successors and assigns, shall be entitled to charge and collect from consumers of such gas, during the period of two years from and after natural gas is first furnished hereunder, at the rate of not to exceed twenty-five (25) cents per thousand cubic feet, and during the period of one year next thereafter, at the rate of not to exceed twenty-eight (28) cents per thousand cubic feet, and during the period of one year next thereafter, at the rate of not to exceed twenty-nine (29) cents per thousand cubic feet, and during the period of one year next thereafter, at the rate of not to exceed thirty (30) cents per thousand cubic feet, and thereafter, during the period of the aforesaid grant, at the rate of not to exceed thirty-five (35) cents per thousand cubic feet; and may also make special contracts with consumers at less than the general rates then in force, based upon the amount of gas used and the conditions of the contract, which special rates shall be the same to all consumers using the same amount of gas under the same contract conditions, and schedules of such special rates and the contract conditions shall be filed with the City Clerk, and each and every change therein shall also be filed with the City Clerk, and be open to public inspection; and if the demand from special rate consumers 1254 threatens the general supply to the city and regular rate consumers, the grantee may shut off the supply from special rate consumers, in whole or in part, and if the grantee fails or refuses so to do, the City Council may by resolution require the grantee so to do; provided, always, that the said grantee shall have the right to charge two (2) cents per thousand cubic feet additional to all consumers who are in arrears for a period longer than ten (10) days;

and provided further, that the grantee may charge and collect from each person who has a meter installed a minimum monthly bill of not to exceed 50 cents; provided, however, that if the bill for natural gas consumed in any month shall at the rate then in force exceed the sum of 50 cents, such consumer shall not be charged any minimum bill for that month.

Section 4. Said grantee, its successors and assigns, shall have the right and privilege to charge the City of Kansas City, Kansas, any sum not exceeding five dollars (\$5) per year, payable monthly, for the natural gas furnished said City for each street lamp, said lights to burn on the "All Night" schedule, the City to furnish burners and mantles and light, extinguish, clean and maintain the same, and the City hereby reserves the right, by resolution of the Mayor and Council, to order lamp posts for street lights located at any place within the city on the mains of the said grantee for the purpose of lighting the streets and public grounds of said city, same to be paid for at the price aforesaid, and to order the same removed to some other location in the city at any time, or to remove said lamps altogether; said removal to some other location to be done at a reasonable cost to the city.

Section 5. Said grantee, its successors and assigns, shall have the right to cut off the natural gas temporarily from its mains and  
1255 pipes, or from any portion thereof, for the purpose of needful repairs or extensions of its works, or while repairs or extensions are being made to the pipes or apparatus by which it obtains its supply of natural gas, and shall not be liable to said city or any consumer for any damage occasioned by said temporary suspension of the supply of natural gas; provided, that whenever possible, notice of such cutting off of the supply shall be given to consumers by publishing in one or more daily newspapers in this city and in Kansas City, Missouri; and provided further, that when natural gas shall be voluntarily cut off by said grantee from any city street lamp, causing the temporary extinguishment of light from any such street lamp, the grantee, its successors and assigns, shall locate some other artificial light at the place of said natural gas street light so temporarily extinguished, without cost to the city.

Section 6. For the purpose of supplying natural gas to the city and its inhabitants, the grantee may use its existing mains, pipes, reservoirs and appliances, including any additional mains, pipes and appliances laid or acquired up to the time natural gas is furnished; provided there shall be no interruption in the supply of manufactured gas to any consumer until the grantee is prepared to supply him with natural gas, and provided further, that while natural gas is being supplied under this franchise, the grantee shall be relieved of any obligation to supply manufactured gas. But nothing herein contained shall be held or considered to relieve the grantee from any other obligation, provision or condition of Ordinance No. 5637, under which the grantee is now operating, except that while natural gas is being furnished hereunder the grantee shall not be required to make the reports and payments in Section 3 of said Ordinance No. 5637. Should the grantee find at any time

1256 hereafter during the life of this franchise, that the supply of natural gas at points contiguous to the mains from which it obtains its supply, or in the natural gas fields of Southeastern Kansas, is inadequate to warrant it in continuing to supply natural gas under the terms of this ordinance, it shall not be longer required so to do, but may proceed to furnish and supply manufactured gas in accordance with the terms and provisions of said Ordinance No. 5637.

Section 7. The City shall enact such ordinances as may be deemed just by the Mayor and Council to protect the grantee, its successors and assigns, and their works and property, from damage, imposition and fraud, and to prevent unnecessary waste of natural gas, and said grantee, its successors and assigns, shall have power to make all reasonable and needful rules and regulations for the collection of their revenues, and shall be permitted to add two (2) cents per thousand cubic feet to the price of natural gas to consumers hereinbefore fixed, but shall deduct said two (2) cents per thousand cubic feet from the bills of all consumers who pay their bills on or before the tenth day of the month next following the month in which the natural gas was used, which said bills shall be delivered at the place where the natural gas was used, unless otherwise requested by the consumer; and to make reasonable rules for the prevention of waste in the conduct and management of their business as may from time to time be by them deemed necessary and just.

Section 8. The rights, privileges and franchises herein granted are for the following considerations and upon the following conditions, to-wit:

1st. That the said grantee shall, within one year after filing its acceptance, be supplying natural gas on not less than twenty-  
1257 five (25) miles of mains to all consumers thereon who have made application therefor, in compliance with its rules and regulations, and within eight (8) months thereafter shall be supplying natural gas to all consumers on its mains who have so made application, and shall, during the lifetime of this franchise, except as herein otherwise provided, continue to supply said city and its inhabitants with natural gas upon the terms and conditions and for the consideration herein provided; and shall locate lamp posts for street lights at any place within the city on the mains of said grantee, for the purpose of lighting the streets and public grounds of said city, whenever ordered so to do by resolution of the Mayor and Council, same to be paid for by the city as hereinbefore provided.

2nd. That on or before the first day of August in each year, said grantee, its successors and assigns, shall file in the office of the City Treasurer a report, under seal of the company, and verified by oath of its president, treasurer, superintendent or other managing officer showing the amount of its gross receipts from the sale of natural gas to the city and private consumers during the six months ending the thirtieth day of June last preceding; and on or before the first day of February in each year, shall also file a report showing the amount of its gross receipts from the sale of natural gas to the city and private consumers during the six months ending the thirty-first day of De-

cember then last preceeding; and said grantee, its successors and assigns, shall, at the time of filing each of such reports, pay into the city treasury a sum equal to two (2) per cent. of its gross receipts from the sale of natural gas to private consumers.

3rd. That during the life of this franchise, the grantee, its successors and assigns, shall maintain a reservoir or gas holder  
1258 within the corporate limits of the City of Kansas City, Kansas, sufficient in size and capacity of storing seven hundred and fifty thousand (750,000) cubic feet of gas, and shall maintain said amount of gas constantly on hand for emergencies.

4th. After December first, 1905, the grantee, its successors and assigns, shall lay additional mains whenever and wherever the Mayor and Council may by resolution direct; provided, however, that said grantee shall not be required to lay or extend mains on any ungraded street, or to lay or extend mains on any graded street except where there is an average of one or more residents on said street to each one hundred (100) feet of the aggregate distance of any such extension of main pipe to be laid, who shall agree to take natural gas and shall have their houses piped therefor; but if any graded street is about to be paved under ordinances of the city, such mains shall be laid ahead of the paving, without regard to the number of consumers thereon, and provided further, that said grantee shall not be required to lay or extend any mains except when the ground is free from frost. Said resolution directing the laying of additional mains, in accordance with this section, shall have appended thereto the signatures of the required number of prospective consumers, and every such resolution shall contain a provision that in case such prospective consumers or any of them fail, within thirty (30) days to enter into a contract with the grantee, as herein provided, such resolution shall not be enforced. If the grantee shall fail or refuse to comply with any such resolution for a period of ninety (90) days, after the approval of the same and after said consumers have made the contracts  
1259 aforesaid, the grantee shall pay to the city the sum of five dollars (\$5.00) per day for each and every day that such failure or refusal continues.

5th. All pipes and mains shall be located and laid so as not to unnecessarily interfere with any pipes, mains, conduits or sewers existing at the time of such location or laying; and said grantee, its successors and assigns, shall hold the city harmless from any and all damages accruing from the negligence or mismanagement of its employees in the construction or operation of said works and the laying of said mains and pipes. There shall be no unreasonable or unnecessary obstruction of the streets, avenues, alleys or public grounds of the city, and the same shall be restored to their former condition as nearly and as soon as possible by the grantee, its successors and assigns, under the direction and control of the city engineer.

6th. That whenever the grantee, its successors and assigns, shall lay or maintain any of its mains and pipes upon any of the public bridges or viaducts of the city, as hereinbefore granted, said mains and pipes shall be so attached to any such bridge or viaduct as not to



interfere with other public uses of the same, and the said grantee shall pay to the city annually, during the life of this franchise, the sum of one hundred dollars (\$100) for each bridge and viaduct so used by said grantee.

7th. The said grantee shall, during the life of this franchise, perpetually maintain on deposit with the City Treasurer of Kansas City, Kansas, the sum of one thousand dollars (\$1,000) to be used by the city, at the order of the Mayor and Council by resolution, for the repair of any street, avenue, alley, pavement, curbing or sidewalk left out of repair by the grantee, its successors and assigns, in the laying of any of its mains or pipes; provided, that three (3) days before said sum or any part thereof shall be used for such purpose, the local managing officer of the grantee shall be notified in writing by the Street Commissioner or City Engineer of the necessity of such repairs.

8th. Within ten (10) days after the passage and publication of this ordinance, the grantee shall accept the same as hereinafter provided, and as an evidence of good faith, deposit with the City Treasurer of Kansas City, Kansas, the sum of twenty-five thousand dollars (\$25,000) in cash at the time of said acceptance, and within thirty (30) days after said acceptance, shall file with the City Treasurer the bond of some responsible surety company, to be approved by the Mayor and Council, in the sum of one hundred thousand dollars (\$100,000), running to the City of Kansas City, Kansas, conditioned that the grantee will within one year after filing said acceptance be supplying natural gas on not less than twenty-five (25) miles of mains to all consumers thereon who have made application therefor in compliance with its rules and regulations, and within eight (8) months thereafter be supplying natural gas to all consumers on its mains who have so made application. And in case of failure to so supply natural gas, the whole of said sums of one hundred and twenty-five thousand dollars (\$125,000) shall be considered liquidated damages and not a penalty, and said twenty-five thousand dollars shall be appropriated to the uses of the city, and said one hundred thousand dollars shall be sued for and recovered by the city in any court of competent jurisdiction, which shall also be set forth in such bond. In case natural gas is so supplied, said bond shall be void and said twenty-five thousand dollars (\$25,000) shall be repaid to the grantee, except any interest accrued on said twenty-five thousand dollars (\$25,000), which interest shall be retained for the use and benefit of the city; provided, however, that if the laying of pipes by the grantee, or the laying of pipes outside of the city or delivering of natural gas at or within the corporate limits of the city by the grantee or by any person with whom the grantee may contract for its supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the grantee or such other person, or by labor strike, or by any cause beyond the control of the grantee or such other person, the time consumed by such prevention, hindrance or delay shall be deducted from the time provided for herein for the supply of natural gas in the city, as herein provided, and the time provided for herein



for so supplying natural gas shall be correspondingly extended for a like period or periods.

9th. The grantee shall not, except as in this ordinance provided, without the consent of the city, evidenced by ordinance, sell, lease or transfer its plant, property, rights, franchises or privileges herein authorized to any person or persons, company, trust or corporation now or hereafter engaged, or for the purpose of engaging in supplying and selling natural gas in this city under any other ordinance or franchise or otherwise, and shall not at any time enter into any combination with any person or persons, company or companies authorized by ordinance to sell natural gas in this city, concerning the rate or price to be charged for natural gas to be used by the city or private consumers; provided, however, that said grantee may convey all its rights, privileges and franchises herein granted to a corporation, its successors and assigns, to be organized under the laws of the State of Kansas, for the purpose of acquiring, building, constructing and operating the gas plant authorized under this ordinance, but this shall not authorize any other grantee to assign the

franchise granted to it to any other company or person or  
1262 persons to which or whom a franchise has been granted, and provided further, that notice of said conveyance, and of any conveyance by said proposed assignee corporation, its successors and assigns, shall be filed with the City Clerk of Kansas City, Kansas, within ten days after the execution thereof; and provided further, that the grantee, its successors and assigns, shall have the full, complete and unqualified right to assign and transfer this franchise and their property by way of mortgage, deed of trust, or other form of security in the nature of a mortgage or deed of trust, for the purpose of securing bona fide indebtedness and for the purpose of acquiring property and of raising funds to build, construct, equip and operate said plant, and to conduct the business thereunder.

10th. The grantee shall at its own expense bring connecting pipes for consumers to the lot line and construct shut-offs, and shall also supply and set meters for measuring natural gas free of charge to consumers, which shall however be and remain the property of the grantee, and freely accessible to it at all reasonable time, and consumers shall be responsible for negligently or wilfully injuring any meters.

11th. Upon the failure, neglect or refusal of the grantee, its successors or assigns, to comply with any of the substantial terms or conditions herein made and contained, this ordinance shall be subject to forfeiture in a regular proceeding brought on behalf of the City of Kansas City, Kansas, in any court of the State of Kansas having jurisdiction of the same, and the said grantee hereby agrees to waive the right to remove said cause to the Federal Court for original hearing. All rights, privileges and immunities not herein expressly granted or necessarily implied shall be reserved to the City, and the grantee shall take only such powers, privileges  
1263 and immunities as are herein given by express grant or necessary implication.

12th. That said grantee shall, within ten (10) days after the pas-

sage of this ordinance, file in the office of the City Clerk of the said city a written acceptance of the terms, obligations and conditions set forth, which shall be approved by the Mayor and Council.

13th. As long as natural gas is furnished and sold to the inhabitants of Kansas City, Kansas, under this franchise, the grantee shall in consideration of this grant furnish free to the City of Kansas City, Kansas, natural gas for light in the City Hall, City Prison, Police and Fire Stations and all other City buildings, including the Carnegie Library, provided all such lights shall be kept extinguished when not needed for illuminating purposes, the City to furnish its own burners, mantles, fixtures and appliances and maintain and keep the same in repair.

14th. If any ordinance of the City of Kansas City, Missouri, authorizing the use of the pipes of the Kansas City, Missouri, Gas Company for the distribution of natural gas under which said pipes of said company shall be applied to the distribution of natural gas in Kansas City, Missouri, shall fix lower rates for natural gas for lighting, heating, power or manufacturing purposes than those fixed by this ordinance or a less minimum monthly bill than that fixed by this ordinance, the grantee shall file in the office of the City Clerk of Kansas City, Kansas, a certified copy of such ordinance of the city of Kansas City, Missouri (and if the grantee shall fail or refuse to so file such certified copy within thirty days after natural gas is sold in Kansas City, Missouri, thereunder, any citizen of Kansas City, Kansas, may so file the same), and from and after such filing the  
1264 grantee shall charge no greater rates for said natural gas or no greater minimum monthly bill, as the case may be, than those fixed in such ordinance of the City of Kansas City, Missouri, so long as such rates shall there be in force under such ordinance, and natural gas there sold according to the same.

Section 9. This ordinance shall take effect and be in force from and after its passage and publication in the Kansas City Gazette.

Passed in Council this 13th day of December, 1904.

P. J. NUGENT, *City Clerk*.

Approved December 14th, 1904.

T. B. GILBERT, *Mayor*.

1265

EXHIBIT 108.

*Agreement Between the Kansas City Pipe Line Company and Wyandotte Gas Company. Dated February 1, 1906.*

This Agreement, made this first day of February, 1906, between The Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, party of the first part, and Wyandotte Gas Company, a corporation organized under the laws of the State of New York, party of the second part.

Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of

natural gas from the gas fields in the State of Kansas to a point at or near the city limits of Kansas City, Missouri, and is desirous of entering into a contract with the party of the second part for the transportation and supply of natural gas to it;

And Whereas, the party of the second part is the owner of an Ordinance of the City of Kansas City, Kansas, granting the right to lay, acquire and maintain pipes in Kansas City, Kansas, for the purpose of supplying natural gas to said city and its inhabitants, copy of which ordinance is attached hereto, marked "Exhibit No. 1;" and has secured or may hereafter secure ordinances or franchises elsewhere in Wyandotte County, Kansas, and desires to obtain a supply of natural gas for use in the said City of Kansas City, and elsewhere in Wyandotte County, Kansas:

Now Therefore, in consideration of the mutuality hereof it is hereby agreed between the parties hereto as follows:

1266 1. The party of the first part hereby agrees that it will, during the period of such ordinance, or any extension or renewal thereof or of any ordinance which may be obtained either in the interest of the party of the second part, or of its property, supply and deliver, through its said pipe line or lines, to said party of the second part, or any successor in the ownership of the property for the distribution of gas for Kansas City, Kansas, or elsewhere in Wyandotte County, at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents, interruptions and failures, the party of the first part does not under this contract undertake to furnish the party of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the party of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the party of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

2. It is hereby agreed between the parties hereto that the party of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city of Kansas City,  
1267 Kansas, or elsewhere in Wyandotte County, at lower rates than those specified in said ordinances.

In order to protect the domestic trade, however, the party of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part

herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the party of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the party of the second part agrees that any contract it makes to furnish gas to manufacturers shall contain provisions by which the party of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the party of the second part agrees to buy from the party of the first part all the gas it may need to fully supply the demand for domestic consumption in the said City of Kansas City, Kansas, or elsewhere in Wyandotte County, and to pay to the party of the first part for the natural gas which it shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of its gross receipts from the sale of such natural gas in said City of Kansas City, or elsewhere in Wyandotte County,

and thereafter a sum equal to sixty-two and one-half per cent  
1268 of such gross receipts. The party of the second part makes no agreement with the party of the first part respecting the rates at which it shall sell natural gas to any consumers in Kansas City, Kansas, or elsewhere in Wyandotte County, but expressly reserves to itself the right to charge its consumers for natural gas any rates not exceeding those mentioned in said ordinance which it may agree upon with such consumers; but if it shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, and the party of the second part shall be at liberty to obtain the same from such other source as it may find available.

3. A statement shall be rendered by said party of the second part to the party of the first part on or before the fifteenth day of each month, showing the amount of receipts during the previous month, and the amount of outstanding and uncollected bills.

Payments hereunder shall be made by the party of the second part to the party of the first part upon the fifteenth day of each month for the party of the first part's percentage of all collections made during the previous month. In order to enable the party of the first part to verify the correctness of payments made by the party of the second part, the party of the first part shall have the right, through its duly appointed representatives, at all times dur-

1269 ing ordinary business hours to have such access to such of the books of the party of the second part as may be necessary to enable it to verify the gas sales of the party of the second part and the amounts and dates of collections for the same.

4. The party of the second part hereby agrees, by advertising, solicitation and all other ordinary methods in vogue with enterprising gas companies, to encourage and increase its business.

5. It is further covenanted and agreed between the parties hereto that the party of the second part will not supply manufacturers at a greater pressure than four (4) ounces at the meter; Provided, that if the pressure of gas at the meter is greater than four (4) ounces per square inch the volume of gas shall be corrected to four (4) ounces pressure and charged to the consumer at the corrected volume.

6. It is further covenanted and agreed by and between the parties hereto that all gas sold shall be supplied through meters of approved design, that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by the party of the second part that each meter shall register as nearly accurately as possible the amount of gas passed through it; that the party of the second part will, at all times, permit the officers or authorized agents of the party of the first part to inspect its mains, pipes, regulators, meters and appliances for the purpose of verifying its monthly statements as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that said party of the second part will forward to the party of the first part a monthly record of the number of contracts made and canceled, and the number of meters  
1270 set, connected and disconnected, together with the total number of consumers at the end of each month, and will make and keep at its office a copy of such contracts, together with a full and complete record of the same, and of all meters used; and it shall be the duty of the party of the second part to keep and maintain its distributing system in good order and condition.

7. It is further covenanted and agreed by the party of the first part that it will furnish to the party of the second part free of charge natural gas for lighting the city hall, city prison, police and fire stations, and all other city buildings, including the Carnegie Library, in the City of Kansas City, Kansas, and all other city buildings elsewhere in Wyandotte County which the party of the second part may be required to light under any franchises which it now owns or may hereafter acquire.

8. It is agreed between the parties hereto that if at any time during the period of said ordinance while the party of the second part is buying from the party of the first part all the natural gas it is distributing and selling in the said City of Kansas City, Kansas, and elsewhere in Wyandotte County, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said City of Kansas City, Kansas, or any of its inhabitants, and any city, town or village or their inhabitants elsewhere in Wyandotte County, with such gas, otherwise

than under this agreement, then, and in any such case, the provision contained in Section No. 2 hereof, in the following words: "but if it shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less

rate than fifteen cents per thousand cubic feet, and the party  
1271 of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices," shall at once become inoperative and cease to have any effect, but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the party of the second part natural gas to fully supply the demand for all purposes of consumption in said City of Kansas City, Kansas, and elsewhere in Wyandotte County, for sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part from the sale of natural gas in said City of Kansas City, Kansas, and elsewhere in Wyandotte County, at any prices for which the said party of the second part may choose to sell the same.

9. This agreement shall be binding upon the successors and assigns of the parties hereto.

In Witness Whereof the parties hereto have duly executed these presents the day and year first above written.

[CORPORATE SEAL.]

THE KANSAS CITY PIPE LINE  
COMPANY,

By PAUL THOMPSON, *President*.

Attest:

C. M. LATOURETTE, *Secretary*.

[CORPORATE SEAL.]

WYANDOTTE GAS COMPANY,

By JAMES B. MCGOWAN, *President*.

Attest:

W. F. DOUTHIRT, *Secretary*.

1272 (Here follows Exhibit No. 1 to said contract, dated February 1, 1906, the same being Ordinance No. 6051, of Kansas City, Kansas.)

1273

EXHIBIT No. 1009.

No. 33887.

An Ordinance authorizing Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, to lay, acquire and maintain pipes in Kansas City, for the purpose of supplying natural gas to said city and its inhabitants.

Be it Ordained by the Common Council of Kansas City:

Section 1. Subject to the provisions of the present city charter, and to the same provisions so far as they may be embodied in any



future charter of the city, permission, right, privilege and authority are hereby granted unto Hugh J. McGowan, Charles E. Small and Randal Morgan, the survivors or survivor of them, and their or his assigns, for the full period of thirty (30) years from and after the approval and taking effect of this ordinance, within the present or any future corporate boundaries of the City of Kansas City, to lay and maintain gas pipes, regulators and appliances below the surface of the streets, avenues, boulevards, alleys and public grounds of said city, and on the bridges and viaducts owned by said city (provided such bridges and viaducts are of sufficient strength to carry such pipes), for the purpose of carrying and distributing natural gas and selling and supplying the same for private and public use, all upon the conditions provided for in this ordinance.

Section 2. Since it is a matter of large financial concern to the people of Kansas City, as well as the city itself, to secure natural gas within the shortest reasonable time, the grantees (which term  
1274 wherever used in this ordinance shall include the several grantees herein named, the survivors or survivor of them and their or his assigns) agree that they will

(1) on or before January 1, 1907, be ready to furnish and be furnishing natural gas on not less than seventy-five miles of mains to all consumers thereon who desire the same, and who have complied with the reasonable rules and regulations of the grantees; and

(2) on or before March 1, 1907, be ready to furnish and be furnishing natural gas on not less than fifty additional miles of mains to all consumers thereon who may desire the same and have complied with said reasonable rules and regulations; and

(3) on or before August 1, 1907, be ready to furnish and be furnishing natural gas to all present consumers on the lines of the Kansas City Missouri Gas Company who may desire the same and who have complied with said reasonable rules and regulations; provided that the grantees shall not be required to furnish patrons from circulating mains.

And said grantees shall within ten (10) days after this ordinance becomes a law file their written acceptance of the same as hereinafter provided, and at the time of filing their written acceptance shall deposit with the City Treasurer, as a special fund fifty thousand dollars (\$50,000.00) in cash, to become the property of the city, unless the requirements of paragraph one (1) of this section hereinbefore mentioned shall be performed within the time above specified.

Whenever the grantees shall file with the City Treasurer a certificate of the Board of Public Works, or other Board or officer of the city then performing the functions of the present Board of Public

1275 Works, stating that the grantees have complied with the requirements of paragraph one (1) of this section respecting the furnishing of natural gas in the city, the Treasurer shall repay to the grantees the said sum of fifty thousand dollars (\$50,000.00); and it shall be the duty of the Board of Public Works, upon compliance by the grantees with the said requirements, to make and deliver to them said certificate.



In order to secure their compliance with the requirements of paragraphs two (2) and three (3) of this Section respecting the furnishing of natural gas in the city, the grantees shall, within twenty (20) days after filing their acceptance of this ordinance, execute and deliver to the city their bond, in form approved by the City Counselor, with surety to the approval of the Mayor and City Comptroller, in the sum of two hundred and fifty thousand dollars (\$250,000.00), to be paid to the city as liquidated damages if the grantees shall fail to comply with the said requirements, said sum being agreed upon by both parties hereto as representing the liquidated damages, for the reason that said parties appreciate and agree that it will be impossible to measure such damages after the breach; and said bond shall be by the city surrendered and canceled on the certificate of the Board of Public Works, which shall be granted when grantees have fulfilled said requirements.

If the commencement of work or the laying of pipes by the grantees necessary for the furnishing of gas to consumers as in this section agreed, or the laying of pipes inside or outside the city or the delivering of natural gas at or within the corporate limits of the city by the grantees or by any persons with whom the grantees may contract for their supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the grantees or such other persons, or by inclement 1276 days or by labor strikes, or by any cause beyond the control of the grantees or such other persons, or if the acquisition of the ownership, use or control of the pipes and property of the Kansas City Missouri Gas Company hereinafter provided for shall be prevented, hindered or delayed by injunction or other legal proceedings, the time consumed by such prevention, hindrance or delay shall not be considered any part of the times provided for herein for supplying natural gas in the city, as required hereby, and the times provided for herein for furnishing gas to consumers shall be correspondingly extended for a like period or periods, but such delay or hindrance, in order to entitle the grantees to an extension of time hereunder, must actually so hinder and delay, and must so result after the grantees have done all in their power to prevent and obviate such hindrance and delay. But no such delay shall be excused or time extended on account thereof, if the grantees can, by the exercise of reasonable diligence, and at reasonable expense obtain natural gas elsewhere.

Section 3. All pavements and sidewalks shall be taken up and all excavations in said streets, avenues, boulevards, sidewalks, lanes, highways, alleys and public grounds, shall be made under the supervision of the Board of Public Works, and such pipes, regulators and appliances, shall be located in such portion of the streets, avenues, boulevards, lanes, highways or public grounds as may be designated by the Board of Public Works, using alleys as far as practicable; provided, that said pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the grantees to their former condition; and if such pavement shall have been laid under any guaranty for its maintenance and repair for any period

1277 of time, the said grantees shall also keep said restored pavement in repair for the unexpired period of such guaranty. Should said grantees fail or refuse to replace or restore said pavement, sidewalk and excavation, within a reasonable time, then the same may be replaced and restored by the city, under the direction of the Board of Public Works, at the cost and expense of the grantees, who shall, before commencing the work of making any excavation, deposit with the City Treasurer the sum of one thousand dollars (\$1,000) in money, for the faithful compliance with this section; and as often as any portion of said sum is used by said Board, said grantees shall on notice from said Board deposit a corresponding sum with the City Treasurer. Before any excavations are made by said grantees at any time in any street or highway, for any of the purposes named in this ordinance, a permit therefor shall be obtained from the proper officer of said city, which permit shall state the particular part of the street or highway where said work is to be done and the length of time said permit shall authorize work to be done thereunder. The work done under such permits shall be under the inspection of a competent inspector designated by the City Engineer, for whose time, reasonably employed in such service, the grantees shall repay the city at the rate of three dollars and sixty cents (\$3.60) per day.

Section 4. Said grantees shall not open or encumber at any one time more of any such highway or public place than may, in the opinion of the Board of Public Works, be necessary to enable them to proceed with advantage in laying or repairing mains and pipes, nor shall they permit any such highway or public place so opened

or encumbered by them to remain open or encumbered for a  
1278 longer period of time than shall, in the opinion of the Board of Public Works, be necessary. In all cases where any such highway or public place shall be encumbered or excavated by the said grantees they shall take all precautions for the protection of the public usual in such circumstances, and such as may now or hereafter be required by the general ordinances of said city. Whenever the city shall grade or regrade any street, alley or public highway, along or across which said grantees shall have constructed any pipes or mains, it shall be the duty of said grantees, at their own expense, to change said pipes or mains so as to conform to the street, alley or public highway so graded or regraded, on an order therefor from the Board of Public Works of said city.

Section 5. Said grantees shall, at their own expense, bring connecting pipes for consumers to the inside of the curb lines, or to the property line in such cases in which mains are laid in alleys, and construct shut-offs; and may, with the approval of the Board of Public Works, make such reasonable rules and regulations for making connections for private consumers with the distributing or service pipes of said grantees as they may deem proper. No person, company or corporation shall make any such connections without first obtaining a permit therefor from said grantees. Said grantees shall at all times keep and maintain such pressure of gas in all places where the same may be furnished to Kansas City and its in-

habitants as may be required by ordinance; provided, the pressure so required shall be reasonable and practicable.

Section 6. Said grantees shall extend their pipes and mains for the distribution of natural gas on such graded streets, avenues, sidewalks, lanes, highways, alleys and public places as may be  
1279 named by ordinance, followed by notice from the Board of

Public Works to proceed thereunder, and within the time specified in said notice; provided, that in every such case at least three consumers on an average for every two hundred feet of extension so made necessary shall first, in writing, agree to take such gas from said grantees for a period of not less than one year, at the general rates; provided, that if the graded street, avenue or highway is about to be paved under ordinance of said city, such extension shall be made ahead of the paving, including connections to curb in cases where buildings are already located, without regard to the number of consumers thereon, and gas shall be furnished by grantees on such extensions. Every ordinance providing for extending pipes and mains as above mentioned shall have appended thereto the signatures of the required number of prospective consumers, and such ordinance shall contain a provision that in case such prospective consumers, or any of them, causing the reduction below the required number of consumers, fail within thirty (30) days after demand has been made by said grantees, to enter into the contract with the grantees as herein required, such ordinance shall not be enforced. If the grantees should fail or refuse to obey any such ordinance for a period of ninety (90) days after the approval of the same, and after said consumers have made the agreements aforesaid, they shall pay to the city the sum of five dollars (\$5) for each and every day that such failure or refusal continues. Failure to obey each ordinance shall constitute a separate violation, and shall entitle the city to the aforesaid sum for the violation of each and every specific independent case.

Section 7. Said grantees shall have the right to shut off gas from any consumer who may be in arrears for a longer period than  
1280 fifteen (15) days, and the delinquent consumer can reinstate his right to obtain gas on payment of the bill and shutting off charge of fifty cents.

Section 8. In constructing, repairing and operating said gas plant said grantees shall use every reasonable and proper precaution to avoid damage or injury to persons or property, and shall, at all times and in all places, hold and save harmless the said city from all and every such damage, injury, loss or expense, caused or occasioned by reason of any act or failure to act of said grantees in the construction, repairing or operating of said gas plant or any part thereof, or in the paving, repaving or repairing of any street, or by reason of any act done by said grantees.

Section 9. The said grantees shall file with the Board of Public Works of said city, on or before the first day of February in each and every year, a statement or plat, duly verified, of all pipes, mains, shut-offs and appliances of every kind and nature laid, constructed or built by them in said highways or public places, during the pre-

ceding calendar year, and the location thereof; which shall be, by said Board of Public Works, copied into a book kept by it for that purpose.

Section 10. For the purpose of enforcing the provisions of this ordinance and securing the correct measurements of gas furnished under the same and the proper pressure of said gas to produce the best obtainable results with the least consumption of gas, with due regard to the reasonableness and practicability of such pressure, and to prevent the waste thereof and to protect the city in its corporate rights, and to protect the consumers in their rights, the city shall have the right to provide, by ordinance, for the appointment of one or more inspectors or measurers of gas, and to prescribe their duties

by ordinance, and to pass such ordinances as may be necessary to enforce the provisions of this ordinance. The city shall pay all costs and charges of such inspection and measurements, the same to be regulated and fixed by ordinance, including the salaries of said inspectors or measurers, and the grantees shall reimburse the city for all these charges, the money to be paid within thirty (30) days after the payment thereof and demand therefor by the city; provided such charges shall be reasonable. The grantees shall also supply and set meters for measuring gas free of charge to consumers, which shall, however, be and remain the property of the grantees and freely accessible to them at all reasonable times, and consumers shall be responsible for negligently or willfully injuring any meters.

Section 11. The said city shall enact all needful and requisite ordinances to protect said grantees, their works and property, from damages, impositions and frauds, and to prevent unnecessary waste of gas, and said grantees shall have the power to make all reasonable needful rules and regulations for the collection of their revenues, prevention of waste and the conducting and management of their business as they may, from time to time, deem necessary; but the city shall incur no liability by any failure to enact any such ordinance, and the city does not hereby waive its rights of governmental control over this subject matter.

Section 12. Said grantees shall have the right to shut off the gas temporarily from their mains and pipes or any portion thereof, for the purpose of making repairs or extensions of their plant or while repairs or extensions are being made to the pipes or apparatus by which the grantees obtain their supply of natural gas, and shall not be liable to said city or any consumer for any damage occasioned by said temporary suspension of said supply of gas; provided, such repairs and extensions are made with due diligence; and provided, that whenever it is practicable notice of such shutting off of the supply of gas shall be given to consumers by publication in one or more daily newspapers in said city.

Section 13. The said grantees shall be entitled to charge and collect from consumers of such gas, during the period of five years from and after natural gas is first furnished hereunder at the rate of not to exceed twenty-five cents per thousand cubic feet, and during the period of five years next thereafter at the rate of not to exceed twenty-

seven cents per thousand cubic feet, and thereafter during the period of the aforesaid grant at the rate of not exceeding thirty cents per thousand cubic feet, and may also make special contracts with consumers at less than the general rate then in force, based upon the amount of gas used and in the conditions of the contract, which special rates shall be the same to all consumers using the same amount of gas under the same contract conditions, and schedules of such special rates and the contract conditions shall be filed with the city clerk, and each and every change therein shall also be filed with the city clerk, and be open to public inspection. The grantees agree that they will at all times make special contracts at as low rates as those at which natural gas is sold at the time to any consumers of the same class using the same amount of gas under the same contract conditions who are located approximately as distant from the fields from which they are at the time supplied as Kansas City, Missouri, is from the fields from which it is at that time supplied and who are supplied by the grantees, or anyone from

1283 whom the grantees obtain their supply, or anyone whose supply is obtained from those from whom the grantees obtain their supply; provided that this agreement to make such special contracts at such rates shall not be construed to compel the grantees to make such special contracts at as low rates as those in effect at the time in any locality where the grantees, or those from whom the grantees obtain their supply, or any one supplied by those from whom the grantees obtain their supply, may be in bona fide competition with any other supplier of natural gas in such locality; but if the demand from special rate consumers threatens the general supply, the grantees may shut off the supply from any special rate consumer, which shall include all other than domestic consumers, in whole or in part, and if the grantees fail or refuse to do so, the city council may by ordinance require the grantees so to do; provided always that the said grantees shall have the right to charge ten (10) per cent additional to all consumers who are in arrears for a longer period than ten (10) days; and provided, further, that the grantees may charge and collect from each person who has a meter installed a minimum monthly bill of fifty cents; provided, however, that if the bill for natural gas consumed in any month shall at the rate then in force exceed the sum of fifty cents, such consumer shall not be charged any minimum bill for that month.

Under the permission and authority hereby granted, the grantees shall furnish natural gas for illuminating, heating and mechanical purposes, which shall at all times be of the same character and quality as when it comes from the earth; and it shall not be mixed with air or otherwise adulterated.

1284 Section 14. Should the supply of natural gas, obtainable by grantees reasonably accessible, be, at any time hereafter during the life of this ordinance, inadequate to warrant them in continuing to supply natural gas under the terms of this ordinance, or should the Common Council of Kansas City so find at any time (and in the event of a disagreement as to the facts in this respect either party or a gas consumer may have recourse to the courts to establish

the facts), they shall not be longer required to do so, but shall manufacture and furnish manufactured gas to said city and its inhabitants through said mains and pipes under the provisions of this ordinance as far as applicable and subject to all the terms and provisions contained in the ordinance number 6658 granted to Milton J. Payne and others passed August 24, 1895, and the ordinance number 6125 granted to Robert M. Snyder and others, passed January 10, 1895, and the ordinance number 8033, entitled: "An ordinance granting the consent of Kansas City to the consolidation of the Missouri Gas Company and the Kansas City Gas Company," until the expiration of said ordinances and no longer, except as to price, which shall be settled by arbitration, in the following manner:

The grantees shall not discontinue furnishing natural gas without serving at least six months' written notice upon the Mayor of Kansas City of their intention so to do. If grantees and the city cannot agree on the price which shall be thereafter charged for manufactured gas within ninety (90) days after the service of such notice Kansas City and said grantees shall each select one of the judges of the circuit court of Jackson County, Missouri, as an arbitrator, and the two judges so appointed shall immediately choose a third judge of said

1285 circuit court. The three judges so appointed shall proceed at once to investigate the matter and shall hear fully all such evidence as is presented to them by either party and shall within ninety (90) days after their appointment make their finding in writing, fixing the just and reasonable maximum rate to be charged by the grantees for manufactured gas during the life of the franchises above described; and said finding, when signed by not less than two of said judges, shall be conclusive between the city and the grantees herein; one copy shall be filed in the office of the city clerk of Kansas City, another with the grantees, and said grantees shall at no time have the right or power to return to the manufacture, distribution or sale of manufactured gas in Kansas City until after such arbitration and award as is herein provided for unless they shall conform to the provisions of said award.

Section 15. As a consideration for the aforesaid grant, the said grantees are hereby required to make a true and faithful report under oath to said city on the first day of February and August in each year for the six months ending on the last day of December and June last preceding, showing the gross amount of money received by them from all such gas delivered to consumers within the corporate boundaries of said city, and shall pay into the City Treasury within fifteen (15) days thereafter an amount equal to two (2) per cent of said gross receipts for said preceding six months. Said city shall have the right at all reasonable times to make such examination and inspection of the books of said grantees as may be necessary to determine the correctness of such reports.

Section 16. All things provided to be done by the Board of Public Works, or other department of the city, may be performed by  
1286 any other official or department of said city when so provided by ordinance or charter of said city.

Section 17. If the said grantees shall do or cause to be done any



act or thing by this ordinance prohibited, or shall fail, refuse or neglect to do any act by this ordinance required, they shall forfeit all rights and privileges granted by this ordinance, and this franchise and all rights thereunder granted shall ipso facto cease, terminate and become null and void, provided such failure to comply with the conditions of this ordinance shall continue unrectified for sixty (60) days after written notice thereof from the Board of Public Works of said city, or the Common Council of said city.

Section 18. The said grantees shall, within ten (10) days after this ordinance becomes a law, file in the office of the City Clerk of said city a written acceptance of the terms, obligations and conditions in this ordinance set forth, in such form as shall be approved by the City Counselor, and unless such written acceptance shall be so filed, this ordinance shall become null and void.

Section 19. As long as natural gas is furnished and sold to the inhabitants of said City of Kansas City under this franchise, said grantees shall, in consideration of this grant, furnish free to the City of Kansas City natural gas for light in the City Hall, City Prison and all city buildings; provided, that all such lights shall be kept extinguished when not needed for illuminating purposes; the city to furnish its own burners, mantles, fixtures and appurtenances, and maintain and keep the same in repair.

Section 20. In order that the city and its inhabitants may receive the benefits of natural gas more speedily and with less disturbance of the streets and inconvenience to the public than would  
1287 otherwise be possible, the grantees are hereby authorized to acquire the ownership or use or control, by purchase, lease, agreement or otherwise, of the pipes and property of the Kansas City Missouri Gas Company, the consent of the city being hereby given to said company, its successors and assigns, to make such transfer, lease or disposition of its pipes and property to the grantees, and during the time the pipes and property of said company shall be in the possession or under the control of the grantees, said company, its successors and assigns, shall be relieved of any obligation to supply manufactured gas (provided, however, that no consumer of manufactured gas shall be deprived thereof by anything done under this section until such consumer can obtain natural gas from grantees), but the acquirement by the grantees of such ownership or use or control of the pipes and property of the Kansas City Missouri Gas Company, shall be subject to the right of the city to purchase the same under the special provisions of the several ordinances under which said company is now operating, and said right of purchase under said special provisions, shall apply not only to the pipes and property of the Kansas City Missouri Gas Company, as acquired by said grantees, but also to all other pipes and property owned by the grantees in Kansas City, Missouri, and used in connection with said plant, the value of such other pipes and property to be determined at the same time, in the same manner and in the same proceedings. And grantees covenant that their contract for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (cor-



porations), that under the terms thereof, after two years from the time the natural gas is first furnished to Kansas City thereunder, the division of the gross income received for said gas between the 1288 distributing company and the supply company shall be in the proportion of thirty-seven and one-half cents out of each dollar to the former, and sixty-two and one-half cents to the latter; and covenant for themselves, their successors and assigns, that none of the terms of that contract agreement shall be changed without consent of Kansas City expressed by ordinance; and grantees agree for themselves, their successors and assigns, that if Kansas City shall acquire said plant and property they will on demand transfer free of cost to Kansas City all their rights under said contract; and grantees further agree to procure from said two corporations and file with the City Clerk within ninety days from the time this ordinance becomes a law, a written agreement in form to be approved by the City Counselor, agreeing that they (said two corporations) will, if Kansas City shall acquire said plant as aforesaid, upon demand, furnish and continue to furnish during the remaining period of this franchise gas to Kansas City on the same terms as they have agreed to furnish it to the grantees, their successors and assigns. If said proposed within agreement to be made by said two corporations is not filed with the City Clerk within the time specified this ordinance shall be null and void. Provided, however, that Kansas City agrees not to exercise the right to purchase the pipes and property of the Kansas City Missouri Gas Company, and of the grantees, under said special provisions, for the period of ten years from the time of the acceptance of this ordinance by grantees, unless grantees shall before the expiration of said period of ten years have ceased to furnish natural gas as required by this ordinance, in which event the right to make such purchase under such special provisions shall be no longer postponed; in consideration whereof the grantees agree during all 1289 the time they may be supplying natural gas to bid annually,

(1) to fit the street lamp posts at present set and in place with incandescent equipment, to furnish natural gas to the same, and to maintain, repair, clean, light and extinguish the same, upon the all night schedule, for the price of not to exceed nine dollars (\$9.00) per lamp per annum; and

(2) to set, on the line of their mains, such additional street lamp posts as the Council may by ordinance demand, to connect the same, to furnish the same with incandescent equipment, to maintain, repair, clean, light and extinguish and to furnish the natural gas to the same, on the all night schedule, for the price of not to exceed twelve dollars (\$12.00) per lamp per annum; or at the option of the city, in lieu of such bidding, to furnish the natural gas free and without cost to the above and to additional posts that may be set by the city, at the rate of one hundred (100) lamps for each eight thousand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory, having the largest circulation, including the

names of business firms; and if the city elects to take natural gas free under this option, and to itself furnish or to contract with others for the incandescent equipment and for maintaining, repairing, cleaning, lighting and extinguishing, the city shall have the right to use for the purpose the posts at that time owned and set by the grantees, which the grantees agree shall not be less than the number which have been set and are now owned by the Kansas City Missouri Gas Company, and the city agrees that the lights shall be 1290 kept extinguished between sunrise and sunset.

Section 21. All prohibitions, amendments, forfeitures and obligations and all other provisions of this ordinance shall be binding upon the grantees, the survivors or survivor of them, and their or his assigns, whether expressly so stated herein or not; and all grants and privileges secured by this ordinance to said grantees shall be held to inure to the benefit of the survivors or survivor or them and his or their legal and bona fide successors and assigns. Nothing in this ordinance shall be construed as granting to said grantees any exclusive franchise, rights or privileges; but nothing herein shall be construed to neutralize or impair the provisions of this ordinance respecting the prohibition against merger and consolidation.

Section 22. The said grantees shall not, except as in this ordinance provided, without the consent of the city, evidenced by ordinance, sell, lease or transfer their plant, property, rights or privileges, herein authorized, to any person, company, trust or corporation, now or hereafter engaged, or for the purpose of engaging in the manufacture or sale of gas in said city, under any other ordinance or franchise, or otherwise; and shall not without such consent at any time enter into any combination, with any person or persons, company or companies, authorized by ordinance to sell gas in said city, or with any person or persons, company or companies proposing by application for a franchise to sell gas to Kansas City or its inhabitants, concerning the rate or price to be charged for gas, to be used by the city, or private consumers; and no officer, employee or manager of the gas plant and works, to be constructed and acquired under and in pursuance of this ordinance, shall, at the same time, be in charge

1291 of, or be the officer, employee or manager of any other gas works authorized by ordinance to manufacture or sell gas in said city, except the Kansas City Missouri Gas Company, its successors and assigns, provided, however, that said grantees may convey all their rights and privileges herein granted to a corporation, its successors and assigns, to be organized by them, under the laws of the state of Missouri, for the purpose of acquiring, building, constructing and operating the gas plant authorized under this ordinance; but this shall not authorize any grantee to assign the franchise granted to it to any other company to which a franchise has been granted; and provided, further, that notice of said conveyance, and of any conveyance by said proposed assignee corporation, its successors or assigns, shall be filed with the City Clerk of Kansas City, Missouri, within ten (10) days after the execution thereof; and provided, further, that the grantees, or their assigns ("assigns" having the meaning above set forth), shall have the full, complete and un-

qualified right to assign and transfer and convey this franchise, and their property, by way of mortgage, deed of trust or other form of security in the nature of a mortgage or deed of trust, for the purpose of securing bona fide indebtedness, and for the purpose of acquiring property and of raising funds to provide, build, construct, equip and operate said plant, and to conduct the business thereunder.

This section shall not be construed, however, in any way to prevent or hinder the grantees from taking over, for the purposes hereinbefore stated, the property or plant of the Kansas City, Missouri, Gas Company and the taking over of the same shall never be construed as any violation of the provisions of this section of 1292 this ordinance. And the grantees further bind themselves to enter into no pooling arrangements or any contract or merger or consolidation, either by way of a holding company, or otherwise, with any other company authorized by ordinance to manufacture or sell gas in Kansas City, except as permitted by this ordinance, and, as a matter of contract, hereby agree to obey all laws of the State of Missouri, and ordinances of Kansas City, now in existence or hereafter passed, in prohibition of mergers, consolidations and pooling.

It being the purpose to safeguard and make sure that there may always be competition in the matter of supplying gas and that gas will be supplied within the city, the grantees and assigns agree that any action on their part impairing or limiting or preventing such competition, or any substantial and continued failure for a period of sixty days to furnish gas in compliance with the provisions of this ordinance, shall constitute a violation of this ordinance, and the city shall have the right to repeal this ordinance by ordinance, and shall have the right to purchase the plant under the same terms and provisions stated in Sections 13 and 14 of ordinance of Kansas City, No. 6658, passed August 24, 1895, commonly known as the ordinance of the Kansas City, Missouri, Gas Company, but the statement of these particular remedies shall not be construed as taking away from the city any of its rights in law or equity.

Provided, the Kansas City Missouri Gas Company, and the grantees and the said corporation so to be formed by them are hereby expressly authorized to sell, lease, convey or otherwise dispose of their pipes and property of every kind, either to the other, and generally to make such contracts and agreements with each other as they may see fit, and said corporation so to be formed, its successors and 1293 assigns, may also, subject to the restrictions of this section, sell, lease, convey or otherwise dispose of its property and the franchise hereby granted, provided such action is taken subject to the terms of this ordinance. Kansas City retains to itself the right to itself own and operate a plant or plants for supplying the city, or the inhabitants thereof, with natural or artificial gas (if it shall at any time see fit so to do) for lighting and heating and manufacturing purposes, and to own and operate a plant or plants for supplying the city, or the inhabitants thereof, with any other sort of light.

Section 23. All ordinances or parts of ordinances in conflict with this ordinance are, in so far as they so conflict, hereby repealed.

The form of the above ordinance is hereby approved.

EDWIN C. MESERVEY,  
*City Counselor.*

Passed Sep. 27, 1906.

GEO. HOFFMANN,  
*President Upper House of the Common Council.*

Passed Sep. 27, 1906.

D. R. SPALDING,  
*Speaker Lower House of the Common Council.*

Approved Sept. 27, 1906.

H. M. BEARDSLEY, *Mayor.*

Attest.

[SEAL.] WM. CLOUGH,  
*City Clerk,*

By E. H. ALLEN, *Dpy.*

1294 The supply-contract between Kansas City Pipe Line Company and McGowan, Small and Morgan, dated November 17, 1906, is omitted for the reason that it is the same in form and substance as the contract between the same parties, dated December 3, 1906.

1295 EXHIBIT 1001-B.

*Agreement Between The Kansas City Pipe Line Company and Hugh J. McGowan, Charles E. Small and Randal Morgan, Dated December 3, 1906.*

"11. This agreement shall, as between the parties hereto, and their respective heirs, executors, administrators, successors and assigns, take the place of and stand instead of that certain other agreement, between the parties hereto, executed and delivered, November 17, 1906, but if the City of Kansas City shall acquire the gas plant, pipes and property of the grantees named in said ordinance No. 33887, then this agreement shall at once terminate and become void, and thereupon the said other agreement shall again come into force and effect as if this agreement had never been made."

1296 This Agreement, made this 3rd day of December, 1906, between The Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, party of the first part, and Hugh J. McGowan, of Indianapolis, Indiana, Charles E. Small, of Kansas City, Missouri, and Randal Morgan, of Philadelphia, Pennsylvania, parties of the second part.

Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the State of Kansas to a point at or

near the city limits of Kansas City, Missouri, and is desirous of entering into a contract with the parties of the second part for the transportation and supply of natural gas to them;

And Whereas, the parties of the second part are the owners of an ordinance of the City of Kansas City, Missouri, granting the right to lay, acquire and maintain pipes in Kansas City, Missouri, for the purpose of supplying natural gas to said city and its inhabitants, copy of which ordinance is attached hereto marked "Exhibit No. 1," and desire to secure a supply of natural gas for the said city and its inhabitants.

Now, Therefore, in consideration of the mutuality hereof it is hereby agreed between the parties hereto as follows:

1. The party of the first part hereby agrees that it will during the period of such ordinance, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties of the second part, or of their property, supply and deliver through its said pipe line or lines, to said parties of the second part, or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, for the consideration hereinafter mentioned. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under his contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city at lower rates than those specified in said ordinance, and that they shall and will make such special contracts in accordance with their agreement to that effect contained in Section 13 of said ordinance, copy of which is hereto attached.

In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the party of the first part

1298 herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part agree that any contract they make to furnish gas to manufacturers shall contain provisions by which the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent. of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent. of such gross receipts. The parties of the second part make no agreement with the party of the first part respecting the rates at which they shall sell natural gas to any consumers in Kansas City, Missouri, but expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those mentioned in said ordinance which they may agree upon with such consumers but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their

1299 agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices, and the parties of the second part shall be at liberty to obtain the same from such other source as they may find available.

3. A statement shall be rendered by said parties of the second part to the party of the first part on or before the fifteenth day of each month, showing the amount of receipts during the previous month and the amount of outstanding and uncollected bills.

Payments hereunder shall be made by the parties of the second part to the party of the first part upon the fifteenth day of each month for the party of the first part's percentage of all collections made during the previous month. In order to enable the party of the first part to verify the correctness of payments made by the parties of the second part, the party of the first part shall have the right, through its duly appointed representatives, at all times during ordinary business hours, to have such access to such books of the



parties of the second part as may be necessary to enable it to verify the gas sales of the parties of the second part and the amounts and dates of collection for the same.

4. The parties of the second part hereby agree that they will

(1) on or before January 1, 1907, be ready to furnish and be furnishing natural gas on not less than seventy-five miles of mains to all consumers thereon who desire the same, and who have 1300 complied with their reasonable rules and regulations; and

(2) on or before March 1, 1907, be ready to furnish and be furnishing natural gas on not less than fifty additional miles of mains to all consumers thereon who may desire the same and have complied with said reasonable rules and regulations; and (3) on or before August 1, 1907, be ready to furnish and be furnishing natural gas to all present consumers on the lines of the Kansas City Missouri Gas Company who may desire the same and who have complied with said reasonable rules and regulations; provided that the parties of the second part shall not be required to furnish patrons from circulating mains; and by advertising, solicitation and all other ordinary methods in vogue with enterprising gas companies to encourage and increase their business. Provided that if the commencement of work or the laying of pipes by the parties of the second part necessary for the furnishing of gas to consumers as herein agreed, or the laying of pipes inside or outside the city or the delivering of natural gas at or within the corporate limits of the city by the parties of the second part or by any persons with whom they may contract for their supply of natural gas, shall be prevented, hindered or delayed by injunction or legal process of any kind against the parties of the second part or such other persons, or by inclement days or by labor strikes, or by any cause beyond the control of the parties of the second part or such other persons, or if the acquisition of the ownership, use or control of the pipes and property of the Kansas City Missouri Gas Company provided for in said ordinance hereto attached shall be prevented, hindered or delayed by injunction or other legal proceedings, the time consumed by such prevention, hindrance or delay shall not be considered any part of the 1301 times provided for herein for supplying natural gas in the city, as required hereby, and the times provided for herein for furnishing gas to consumers shall be correspondingly extended for a like period or periods.

5. It is further covenanted and agreed between the parties hereto that the parties of the second part will not supply manufacturers at a greater pressure than four (4) ounces at the meter; provided, that if the pressure of gas at the meter is greater than four (4) ounces per square inch, the volume of gas shall be corrected to four (4) ounces pressure and charged to the consumer at the corrected volume.

6. It is further covenanted and agreed by and between the parties hereto that all gas sold shall be supplied through meters of approved design, that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by



the parties of the second part that each meter shall register as nearly accurately as possible the amount of gas passed through it; that the parties of the second part will at all times permit the officers or authorized agents of the party of the first part to inspect their mains, pipes, regulators, meters and appliances for the purpose of verifying their monthly statements as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that said parties of the second part will forward to the party of the first part a monthly record of the number of contracts made and cancelled, and the number of meters set, connected and disconnected, together with the total number of consumers at the end of each month, and will make and keep at their office a copy of such contracts, together with a full and complete record of the same, and of all meters used; and it shall be the duty of the parties of the second part to keep and

1302 maintain their distributing system in good order and condition.

7. It is further covenanted and agreed that the parties of the second part shall not be liable to the party of the first part for any portion of their receipts from the city of Kansas City, Missouri, for street lamps, so far as the street lamp posts, or an equivalent number, set and in place on September 27, 1906, (the date of the passage and approval of said ordinance) are concerned, and as to any additional number it is hereby agreed that ten thousand (10,000) cubic feet per lamp per annum, at fifteen (15) cents per thousand cubic feet, shall be the agreed upon proportion of the receipts of said parties of the second part from that source on which the percentage of the party of the first part for gas shall be reckoned. The party of the first part agrees to furnish natural gas to the parties of the second part free of charge for use in the said street lamp posts, or an equivalent number, set and in place on said September 27, 1906, and to additional posts that may be set by the city at the rate of one hundred (100) lamps for each eight thousand (8,000) inhabitants, over and above two hundred thousand (200,000) inhabitants, population to be calculated for the purpose on the basis of two and one-half times the number of names shown by the city directory having the largest circulation including the names of business firms, should the city of Kansas City, Missouri, elect to take natural gas free and itself furnish or contract with others for the incandescent equipment, and for maintaining, repairing, cleaning, lighting and extinguishing. And the party of the first part further agrees to furnish natural gas to the parties of the second part free of charge for lighting the City Hall, City Prison, and all city buildings in said city.

1303 8. It is agreed between the parties hereto that if at any time during the period of said ordinance while the parties of the second part are buying from the party of the first part all the natural gas they are distributing and selling in the said city, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said city or any of its inhabitants with such gas, otherwise than under this agreement, then, and in any such case, the provision contained

in Section No. 2 hereof, in the following words, to-wit: "but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices," shall at once become inoperative and cease to have any effect but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the parties of the second part natural gas to fully supply the demand for all purposes of consumption in said city for sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part from the sale of natural gas in said city at any prices for which the said parties of the second part may choose to sell the same.

1304     9. The parties of the second part shall have the right, authority and power to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise convey this agreement and all their rights, titles and interests hereto, herein and hereunder; and they agree that they will, on or before December 31, 1907, assign and convey this agreement and all of their rights, titles and interests hereto, herein and hereunder to a corporation organized under the laws of the State of Missouri and competent to take such assignment, and that such corporation shall thereupon accept such assignment and the party of the first part agrees that upon such assignment and acceptance, and written notice thereof to the party of the first part, accompanied by a copy of the assignment, and by a copy of the acceptance, the parties of the second part shall ipso facto be released from all obligations to the party of the first part hereunder; and the party of the first part further agrees to execute and deliver to the parties of the second part all such evidences of their release as they may reasonably require. The said corporation organized under the laws of the State of Missouri, and its successors and assigns, shall also have the right, authority and power, to bargain, grant, sell, assign, transfer, set over, mortgage, pledge or otherwise convey this agreement and all its or their rights, titles and interests hereto, herein and hereunder.

10. This agreement shall be binding upon the successors and assigns of the parties hereto.

11. This agreement shall, as between the parties hereto, and their respective heirs, executors, administrators, successors and assigns, take the place of and stand instead of that certain other agreement, between the parties hereto, executed and delivered, November 17,

1906, but if the city of Kansas City shall acquire the gas plant,  
1305 pipes and property of the grantees named in said ordinance

No. 33887, than this agreement shall at once terminate and become void, and thereupon the said other agreement shall again come into force and effect as if this agreement had never been made.

In Witness Whereof the parties hereto have duly executed these presents the day and year first above written.

[CORPORATE SEAL.] THE KANSAS CITY PIPE LINE  
COMPANY,

By PAUL THOMPSON, *President*.

Attest:

C. M. LATOURETTE, *Secretary*.

Signed, sealed and delivered by Kansas City Pipe Line Company in presence of

D. N. OGDEN.

W. F. DOUTHIRT.

HUGH J. MCGOWAN. [SEAL.]

Signed, sealed and delivered by Hugh J. McGowan in presence of ANNA L. BOWMAN.

CHARLES E. SMALL. [SEAL.]

Signed, sealed and delivered by Charles E. Small in presence of CALER S. MONROE.

RANDAL MORGAN. [SEAL.]

Signed, sealed and delivered by Randal Morgan in presence of GEORGE S. PHILLER.  
W. F. DOUTHIRT.

1306 STATE OF PENNSYLVANIA,

*County of Philadelphia, ss:*

Be it Remembered That on this 3rd day of December, 1906, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came Paul Thompson, President of The Kansas City Pipe Line Company, a corporation duly organized, incorporated and existing under the laws of the State of New Jersey, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself, the President thereof.

In Witness Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

[NOTARIAL SEAL.]

F. H. MACMORRIS,

*Notary Public.*

My commission expires 2/12/1909.

## STATE OF PENNSYLVANIA,

*County of Philadelphia, ss:*

I, Thomas K. Finletter, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do by my Deputy James W. Fletcher, authorized by Act of Assembly of May 26, 1897, Certify, That F. H. MacMorris, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, 1307 duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 4th day of December in the year of our Lord one thousand nine hundred and six.

[SEAL.]

THOMAS K. FINLETTER,

*Prothonotary.*

By JAS. W. FLETCHER,

*Dep. Prothonotary, Durante Absentia, Secundum Legem.*

## STATE OF INDIANA,

*County of Marion, ss:*

On this 6th day of December, 1906, before me personally appeared Hugh J. McGowan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at Indianapolis, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the 19th day of September, 1908.

[NOTARIAL SEAL.]

ANNA L. BOWMAN,

*Notary Public.*

1308 STATE OF INDIANA,  
*County of Marion, set:*

I, William E. Davis, Clerk of the County of Marion, in the State of Indiana, and also Clerk of the Circuit Court, within and for said County and State, the same being a Court of Record, and having a seal, do hereby certify that Anna L. Bowman, whose name is subscribed to the acknowledgment to the annexed instrument, was at the time of taking such acknowledgment, to-wit: Dec. 6, 1906, an acting Notary Public within and for the County aforesaid, duly commissioned and qualified, and authorized by the laws of the State of Indiana, to take and certify the same, as well as take and certify all affidavits, and the acknowledgment and proof of deeds or conveyances, and all other instruments of writing.

And further, that I am well acquainted with the handwriting of said Anna L. Bowman, and verily believe that the signature to said Certificate or Proof of Acknowledgment or Jurat is genuine and that said instrument is executed and acknowledged according to the laws of the State of Indiana.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, at Indianapolis, Indiana, this 6th day of December, A. D. 1906.

[SEAL.]

WILLIAM E. DAVIS, *Clerk.*

STATE OF MISSOURI,  
*County of Jackson, ss:*

On this 7th day of December, 1906, before me personally appeared Charles E. Small, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

1309 In Witness Whereof, I have hereunto set my hand and affixed my official seal at Kansas City, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the eighteenth day of September, 1910.

[NOTARIAL SEAL.]

CALEB S. MONROE,  
*Notary Public.*

STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

On this 4th day of December, 1906, before me personally appeared Randal Morgan, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at Philadelphia, in the State and County aforesaid, the day and year last aforesaid.

My commission as a Notary Public will expire on the 12th day of February, 1909.

[ NOTARIAL SEAL.]

F. H. MacMORRIS,  
*Notary Public.*

(Here follows Exhibit No. 1, to said contract dated December 3, 1906, the same being Ordinance No. 33887 of Kansas City, Missouri.)

1310

EXHIBIT 1013.

*Lease.*

The Kansas City Pipe Line Company to Kansas Natural Gas Company, Dated January 1, 1908.

"Nineteenth. This indenture is a substitute for and shall take the place of an indenture, dated November 19, 1906, between the Lessor and the Kaw Gas Company, of which Company the Lessee is the successor, having heretofore acquired all the properties of the Kaw Gas Company and assumed all the obligations of the Kaw Gas Company under said indenture dated November 19, 1906, and under the agreement of the Kaw Gas Company, dated December 5, 1906, which is attached to and refers to the agreement dated December 3, 1906, between the Lessor and Hugh J. McGowan, Charles E. Small and Randal Morgan, which last mentioned agreement is referred to in Article Fifth of this indenture and a copy thereof hereto attached marked Exhibit C."

1311

*Lease.*

This indenture, made this first day of January, 1908, between The Kansas City Pipe Line Company, a corporation organized under the laws of the State of New Jersey, hereinafter called the Lessor, party of the first part, and Kansas Natural Gas Company, a Delaware corporation, hereinafter called the Lessee, party of the second part, Witnesseth:

Whereas the Lessor has an authorized capital stock of four million five hundred thousand dollars (\$4,500,000), at par divided into forty-five thousand (45,000) shares of the par value of one hundred dollars (\$100) each, and has executed and delivered its gold bonds to the amount of five million dollars (\$5,000,000), at par, bearing interest at the rate of six (6) per cent per annum, dated August 1, 1907, and secured by first mortgage to Fidelity Trust Company, of the City of Philadelphia, as Trustee, upon all the property, real and personal, and franchises of the Lessor owned by it at the date of said mortgage, or subsequently acquired, the covenants of which bonds and mortgage provide that the total amount thereof shall be paid in installments as follows:

Series.	Date of maturity.	Numbers.	Amount.
A .....	February 1, 1908	1 to 300	\$300,000
B .....	February 1, 1909	301 to 700	400,000
C .....	February 1, 1910	701 to 1100	400,000
D .....	February 1, 1911	1101 to 1650	550,000
E .....	February 1, 1912	1651 to 2200	550,000
F .....	February 1, 1913	2201 to 2750	550,000
G .....	February 1, 1914	2751 to 3300	550,000
H .....	February 1, 1915	3301 to 3850	550,000
1312			
I .....	February 1, 1916	3851 to 4250	400,000
J .....	February 1, 1917	4251 to 4650	400,000
K .....	February 1, 1918	4651 to 5000	350,000
Total .....			\$5,000,000

Now, therefore, this indenture witnesseth, That the parties have agreed, each for itself, its successors and assigns, and each in consideration of the grants, covenants and agreements herein made by each with the other, its successors and assigns, as follows:

First. The Lessor has granted, leased and demised and by these presents does grant, lease and demise, unto the Lessee, its successors and assigns, all and singular its gas lands, gas wells, gas leases, leaseholds, pipe lines, buildings and other structures of every kind and description, and all easements, rights of way and appurtenances thereunto appertaining, also all equipment, machinery, tools, appliances and all other property, real, personal and mixed, belonging to the Lessor, and all contracts, rights, privileges and franchises connected with or relating to the said demised property, or any part thereof, as fully as the same may now or hereafter be vested in the Lessor; excepting, however, its franchise to be a corporation, its corporate seal, its minute, transfer and stock books, the books containing the dividend accounts of the Lessor, its office furniture, and its deeds, grants, plats and other instruments and documents containing the evidence of its right and title to the property now leased, owned or operated by it:

To have and to hold all and singular the demised property unto the Lessee, its successors and assigns, for and during the term  
 1313 of ninety-nine (99) years from and after the second day of February in the year 1906, on the terms and conditions and for the consideration hereinafter provided and agreed to by the parties hereto.

Second. The Lessor covenants that it will at any time, and from time to time hereafter, upon the reasonable request of the Lessee, do, make, execute, acknowledge and deliver, or cause or procure to be made, executed, acknowledged, delivered and done, all and every such further and other lawful and reasonable conveyances, transfers, and assurances in the law, and acts as by the Lessee shall be reasonably devised, advised or required for the better and more effectual



vesting and confirming in the Lessee of the premises, property, contracts, rights, powers, privileges and franchises hereby leased and demised, or intended so to be; and especially for the better and more effectual vesting and confirming in the Lessee all such premises, property, contracts, rights, powers, privileges and franchises as shall be hereafter acquired by the Lessor; that during the continuance of this lease it will maintain its corporate existence and organization, and to that end will comply with all the requisites and formalities of law, hold all necessary meetings, elect all necessary officers and make all necessary records, reports, and returns, and it will, at the request and expense of the Lessee, exercise or cause to be exercised, all such franchises and do and perform, or cause to be done and performed, all such acts lawful and consistent with its rights hereunder as shall be proper and necessary for the due protection, preservation and full enjoyment by the Lessee of all the property, rights, franchises, contracts and interests hereby demised or granted to it, and the proper extension, from time to time, of such plants and franchises,

1314 and to carry out the true intent and meaning of this instrument; and in case of any default hereunder, the Lessor hereby authorizes the same to be done by the Lessee, or by its successors and assigns, in the name and as the act of the Lessor; and the Lessee may, from time to time, and at its own expense, apply for and operate in the name or in the right of the Lessor, or in the name or right of any other company in whose name or right the Lessor is entitled to act, further rights to lay and maintain pipes, for said gas plant, and may at its expense and charge, and for its own benefit, use the Lessor's name or rights in bringing, prosecuting or defending any suit or proceedings, or taking any action which may be necessary or proper for the protection or enjoyment of the demised property, rights, privileges and franchises, or to enforce payment of damages for injuries thereto.

The Lessee may at all reasonable and convenient times have access to and make copies of the Lessor's plats, deeds, grants and other instruments and documents containing the evidence of its right and title to the properties, contracts, powers, rights, privileges and franchises hereby leased and demised.

Third. The Lessee shall pay to the Lessor in each year during the existence of this lease the following:

(a.) The amount of all taxes, rates, imposts, excises, duties, charges, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description, which may be lawfully imposed or assessed during the continuance of this lease in any way upon the Lessor with reference to its capital stock or property, contracts, rights, privileges or franchises hereby demised, or upon the bonds of the Lessor, which it may be required to pay or deduct,

1315 or upon all dividends declared during the continuance of this lease upon the capital stock of the Lessor, and all sums of money which the Lessor may now or hereafter become liable to pay by law, contract or otherwise, for the protection, enjoyment or perpetuation of any of its rights, powers, privileges or franchises,

said payments to be made as they become due to the officer or other person entitled by law to receive the same.

(b.) Interest from time to time as the same shall fall due upon all bonds which may be outstanding from time to time, issued under the terms of and secured by said mortgage of the Lessor to Fidelity Trust Company, Trustee, dated August 1, 1907.

Said interest shall be paid by the Lessee, for the account of the Lessor, to the Fidelity Trust Company, Trustee, under said mortgage of the Lessor, semi-annually, on or before the first day of February and August in each year, so that payments of the coupons in each and every year representing the amount due upon said bonds can be made by the Trustee as the same fall due.

(c.) Upon or before the first day of February, 1908, and on the first day of February in each and every year thereafter, the Lessee shall pay a sum equal to the amount which the Lessor shall require to pay off and satisfy so many bonds secured by said mortgage as under the terms of said mortgage the Lessor obligates itself to pay off and satisfy upon said dates, which payment shall be made at the times stated to Fidelity Trust Company, Trustee, under said mortgage of the Lessor, so that payments in discharge of the said bonds can be made by the Trustee as the same fall due.

Ten days before each and every interest paying period the Lessor shall certify to the Lessee the amount of outstanding bonds  
1316 upon which interest shall then be maturing, and ten days before each and every bond retiring period the Lessor shall certify to the Lessee the amount of outstanding bonds of the series then about to mature, to the end that the Lessee shall be advised of the amount of money it must pay to or for account of the Lessor to meet the interest coupons and bonds then about to mature.

(d.) A sum sufficient to enable the Lessor to pay six (6) per cent dividends on its capital stock.

(e.) The actual expense of maintaining the organization of the Lessor, and for providing suitable offices for the accommodation of its officers and directors, not exceeding the sum of five hundred dollars (\$500) which shall be paid in each year in such amounts as shall be requested by the Lessor.

Fourth. The Lessor covenants that it will suffer and permit the Lessee, it keeping all the covenants on its part as herein contained, to occupy, hold, use, possess and enjoy the property, rights, contracts, powers, privileges and franchises herein demised, during the continuance of the term of this lease, without hindrance or molestation from the Lessor or any person claiming by or through or under it, subject, however, to said mortgage.

Fifth. The Lessee hereby assumes and covenants to perform all the obligations assumed by the Lessor under the terms of an agreement, dated February 1, 1906, between the Lessor and the Wyandotte Gas Company, for the supply of natural gas to Kansas City, Kansas, and Wyandotte County, in said State, copy of which is attached hereto, and marked Exhibit A, and those assumed by the Lessor under the terms of a certain other agreement, dated Novem-

ber 17, 1906, between the Lessor and Hugh J. McGowan,  
1317 Charles E. Small and Randal Morgan, for the supply of  
natural gas to Kansas City, Missouri, copy of which said last  
named agreement is hereto attached and marked Exhibit B, and  
those assumed by the Lessor under the terms of a certain other agree-  
ment, dated December 3, 1906, between the Lessor and said Hugh  
J. McGowan, Charles E. Small and Randal Morgan, copy of which  
is hereto attached marked Exhibit C, as amended by an agreement,  
dated December 11, 1907, between the same parties, copy of which  
is hereto attached marked Exhibit D.

The Lessee hereby assumes and covenants to perform all the ob-  
ligations assumed by the Lessor under the terms of all other contracts  
now in force and binding upon the Lessor, and the Lessee further  
covenants to assume and pay all the outstanding indebtedness of  
the Lessor, whether the same be absolute or contingent, as the same  
shall from time to time fall due or be established, and to assume and  
pay all the liabilities of the Lessor now existing for injury or dam-  
age to persons or property, as the same shall from time to time here-  
after be established, and to defend, at its own expense, all actions now  
pending or hereafter brought against the Lessor on account of  
claims for said liabilities.

The Lessee agrees that if the gas wells hereby demised situated in  
the territory of the Lessor do not furnish a sufficient volume of gas,  
or if the pipe line of the Lessor shall not have a delivery capacity suf-  
ficient to supply the demands for gas in the cities of Kansas City,  
Kansas, and Kansas City, Missouri, it, the Lessee, will supplement  
said gas supply from its own gas wells up to an amount equal to  
fifty (50) per cent of the gas, which by the use of the diligence  
in connecting existing wells and drilling new ones, it may be  
1318 able to produce from the territory now or hereafter controlled  
by it; and will construct at its own cost and expense, or, so  
far as any of the bonds of the Lessor in his lease referred to may be  
available for the purpose, at the cost and expense of the Lessor, the  
additional pipe lines necessary for the delivery of gas to supply such  
demands, whether from the Lessor's or the Lessee's territory. Pro-  
vided, however, that if the expectation of continuance of the supply  
of gas shall not be sufficient to warrant the laying of an additional  
pipe line at any time, the Lessee shall not be required to do so,  
whatever the demand for gas in said cities: Provided, further, that  
it is the intent of the parties that the provisions of this clause shall  
not be so construed as to in effect require the Lessee to lay a line for  
manufacturing purposes mainly or only.

Sixth. It is understood and agreed that if the Lessee shall desire  
to resist by legal proceedings the payment of any tax or assessment  
upon the ground that the same is not legally assessed or is excessive,  
and shall so notify the Lessor, the Lessor shall not pay any such tax  
or assessment until thirty (30) days after final adjudication upon  
such tax or assessment by a court having jurisdiction in such cases.

Seventh. The Lessee covenants that during the continuance of this  
lease it will in good faith and to the best of its ability operate at its  
own risk and expense the Lessor's works and plants and furnish all

apparatus and equipment in substitution for, and in addition to, that hereby demised, which may be necessary or proper to such operation, and will carry on, preserve and extend the business heretofore carried on by the Lessor in such manner as at all times to meet the demands of the public service and to promote the interest of and preserve the franchises vested in the Lessor.

Eighth. The Lessor covenants to deliver to the Lessee, upon the execution hereof, the sole and exclusive possession of all the demised property and franchises; and further, from time to time, during the continuance of this lease as other property and franchises are acquired or come into the right or possession of the Lessor, to transfer and deliver possession, or right of possession, thereof to the Lessee.

Ninth. The Lessee hereby accepts the plant, estate and property hereby demised as the same actually are at the date hereof, and covenants that it will extend, renew, repair and replace the same so as to maintain and keep the demised premises in good order, repair and condition; that it will, from time to time, out of the uncertified bonds of the Lessor referred to in Section Tenth hereof, or at its own expense if all of the said bonds shall have been used for the purposes therein mentioned, make all extensions, additions, alterations, improvements, renewals and betterments which may be necessary or proper with reference to the premises and property hereby demised, and for the use and operation thereof, and will do and perform all other things necessary to make and maintain said works and plants as a first-class pipe line company; and that all lands, structures, improvements, betterments and renewals added to or made upon the demised premises and all rights, privileges and franchises acquired by the Lessee in connection with the demised premises and paid for out of the sale of the said bonds shall become the property of the Lessor and be treated as part of the demised premises and be subject to all the terms, conditions and provisions of this indenture the same as if they had been vested in the Lessor at the date of this instrument, but provided that all extensions, lands, structures, improvements, betterments, renewals, rights, privileges and franchises paid for by the said Lessee not out of the proceeds of said bonds shall belong to and remain its sole and separate property.

Tenth. It is hereby agreed between the parties that all uncertified bonds of the Lessor which are in the hands of the Trustee under its mortgage and retained for the purpose of making additions to or extensions or betterments of the plant of the Lessor, or acquiring new property, real and personal, may be used by the Lessee for the purposes provided in said mortgage, and to that end whenever the Lessee shall need funds for such purposes, it shall in writing notify the Lessor of the amount of money required for such purposes (which amount, however shall never exceed the amount of the uncertified bonds held by the Trustee for the purposes aforesaid), and such notice shall be signed by the President or Vice-President of the Lessee, attested by its Secretary and sworn to by one of the officers of the Lessee as a proper and necessary expenditure for such purposes, whereupon the Lessor shall, by reso-

lution of its Board of Directors, call upon the Trustee under its said mortgage, in the manner provided in the mortgage, for the certification and delivery of an amount of bonds sufficient to provide the amount of money so required, and upon receipt of said bonds, the Lessor shall either sell the same and pay the cash proceeds of such sale to the Lessee, or deliver said bonds to the Lessee to be used by it for making the payments aforesaid.

Eleventh. The Lessee covenants that it will save the Lessor harmless from all charges, actions, costs, damages, and expenses  
1321 arising from the maintenance or the operation of the works and pipe lines, or other use by the Lessee of the property, contracts, rights, powers, privileges or franchises hereby leased and demised; and that the Lessee will, at its own expense, defend all suits brought against the Lessor for any such cause, and pay the final judgments recovered therein.

Twelfth. The Lessee shall cause the property, from time to time, subject to this lease, to be insured, at the expense of the Lessee, against loss or damage by fire, to the extent that the property of natural gas companies is usually insured, in good and solvent companies—such insurance to be taken in the name of the Lessee, and the proceeds thereof, when received by the Lessee, to be placed in a separate fund, and to be applied by the Lessee solely to the rebuilding, replacement or repair of the property damaged or destroyed, whenever necessary to the operation of the leased property, or, when not so necessary, then to other extensions, betterments and renewals of property subject to this lease; Provided, however, that the Lessee may adopt such other plan or method of protection against loss by fire, whether by the establishment of an insurance fund, or otherwise, as may be approved by the Board of Directors of the Lessor.

In case of any failure on the part of the Lessee to keep said property so insured or protected from loss by fire it shall be lawful for the Lessor to cause said property to be insured, and the Lessor may recover the amount of any payments of premiums for such insurance, with interest thereon from the date thereof, from the Lessee, without prejudice to any right secured to the Lessor by this lease for breach of any covenant hereof.

1322 It is understood by and between the parties hereto that the provisions thus made for restoration of the demised property, or any portion thereof, which may be destroyed or injured by fire, shall be treated and shall operate as a waiver by the Lessee of any right, whether statutory or otherwise, on its part, to surrender said leased property, or any part thereof, by reason of destruction or injury by fire, or otherwise, the object being to require the Lessee, notwithstanding such event, to continue the term of this lease, and to make the payments and perform the covenants herein required, anything in the statutes of the state of Kansas to the contrary notwithstanding.

Thirteenth. At the expiration or earlier termination of this lease, the Lessee shall return and surrender to the Lessor the demised rights, privileges, franchises, premises and property, and all improvements, additions, and extensions thereto, and all property, real and

personal, rights, privileges and franchises acquired by the Lessee in connection or for use therewith, except as the same may have been sold, conveyed, altered, changed, abandoned, removed or replaced in accordance with the terms of this instrument.

Fourteenth. In case the Lessee shall default in the payment of any sum required to be paid under this lease or shall fail to perform any other covenant or condition contained herein, and such default shall continue for the space of thirty (30) days after notice and demand by the Lessor to make such payment or perform such condition or covenant, the Lessor shall have the right, at its option, to terminate this lease, and it may, upon notice of its election so to do, re-enter upon the demised premises, or any part thereof, in the name of the whole, and the same have and possess as of its former estate; together  
1323 with all the additions and extensions made thereto, and franchises acquired in connection therewith by the Lessee, as contemplated herein, and may expel the Lessee and those claiming under it therefrom, without prejudice to its right of action for payment of damages to which the Lessor may be entitled under this lease for or on account of any such default or defaults.

Fifteenth. The Lessor, by its agents or representatives, may at all proper and reasonable times enter upon the demised property and estate, and inspect the same, for the purpose of ascertaining its condition and the character of the management, and whether the covenants and agreements of the Lessee herein contained are being substantially complied with.

Sixteenth. There shall be made a full, complete and particular inventory and description of all the estate and property, real and personal, belonging to the Lessor, and coming into the possession of the Lessee by virtue of this lease; such inventory and description shall be made by two competent persons, one selected by each party; such inventory and description shall be made in duplicate and an original furnished to each party.

Seventeenth. This lease is made by the Lessor and accepted by the Lessee subject to terms of the mortgage hereinbefore referred to, dated August 1, 1907, which shall remain and be a continuing lien upon the property described in said mortgage until the bonds secured by the same are paid and said mortgage satisfied of record.

Eighteenth. The parties hereto covenant each with the other that the covenants herein contained shall inure to the benefit of and be obligatory upon their respective successors and assigns.

1324 Nineteenth. This indenture is a substitute for and shall take the place of an indenture, dated November 19, 1906, between the Lessor and The Kaw Gas Company, of which Company the Lessee is the successor, having heretofore acquired all the properties of The Kaw Gas Company and assumed all the obligations of The Kaw Gas Company under said indenture dated November 19, 1906, and under the agreement of the Kaw Gas Company, dated December 5, 1906, which is attached to and refers to the agreement dated December 3, 1906, between the Lessor and Hugh J. McGowan, Charles E. Small and Randal Morgan, which last men-



tioned agreement is referred to in Article Fifth of this indenture and a copy thereof hereto attached marked Exhibit C.

In witness Whereof The Kansas City Pipe Line Company and Kansas Natural Gas Company have caused their corporate names to be hereto subscribed, and their corporate seals to be hereto affixed, by officers thereunto duly authorized, the day and year first above written.

THE KANSAS CITY PIPE LINE  
COMPANY.

By S. T. BODINE, *President*.

Attest:

[SEAL.] W. F. DOUTHIRT, *Secretary*.

Signed, sealed and delivered by The Kansas City Pipe Line Company in presence of

W. G. GASTON.

PERCIVAL A. WILSON.

KANSAS NATURAL GAS COM-  
PANY.

By T. N. BARNSDALL, *President*.

Attest:

[SEAL.] JOHN S. SCULLY, Jr., *Secretary*.

Signed, sealed and delivered by Kansas Natural Gas Company in presence of

V. A. HAYS.

J. C. McDOWELL.

1325 STATE OF PENNSYLVANIA.

*County of Philadelphia, ss:*

Be it remembered that on this 2nd day of January, 1908, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came Samuel T. Bodine, President of The Kansas City Pipe Line Company, a corporation, duly organized, incorporated and existing under the laws of the state of New Jersey, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself, the President thereof.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, on the day and year last above written.

[SEAL.]

F. H. McMORRIS,

*Notary Public.*

My commission expires February 12, 1909.



1326 STATE OF PENNSYLVANIA,  
*County of Allegheny, ss:*

Be it remembered that on this third day of January, 1908, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came T. N. Barnsdall, President of Kansas Natural Gas Company, a corporation, duly organized, incorporated and existing under the laws of the State of Delaware, who is personally known to me to be such officer and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself, the President thereof.

In witness whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

[SEAL.]

W. B. CHAPMAN,

*Notary Public.*

My commission expires Feb. 2, 1910.

1327 (Here follows Exhibit "A" to the Lease, being the agreement between The Kansas City Pipe Line Company and Wyandotte Gas Company, dated February 1, 1906.)

(Then follows Exhibit "1" to said agreement, being Ordinance No. 6051 of Kansas City, Kansas.)

(Then follows Exhibit "B" to said Lease, the same being agreement between The Kansas City Pipe Line Company and McGowan, Small and Morgan, dated November 17, 1906, with the natural gas franchise-ordinance of Kansas City attached thereto.)

(Then follows Exhibit "C" to said Lease, the same being agreement between The Kansas City Pipe Line Company and McGowan, Small and Morgan, dated December 3, 1906, superseding the agreement of November 17, 1906, with the natural gas franchise-ordinance of Kansas City, Missouri, thereto attached.)

1328 In the District Court of Montgomery County, Kan.

No. 13476.

STATE OF KANSAS, Plaintiff,

vs.

THE INDEPENDENCE GAS COMPANY, a Corporation; THE CONSOLIDATED GAS, OIL AND MANUFACTURING COMPANY, a Corporation, and The Kansas Natural Gas Company, a Corporation, Defendants.

*Petition.*

Comes now The State of Kansas, by John S. Dawson, its duly elected, qualified and acting attorney-general, and complains of the defendants herein, as follows:

That The Independence Gas Company is a corporation which received a charter from the state of Kansas on April 29, 1893, for the corporate purposes to dig or mine for natural gas and sell the same for heat and lighting purposes.

That The Consolidated Gas, Oil and Manufacturing Company is a corporation created, organized and existing under and by virtue of the laws of the state of Kansas, which received a charter from the Kansas State Charter Board on July 6, 1903, for the purposes of producing, transporting, distributing, delivering and selling natural gas to the inhabitants of the city of Independence, Kansas, and others.

That the Kansas Natural Gas Company is a corporation created, organized and existing under and by virtue of the laws of 1329 the state of Delaware, and duly authorized by the Kansas State Charter Board to transact business in the state of Kansas as a foreign corporation, and that said corporation was created for the purposes of acquiring gas leases on lands in Kansas and of producing, transporting, distributing, delivering and selling natural gas to inhabitants of Kansas and others for heating and lighting.

That plaintiff alleges that the above-named defendants, and each of them, have entered into a series of unlawful arrangements, contracts, agreements, trusts and combinations with each other in violation of the laws of the state of Kansas, with a view to prevent and are done to prevent full and free competition in the production and sale of natural gas within the state of Kansas, which product is an article of domestic raw material produced in large quantities in Montgomery county, Kansas, and elsewhere in southern Kansas, and is an article of trade and commerce and is an aid to commerce, which arrangements, contracts, agreements, trusts and combinations are in restriction and restraint of the full and free operation of divers and various lines of legitimate business authorized and permitted by the laws of the state of Kansas, and are in perversion, misuse and abuse of the corporate powers and privileges granted to them, and each of them, by the state of Kansas, as above set forth, and all of which is more particularly set forth as follows:

That the city of Independence was, on the 14th day of March, 1893, a city of the second class of the state of Kansas, and that as such it did, on or about said day, grant to one J. D. Nickerson, his successors or assigns, and the said Nickerson did thereafter, and on or about the 20th day of March, 1893, accept from said city a franchise for the use of its streets, alleys and public ways for the distribution and delivery to the inhabitants thereof, a substance known as natural gas, to be used by the said inhabitants for heating and lighting, and thereafter, and on or about the 29th day of April, 1893, the said J. D. Nickerson assigned said franchise to the said The Independence Gas Company, defendant, and that from said date until about the 6th day of July, 1903, the said The Independence Gas Company, defendant, in pursuance of its said corporate purposes and privileges, was engaged in the production, delivery and sale of natural gas to the inhabitants of said city, and others.

That on the 6th day of July, 1903, the said The Independence Gas Company, defendant, was reorganized as The Consolidated Gas, Oil and Manufacturing Company, defendant, the stockholders in each of said corporations being the same persons, and the shares of stock in the said The Consolidated Gas, Oil and Manufacturing Company being paid for by a surrender and cancellation of the 1330 shares of stock of the said The Independence Gas Company, the purpose of said reorganization being to create a corporation with greater capital and corporate powers for the production, transportation, delivery, distribution and sale of natural gas and oil than the said The Independence Gas Company, defendant, possessed, and that from said 6th day of July, 1903, until about the 1st day of July, 1904, the business of producing, transporting, delivering, distributing and selling natural gas at Independence, Kansas and in the vicinity thereof, was conducted by, and in the name of, the said The Consolidated Gas, Oil and Manufacturing Company, defendant, but that during all of said time the said franchise granted by said city of Independence as aforesaid was held and owned by the said The Independence Gas Company, defendant.

That on or about the 23d day of December, 1903, the said The Independence Gas Company and the said The Consolidated Gas, Oil and Manufacturing Company, defendants, with the purpose and intent of evading and avoiding the contracts, obligations and agreements theretofore entered into by said corporations with the inhabitants of the state of Kansas, and especially one certain contract, obligation and agreement made and entered into by the said The Independence Gas Company with a certain corporation, as more particularly set out hereafter in this petition, jointly, wrongfully and unlawfully made and entered into an agreement, understanding and arrangement in writing with one R. M. Snyder whereby, in consideration of the payment to them of the sum of ten thousand dollars (\$10,000) in cash by the said Snyder and the promise by him to pay to them a further sum of five hundred forty thousand dollars (\$540,000), said corporations unlawfully and wrongfully attempted to grant to the said Snyder the exclusive right and option until the first day of February, 1904, to purchase the entire gas plant of said corporations and all property of every description, kind and character, real and personal, kept and owned or used by said corporations in the carrying on and operating of said gas business, and particularly including all gas rights in lands in Montgomery county, Kansas, and elsewhere belonging to said corporations, or either of them, and all gas, gas wells, mains, pipes, pipe lines and all other appliances, fixtures, machinery, buildings or other property used or owned in connection with said gas plant or in the operation thereof by said corporations, or either of them, together with all franchises, rights and privileges held or possessed by said corporations, or either of them, to lay, maintain and operate pipes and pipe lines for the piping or transportation of gas in the said city of Independence and in the county of Montgomery, Kansas, or elsewhere, a true and correct copy of said writing being hereto attached, made a part hereof

and marked Exhibit "A," and that at the time of making  
1331 said unlawful agreement, understanding and arrangement  
with said Snyder it was understood between him and said  
corporation that said Snyder would proceed at once to organize a  
corporation to take over the entire plant and all property of every  
kind and character, including said Nickerson franchise, together with  
other gas properties and franchises in the state of Kansas, and that  
thereafter the said Snyder, in pursuance of said unlawful and wrong-  
ful agreement, understanding and arrangement engaged with T. N.  
Barnsdall, John S. Scully, C. S. James and others in and about the  
organization of the Kansas Natural Gas Company, defendant, and  
that said Kansas Natural Gas Company, defendant, was incorporated  
under the laws of Delaware on the 8th day of April, 1904, at the  
instance and by the procurement of said parties and others, for the  
unlawful and wrongful purpose of purchasing and acquiring the  
entire plant, properties and franchises of the said The Independence  
Gas Company and The Consolidated Gas, Oil and Manufacturing  
Company, defendants, and other gas properties and franchises in  
Kansas, with the unlawful and wrongful intent and purpose of  
monopolizing, restricting and controlling the production, transpor-  
tation, distribution, delivery and sale of natural gas to the inhabi-  
tants of the city of Independence, and of the state of Kansas, and of  
advancing the cost and price of natural gas to the consumers thereof,  
all in pursuance of said unlawful and wrongful agreement, under-  
standing and arrangement between the said Snyder and said The  
Independence Gas Company and The Consolidated Gas, Oil and  
Manufacturing Company, defendants.

That said unlawful agreement, understanding and arrangement  
aforesaid between The Independence Gas Company and The Consol-  
idated Gas, Oil and Manufacturing Company, defendants, acting  
jointly as aforesaid, and the said Snyder was continued and extended  
by further unlawful agreements and arrangements between them,  
and that on or about the 9th day of March, 1904, in furtherance  
thereof, said The Independence Gas Company and The Consolidated  
Gas, Oil and Manufacturing Company, defendants, assigned to said  
Snyder all gas leases and gas rights in and upon the lands in Mont-  
gomery county and elsewhere in Kansas owned and held by said  
corporations, or either of them.

That thereafter, and on the 25th day of May, 1904, the said Sny-  
der, in furtherance of said unlawful and wrongful agreement, under-  
standing, purpose and intent, agreed to and with Kansas Natural  
Gas Company, defendant, to sell, transfer and assign and did un-  
lawfully and wrongfully attempt to assign to said Delaware corpora-  
tion all gas rights in Montgomery and Chautauqua counties, Kansas,  
that were owned or controlled by said other corporations, defendants,  
or either of them, and the said Nickerson franchise that had

1332 been granted as aforesaid by the said city of Independence,  
Kansas, to use the streets, roads, alleys and public grounds in  
said city for the purpose of delivering gas to the inhabitants thereof,  
and the entire gas plant, properties and franchises of the said The

Independence Gas Company and the said The Consolidated Gas, Oil and Manufacturing Company, or either of them, in Montgomery county, Kansas, and all mains, pipes, pipe lines and branches thereto supplying said Independence gas plant, and all appurtenances and appliances thereto belonging, and also the franchise that had been theretofore granted by said city of Independence, Kansas, to the New York Oil and Gas Company, a partnership, to use the streets, alleys and public ways of said city for the distribution and delivery of natural gas to the inhabitants of said city, and all gas rights of said partnership in Montgomery, Labette and Chautauqua counties, Kansas, and elsewhere, and all tanks, pipe lines, and all other appurtenances and property belonging to said partnership, and also gas franchises in Liberty, Altamont, Columbus, Oswego and Galena, in Kansas, and all rights of way for pipe lines through said counties in Kansas.

That said The Independence Gas Company and The Consolidated Gas, Oil and Manufacturing Company, defendants, were at all times herein mentioned public service corporations of the state of Kansas, and were without authority under the law to sell or dispose of their entire properties, franchises and means of performance of their duties to the public in and about the production, transportation, delivery and sale of natural gas to the inhabitants of the state of Kansas, but that in pursuance of said unlawful and wrongful agreement, understanding, arrangement, purpose and intent between the said corporations, defendants, and the said Snyder, and in violation and total disregard of their duties to the said inhabitants of the state of Kansas, and in abuse, misuse and perversion of their corporate powers and privileges, the said The Independence Gas Company and The Consolidated Gas, Oil and Manufacturing Company, defendants, did unlawfully and wrongfully deliver over directly to said Kansas Natural Gas Company, defendant, their said entire gas plant, properties and franchises and all property of every kind and character belonging to them, or either of them, and used and employed by them, or either of them, in or about the production, transportation, distribution, delivery or sale of gas, and the said New York Oil and Gas Company, a partnership as aforesaid, did at the same time deliver over to said Kansas Natural Gas Company, defendant, the said franchises then owned and held by it, together with all of the gas leases of said partnership on lands in Kansas and elsewhere, and all property of every kind and character used by the said partnership,

or to be used, in and about the production, transportation, distribution, delivery or sale of natural gas, and the said

1333 Kansas Natural Gas Company then and there paid to said two other corporations, defendants, the sum of two hundred thousand dollars (\$200,000) in cash and thereafter the further sum of two hundred fifty thousand dollars (\$250,000), and to the said New York Oil and Gas Company, a partnership as aforesaid, the sum of ——— dollars, and the said Kansas Natural Gas Company, defendant, in pursuance of said unlawful and wrongful agreement, understanding, arrangement, purpose and intent, hath ever since been and is now in exclusive possession and control, and claims to own all gas,

gas leases, franchises and properties of every kind and character as aforesaid that were used, owned and employed by said other corporations, defendants, and said partnership, in and about the production, transportation, distribution, delivery and sale of natural gas to the said inhabitants of the state of Kansas; but such possession and control by said Kansas Natural Gas Company, defendant, is merely as agent or trustee.

That The Independence Gas Company, defendant, prior to its consolidation as aforesaid with its said codefendant, The Consolidated Gas, Oil and Manufacturing Company, in the ordinary course of its business of supplying gas to the inhabitants of the state of Kansas, made and entered into contracts and agreements with reference to the production, transportation, distribution, delivery and sale of natural gas with said inhabitants in the aggregate, and with various individual citizens of said state, and more especially with a certain corporation created, organized, and existing under and by virtue of the laws of the state of West Virginia, and its assigns, which said corporation was duly authorized as a foreign corporation to do business in Kansas, and which was known as The Adamson Manufacturing Company; said contract with said corporation was in writing, a true and correct copy whereof is hereto attached and made part hereof, marked Exhibit "B." That by the provisions of said contract with said corporation said The Independence Gas Company, defendant, became, and was, bound to deliver and supply natural gas on the terms therein stipulated to said The Adamson Manufacturing Company, or its assigns, for a period of ten years from and after February 28, 1902, at two cents per thousand cubic feet, and thereafter at three cents per thousand cubic feet; that in pursuance, and in part performance thereof, said The Independence Gas Company, defendant, did supply gas to said corporation, and was delivering and supplying gas thereto under said contract at the time of the said consolidation of the said The Independence Gas Company and the said The Consolidated Gas, Oil and Manufacturing Company as aforesaid. That by reason of said consolidation of said corporations,

the said The Consolidated Gas, Oil and Manufacturing Company succeeded to all of the rights, and assumed all of the obligations, of all contracts and agreements for the delivery and supply of gas that had been so as aforesaid made and entered into by said The Independence Gas Company, and thereby became, and was, legally bound to keep and perform said contract with the said The Adamson Manufacturing Company, or its assigns. That by virtue of various assignments in writing, copies of which are hereto attached, made part hereof and marked respectively Exhibit- "C," "D," "E," and "F," all of the right, title and interest of the said The Adamson Manufacturing Company in and to said contract was duly assigned to, and vested in, a public service corporation of the state of Kansas known as The Independence Manufacturing and Power Company, whose corporate purpose was, and is, to produce, sell, and deliver electric power to the inhabitants of the state of Kansas, and which owns a franchise of the said city of Independence



to use the streets, alleys and public ways of the said city for the furtherance of said corporate purpose.

That the said The Independence Manufacturing and Power Company, relying in good faith upon full performance of said contract between said The Independence Gas Company, defendant, and the said Adamson Manufacturing Company, for delivery and supply of natural gas as therein provided, hath expended large sums of money in and about the construction and maintenance of a plant for the production of electric power to be sold and delivered to the inhabitants of the state of Kansas, and more especially to the inhabitants of the said city of Independence as aforesaid, and with the purpose and intent to use said natural gas as fuel in the operation of said plant for the production of electric power as aforesaid. That natural gas is necessary to be used as a fuel in the operation of said plant for the production of electric power, and that said The Independence Manufacturing and Power Company, public service corporation of the state of Kansas as aforesaid, can not carry out and perform its said corporate purpose of producing, selling and delivering electric power to the inhabitants of the state of Kansas, and more especially to the inhabitants of said city of Independence, unless it can have natural gas delivered to it by said defendants as provided in said contract between said The Independence Gas Company, defendant, and said The Adamson Manufacturing Company and its assigns; but plaintiff says that at all times since the said unlawful and wrongful delivery by said The Independence Gas Company and the said The Consolidated Gas, Oil and Manufacturing Company of their entire properties and franchises as aforesaid to their said co-defendant, the said Kansas Natural Gas Company, and the unlawful and wrongful taking possession by said Kansas Natural Gas Company as aforesaid of all gas properties, franchises, and means of performance as aforesaid that were held and owned by said other corporations defendants, said defendants in furtherance of their said unlawful and wrongful purpose and intent have advanced the cost and price of gas to the said consumers thereof, and have refused, and still refuse, to keep and perform the obligations, contracts and agreements of said The Independence Gas Company and The Consolidated Gas, Oil and Manufacturing Company, defendants, and more especially the said contract between the said The Independence Gas Company, defendant, and the said The Adamson Manufacturing Company, and The Independence Manufacturing and Power Company, as assignee thereof (exhibit "B" of this petition), well knowing that said The Independence Gas Company and the said The Consolidated Gas, Oil and Manufacturing Company, defendants, have by their said attempted assignment and by their said actual delivery of possession of all their properties and franchises as aforesaid, unlawfully and wrongfully, purposely and intentionally disabled themselves, and each of them, from the performance of their duties as public service corporations of the state of Kansas to the said inhabitants of said state.

That the managing officers of said defendant corporations, and of each of them, within the state of Kansas, purposely, willfully and



intentionally abuse, misuse and mismanage the corporate property and business, and thereby cause said defendants, and each of them, to abuse, misuse and pervert its corporate powers and privileges as aforesaid, and that said defendants, and each of them, threaten to and will continue its abuse and misuse and perversion of its corporate privileges unless its said officers shall be, by order of this court, removed, and others elected under the supervision of the court, or a receiver be appointed, to manage its corporate property and business, under the supervision of this honorable court, until said abuses are fully corrected.

Plaintiff further alleges that for the prosecution of this action it is entitled to a reasonable attorney's fee, to be determined by the court, but plaintiff alleges that until the conclusion of this action it has no means of determining the amount of professional skill and labor which may be invoked and found necessary in the proper prosecution of this case.

Wherefore, the premises considered, plaintiff prays the court for an order herein ousting said defendants, and each of them, from the exercise of corporate powers and privileges within the state of Kansas; and that a receiver may be appointed to manage the corporate property and business and to wind up the affairs of each of said defendants; and that the court, by its order, oust the officers of each of said defendants within the state of Kansas whom it may find to be responsible for the abuse, misuse and mismanagement of the corporate business, from the exercise of their respective offices, 1336 and that the court may make such other and further orders as may be necessary to fully correct the abuses complained of in this action; and that a temporary mandatory injunction may issue herein to said defendants, their agents, servants and employees, commanding them, and each of them, to fully keep and perform all the duties, obligations, contracts and agreements of the said The Independence Gas Company, and The Consolidated Gas, Oil and Manufacturing Company, and each of them, and of the Kansas Natural Gas Company, defendants, as to the delivery of gas to the inhabitants of the state of Kansas, and more particularly to the said The Adamson Manufacturing Company or to the Independence Manufacturing and Power Company, its assign, and that upon final hearing said mandatory injunction may be made perpetual. That the court give judgment in favor of plaintiff, and against defendants, for such amount of money as an attorney's fee herein as may seem to the court fair and reasonable, and for costs herein; and that the court give such other and further relief as may seem proper in the premises.

JOHN S. DAWSON,  
*Attorney-General.*

T. S. SALATHIEL,  
O. P. ERGENBRIGHT,  
*Of Counsel.*

1337 In the District Court of the United States of America in and for the District of Kansas, First Division.

In Equity.

No. 1351.

JNO. L. MCKINNEY

VS.

KANSAS NATURAL GAS COMPANY.

*Bill of Complaint.*

To the Honorable the Judges of the District Court of the United States of America in and for the District of Kansas, First Division:

John L. McKinney, a citizen of the state of Pennsylvania and a resident of that state, brings this, his bill of complaint, against the Kansas Natural Gas Company, a corporation of the state of Delaware and a citizen and resident of that state, and

Thereupon your orator complains and says;—

First. That at the time of the bringing of this suit and during all the times hereinafter mentioned he was and still is a citizen and resident of the state of Pennsylvania.

1338 Second. That at the time of the bringing of this suit and during all the times hereinafter mentioned the above named defendant, the Kansas Natural Gas Company, was and still is a corporation of the state of Delaware and a citizen and resident of that state.

Third. That the Kansas Natural Gas Company was incorporated April 9, 1904, under the laws of the state of Delaware, with an authorized capital stock of six million dollars divided into sixty thousand shares of the par value of one hundred dollars each; but later, on or about May 4, 1904, by due, regular and corporate action the said authorized capital stock was legally increased to twelve million dollars, divided into one hundred and twenty thousand shares of the par value of one hundred dollars each.

Fourth. That, at and for sometime prior to the time of the increase of the company's capital stock referred to in the last preceding paragraph, Theodore N. Barnsdall, R. A. Long, R. M. Snyder, Sr., R. M. Snyder, Jr. and M. M. Sweetman owned absolutely, or controlled through contracts of option or purchase, a large acreage of oil and gas mining lands, leases and leaseholds in Elk, Coffey, Neosho, Chautauqua, Anderson, Woodson, Allen, Wilson, Labette and Montgomery Counties, Kansas, aggregating over one hundred and sixty-five thousand acres, upon which many gas wells had been drilled and found to produce gas in paying quantities; and, while the rock pressure of many of these wells was low as compared with

some eastern fields, yet their volume (which is the quantity of gas they would deliver against atmospheric pressure) was enormous, and these lands, leases and leaseholds, with the wells then drilled thereon, were believed capable of producing a quantity of gas sufficient to supply a large number of consumers and were valued by natural gas experts of great and varied experience as worth many millions of dollars and to indicate a great gas belt with its northern terminus in Anderson County, Kansas, and extending therefrom in a generally southwesterly direction to and beyond what is now the line between the states of Kansas and Oklahoma, and was believed to be fully capable for many years of supplying all consumers in the cities of western Missouri and eastern Kansas with natural gas for light, heat and fuel, and returning the money invested with substantial interest thereon.

Fifth. That on or about July 1, 1904, the said Long, the two Snyders, Sweetman and Barnsdall sold and transferred, or caused to be sold and transferred, to the said Kansas Natural Gas Company all of the said oil and gas lands, leases and leaseholds, with 1339 the wells drilled thereon, for the purchase price of \$12,900,000.00, and took in payment thereof all of the capital stock of the said company, fully paid up and forever non-assessable, amounting to \$12,000,000.00, and nine hundred of the first mortgage bonds referred to in the twelfth paragraph hereof, which bonds or the proceeds from the sale thereof, were delivered or paid to the said Long, Snyders and Sweetman (the said Barnsdall receiving no portion thereof) and used by them in paying the purchase price on the lands, leases and leaseholds which they had contracted for or optioned, as referred to in the last preceding paragraph.

Sixth. That by reason of the great measured volume or capacity of the wells drilled on the said lands, leases and leaseholds and the very limited market therefor in the immediate neighborhood thereof, the value of the said gas could not be realized unless piped to a market therefor in the cities of Kansas City, St. Joseph, Joplin, Webb City, Carthage and other smaller cities, towns and villages in western Missouri, and in the cities of Kansas City, Topeka, Lawrence, Leavenworth, Atchison, Ottawa, Pittsburg, Galena, Oswego and other smaller cities, towns and villages in eastern Kansas; and the Kansas Natural Gas Company, upon its acquiring the title to the said lands, leases and leaseholds, planned to build a system of gas pipe lines from its said gas fields to the said cities, towns and villages in manner following:

(a) One line from Montgomery County eastwardly to Joplin, Webb City and Carthage, Missouri, and to the zinc and lead mines in southwestern Missouri, with branches therefrom to Pittsburg, Oswego and Galena, Kansas, and other smaller cities, towns and villages along its route.

(b) One line from Wilson and Anderson counties northwardly to St. Joseph, Missouri, with branches therefrom to Topeka, Lawrence, Atchison, Leavenworth and other smaller cities, towns and villages along its route.

(c) One line to Kansas City, Kansas, and Kansas City, Missouri, and other smaller cities, towns and villages along its route.

Seventh. That at the time the Kansas Natural Gas Company proposed to build its lines mentioned in the last preceding paragraphs and pipe its natural gas to the said cities, towns and villages named or referred to therein, there was in each of the cities of Kansas City, St. Joseph, Carthage and Joplin, Missouri, and Kansas City, Topeka, Lawrence, Leavenworth, Atchison, Ottawa and Pittsburg, Kansas, a local manufactured gas company which had at great cost 1340 and expense built and laid and was then operating along the streets, alleys and public places of the city, a system of pipes through and by means of which it was furnishing manufactured gas to the inhabitants of the city for use as light, heat and fuel. The price charged and paid for this manufactured gas in the said cities was as follows:

Kansas City, Mo., \$1.00 per thousand cubic feet; St. Joseph, Mo., \$1.00 per thousand cubic feet; Joplin, Mo., \$1.50 per thousand cubic feet; Carthage, Mo., \$1.25 per thousand cubic feet; Kansas City, Kansas, \$1.00 per thousand cubic feet; Topeka, Kansas, \$1.25 per thousand cubic feet when used for fuel, and \$1.75 per thousand cubic feet when used for illuminating purposes. Leavenworth, Kansas, \$1.00 per thousand cubic feet; Lawrence, Kansas, \$1.60 per thousand cubic feet; Ottawa, Kansas, \$1.50 per thousand cubic feet; Pittsburg, Kansas, \$1.25 per thousand cubic feet when used for fuel, and \$1.50 per thousand cubic feet when used for illuminating purposes.

Eighth. That at the time the Kansas Natural Gas Company proposed building its system of pipe lines mentioned in the sixth paragraph hereof, it was not considered advisable to itself distribute and market its gas in the said cities for the following, among other, reasons:

(a) The expense thereof would have been enormous and burdensome, approaching, if not exceeding, twenty million dollars, and it was impossible for the company to finance the same, it being only able to finance the building of its main system of pipe lines.

(b) The time necessary to build its distributing plants in the said several cities would have greatly delayed the completion of its system and the delivery of its gas to the waiting public, and also any return to the company on its investment.

(c) It would have necessitated the tearing up of the street pavement in the said cities and the trenching of the streets and other public places with the consequent annoyance to the traveling public and the abutting owners.

(d) It would have resulted in duplicate gas systems in each of the said towns, the natural gas lines paralleling those of the manufactured gas plants and, as it is a fact that a manufactured gas plant cannot compete with a natural gas plant, the business of the manufactured gas plants in the said cities would have been totally 1341 taken away from them and the investment in such plants wholly lost, excepting only the junking value thereof, and

even as to that it could not be realized except by tearing up the streets and pavements of the cities, with the consequent annoyance to the traveling public and abutting owners.

That it was for the public good as well as for the mutual benefit of both the Kansas Natural Gas Company and the several manufactured gas companies, that the plants of the latter in each of the said cities be utilized for the distribution and marketing of the natural gas therein, and to that end the Kansas Natural Gas Company contracted with each of the manufactured gas companies in the said several cities by which the Kansas Natural Gas Company should pipe its natural gas to the limits of the said cities and there deliver the same into the local manufactured gas system or plant and that the local manufactured gas company should there take and receive the said gas and through and by means of its manufactured gas plant or system of pipes distribute, market and sell the same to consumers thereof in the said city, and that the proceeds from domestic sales should be divided in the percentage of sixty-six and two-thirds per cent to the Kansas Natural Gas Company and thirty-three and one-third per cent to the local distributing Company, except in the two Kansas Cities in which the Kansas Natural Gas Company received only sixty per cent for the first two years and sixty-two and one-half per cent thereafter, the local distributing companies receiving forty per cent for the first two years and thirty-seven and one-half per cent thereafter; and excepting also in the city of Parsons, Kansas, which was not at first but afterwards supplied by the Kansas Natural Gas Company, that company receiving seventy-five per cent of the receipts from domestic sales, and the local distributing company twenty-five per cent; and excepting also in the cities of Fort Scott, Kansas, and Nevada, Missouri, which were not at first but afterwards supplied by the Kansas Natural Gas Company, and where the branch lines running to them were furnished by third parties with which the Kansas Natural Gas Company had no connection whatever, either by stock ownership or otherwise, the Kansas Natural Gas Company receiving only fifty per cent of the domestic receipts and the remaining fifty per cent being divided between the local distributing companies and such third parties; and excepting also in Webb City and Joplin, Missouri, where the Kansas Natural Gas Company for the first two years received only sixty per cent and the local company forty per cent of the domestic receipts, and thereafter sixty-six and two-thirds and thirty-  
1342 three and one-third per cent respectively; and excepting also in the city of Carthage, Missouri, where the Kansas Natural Gas Company received and still receives seventy per cent of domestic receipts and the local distributing company only thirty per cent.

Ninth. That prior to the building and laying of the said pipe line system of the Kansas Natural Gas Company, many of the distributing companies in the cities named in the eighth or last preceding paragraph hereof, excepting particularly the cities of St. Joseph and Kansas City, Missouri, had either directly or by purchase from the original grantee, acquired franchises for the distribution

and sale of natural gas within the limits of their respective cities. The said franchises named and fixed a price at which natural gas might be sold in the city granting it, as follows:

Webb City, Mo., 35 cents per thousand cubic feet.

Topeka, Kansas, 45 cents per thousand cubic feet.

Kansas City, Kansas, 25 cents per thousand cubic feet for two years, then 28 cents for one year, then 29 cents for one year, then 35 cents thereafter. The four years provided for have long expired and 35 cents may now be charged in the said city, save for a provision in the franchise providing that the rate shall never exceed that charged in Kansas City, Missouri.

Athlison, Kansas, 35 cents per thousand cubic feet.

Leavenworth, Kansas, 30 cents per thousand cubic feet.

Ottawa, Kansas, 30 cents per thousand cubic feet.

Pittsburg, Kansas, 35 cents per thousand cubic feet.

Lawrence, Kansas, 30 cents per thousand cubic feet.

Tenth. That the distributing company in the city of St. Joseph did not ask for or secure a natural gas franchise from the city inasmuch as it operated under an ancient franchise which its counsel learned in the law advised it was sufficient and broad enough to allow it to sell natural gas at \$2.50 per thousand cubic feet, and under such ancient franchise upon the completion of the pipe line system of the Kansas Natural Gas Company to the said city of St. Joseph, the distributing company began and has ever since continued the distribution and sale of the natural gas of the Kansas Natural Gas Company.

Eleventh. That the local distributing company in Kansas City, Missouri, applied promptly to the city for a franchise to distribute and sell natural gas in the city. The price asked for in the 1343 franchise for which application was made was thirty-five cents per thousand cubic feet; but the authorities of the city delayed granting the franchise and eventually on September 27, 1906, granted one for twenty-five cents per thousand cubic feet for the first five years after gas was turned into the city, twenty-seven cents for the next five years and thirty cents thereafter. In the meantime the pipe line referred to in sub paragraph (c) of the sixth paragraph hereof had been completed to the city gates and for fifteen months after its completion lay packed with gas, a substantially useless investment, before the said franchise was finally granted, during which period of time the expenses, interest and fixed charges of the company kept running on and the company was compelled to and did sell immense quantities of low priced gas for use in brick kilns, smelters, meat packing establishments, manufacturing and other steam producing purposes, (and which sales are hereinafter referred to as "boiler Gas" sales), for the purpose of meeting and discharging its said expenses, interest and fixed charges as they from time to time matured.

Twelfth. That when the Kansas Natural Gas Company contemplated the building and laying of the lines mentioned in the sixth paragraph hereof it proposed to itself finance and build and lay those described under sub paragraphs (a) and (b), and erect a compressor



or forcing station on the one described in sub paragraph (b) at Petrolia, Allen County, Kansas, the same to have four compressors or units; but being unable to finance those described under sub paragraph (c) it proposed that they should be financed by the United Gas Improvement Company, a Pennsylvania corporation, which was substantially interested in the companies owning the distributing plants in Kansas City, Kansas, and Kansas City, Missouri. That, at that time, it was confidently believed that the volume of gas which could be produced from Wilson, Anderson, Allen and Neosho Counties, Kansas, would be sufficient for many years to supply the consumers on lines in sub paragraphs (b) and (c). In furtherance of these purposes the Kansas Natural Gas Company on or about July 1, 1904, issued four thousand bonds of one thousand dollars each, and secured the same by a first mortgage upon the lands, leases, leaseholds and wells mentioned and referred to in the fourth paragraph hereof, as well as upon any and all other property which it might afterwards acquire, included in which would be its proposed pipe line system. To each of the said bonds were attached interest coupons at the rate of six per cent per annum, falling due successively on the first days of May and November in each year.

1344 All of the said bonds were sold, the company receiving the face value thereof in cash, and all of the proceeds therefrom (less \$900,000 balance of the purchase price it paid the said Long, Snyders and Sweetman upon the said lands, leases and leaseholds as detailed in the fifth paragraph hereof) were expended by it in the construction of the pipe lines in sub paragraphs (a) and (b). The said United Gas Improvement Company caused to be organized the Kansas City Pipe Line Company, which immediately authorized an issue of three thousand bonds of one thousand dollars each, and secured the same by a first mortgage upon its pipe lines, being those in sub paragraph (c) of the sixth paragraph hereof, and also upon an acreage of oil and gas lands, leases, leaseholds and other assets which it had taken over in exchange for its total authorized capital stock, to-wit, three million dollars, and also one hundred and seventy of said bonds. To each of the said bonds were attached interest coupons at the rate of six per centum per annum, falling due successively on the first days of February and August in each year. Two thousand one hundred and seventy-six of these bonds of the Kansas City Pipe Line Company were sold at par and the whole proceeds therefrom were expended in the construction of the pipe line in sub paragraph (c) and which will be hereinafter referred to as the Kansas City pipe line. That immediately upon its completion, such pipe line and the said lands, leases and leaseholds were leased to the Kansas Natural Gas Company upon its agreement to pay all taxes and operating expenses and a rental sufficient to meet and discharge the interest coupons on the said bonds as they matured, and also the bonds themselves as they from time to time fell due as recited in the fifteenth paragraph hereof. The said lease is in writing and from time to time changes were made therein by the mutual consent of the parties thereto. A true copy of the same as it now reads, marked "Exhibit A," is to the court now exhibited and is



filed herewith and made a part hereof as fully as though incorporated at length herein.

Thirteenth. That, upon the completion of the lines referred to in sub paragraphs (b) and (c) of the sixth paragraph hereof, the Kansas Natural Gas Company began the supplying of gas to the cities served by the said lines; but it was soon discovered, and your orator states it to be a fact, that what was at first believed to be a great gas belt extending from Anderson County on the north to and into Oklahoma on the south, was not one solid gas field but made up of various so-called "pools," limited in their respective areas, in 1345 which wells were found which, while they at first, upon being drilled in, produced gas in large quantities, waned rapidly in both volume and rock pressure and soon became barren or nearly so. That, when this discovery was made and the said "pools" began rapidly to be exhausted, it became absolutely necessary, in order to prevent a gas famine in the cities served by the Kansas Natural Gas Company,

(1) To extend the said Kansas City pipe line, as well also as the line of the Kansas Natural Gas Company itself mentioned in sub paragraph (b) of the sixth paragraph hereof, southwardly to and into Montgomery County, Kansas, duplicating in many instances lines already laid.

2. To erect powerful forcing or compressor stations upon its lines, one at Scipio in Anderson County, Kansas, and another at Grabham in Montgomery County, Kansas, and to increase the capacity of the one already built at Petrolia, Allen County, Kansas, from four to nine units.

(3) The purchase of all the gas territory it could in the said gas fields, which it did by buying, among others, the gas lands, leases and leaseholds of the Prairie Oil and Gas Company and of the Peoples Gas Company.

That the expense of these betterments, extensions and purchases was enormous, and, while the sales of gas met and discharged some of it yet the Kansas Natural Gas Company was compelled to and did issue four thousand more of its bonds of one thousand dollars each, and secured the same by a second mortgage upon all its present or future pipe lines, lands, leases, leaseholds, wells and property. That these bonds could not be floated at par but had to be sold at a discount, the company realizing only seven hundred and fifty dollars on each bond sold, all of which went into the said extensions, stations and betterments. That in addition to this the bond issue of the Kansas City Pipe Line Company referred to in the twelfth or last preceding paragraph hereof was retired and a new one of five thousand bonds of one thousand dollars each issued in lieu thereof. The increase of bonds over those sold out of the first issue was two thousand six hundred and fifty-four bonds. Of these one thousand and seventy were sold at par and one thousand three hundred and twenty-nine were sold at seven hundred and fifty dollars each, and the remaining two hundred and fifty-five were never sold but remained in the company's treasury. All of the proceeds from 1346 those sold were expended in the extension of the company's (Kansas City Pipe Line Company) lines to Montgomery

County, Kansas, and in duplicating its lines and the construction and building of the stations and betterments thereon.

Fourteenth. That the first mortgage bonds and mortgage of the Kansas Natural Gas Company required semi-annual interest and also monthly sinking fund payments, aggregating not less than two hundred thousand dollars every six months, and which sinking fund should at the end of each of the said six [months] periods, be used for the retirement of the company's bonds. These semi-annual sinking fund redemptions are on the first days of May and November in each year, and the Kansas Natural Gas Company has fully paid all interest and met all of its monthly sinking fund payments( except as hereinafter stated) until there now remains outstanding and unpaid sixteen hundred of its said first mortgage bonds, and there is now in the said sinking fund the further sum of \$166,666.66.

Fifteenth. That the second mortgage bonds and mortgage of the Kansas Natural Gas Company required semi-annual interest and also monthly sinking fund payments aggregating not less than two hundred thousand dollars every six months, and which sinking fund should at the end of each of the said six months periods be used for the retirement of the company's bonds. The mortgage, however, gives to the company the right, instead of making the said monthly payments into the sinking fund, or buying its bonds in the open market to an amount equal at their par value to the amount of such monthly payment, and of turning the same into the sinking fund in lieu of such cash payment. These sinking fund redemptions are on the first days of January and July in each year and the Kansas Natural Gas Company (excepting as hereinafter stated) has promptly paid all interest and met all of its monthly sinking fund payments until there now remains outstanding and unpaid twenty-two hundred and sixty-seven of the said bonds. That the company has for lack of funds been unable to meet and discharge its monthly sinking fund payment of \$33,333.33, falling due and payable in the months of May, June, July, August and September, 1912, and the company remains wholly in default in such sinking fund payments.

Sixteenth. That the bonds of the Kansas City Pipe Line Company are serial ones and the following is a statement of each series, the amount thereof and the date of its falling due:

1347

Series.	Amount due.	Maturing.
A. ....	\$300,000	February 1, 1908
B. ....	400,000	February 1, 1909
C. ....	400,000	February 1, 1910
D. ....	550,000	February 1, 1911
E. ....	550,000	February 1, 1912
F. ....	550,000	February 1, 1913
G. ....	550,000	February 1, 1914
H. ....	550,000	February 1, 1915
I. ....	400,000	February 1, 1916
J. ....	400,000	February 1, 1917
K. ....	350,000	February 1, 1918

That the Kansas Natural Gas Company, complying with the terms of the lease which it holds of the Kansas City Pipe Line Company, has promptly paid its rental so that all interest on the said bonds to date and each yearly series of bonds maturing prior to this date have been promptly paid and there now remains unpaid the following series:

Series.	Amount due.	Maturing.
F.....	550,000	February 1, 1913
G.....	550,000	February 1, 1914
H.....	550,000	February 1, 1915
I.....	400,000	February 1, 1916
J.....	400,000	February 1, 1917
K.....	350,000	February 1, 1918

Of these, thirty-four bonds of Series H, due February 1, 1915, were never issued, and two hundred and twenty-one bonds of Series K, due February 1, 1918, were never issued and do not have to be paid. To each of the said bonds were attached interest coupons, at the rate of six per cent per annum, falling due semi-annually on the first days of February and August in each year.

Seventeenth. That the franchise granted by the city of Kansas City, Kansas, to the local distributing company therein to market and sell natural gas within the city, did, as hereinbefore in the ninth paragraph hereof mentioned, contain a provision that the city should be favored with the same gas rates as were charged in the city of Kansas City, Missouri. The officers of the Kansas Natural Gas Company did, on October 10, 1907, enter into an agreement with the distributing company of the city of Leavenworth, Kansas, that it should likewise be favored with the same rates as those established in Kansas City, Missouri. The contract with the Atchison Company provided that they shall not be required to charge a higher price than 1348 is charged in Leavenworth. It is a fact that the franchise rates in Kansas City, Missouri, have practically fixed the price of gas in the cities of Topeka, Atchison, Leavenworth, Lawrence, Ottawa, Parsons and Kansas City, Kansas.

Eighteenth. That, as hereinbefore in the thirteenth paragraph hereof stated, the gas field of Kansas reached by the lines of the Kansas Natural Gas Company rapidly exhausted themselves, the rock pressure falling off at an astonishing rate. This is shown by the record of the rock pressure of its gas wells, which the Company began to keep in December, 1907, and which it has regularly taken and kept ever since. Rock pressure is the confined pressure of the gas per square inch in the sand, rock or stratum where the same is found, and as the confined gas is taken out this pressure falls in proportion to the quantity taken, so that the rock pressure always indicates the quantity of gas relatively still remaining in the sand, rock or stratum. The following is a statement of the rock pressure in the several fields from which the company is taking gas, showing the rock pressure when those pools were first opened up and what that pressure is today:

Field.	Pressure in pounds.	Date taken.	Pressure in pounds today.
East Chanute .....	90	in December, 1907	17
West Chanute .....	150	in December, 1907	6
Altoona .....	80	in December, 1907	42
Neodosha .....	115	in December, 1907	10
Independence .....	260	in December, 1907	80
Vanderpool .....	405	in December, 1909	26
Hogshooter, North .....	535	in October, 1910	125
Hogshooter, South .....	493	in October, 1911	137

That the Company now has its pipe line system extended (either by lines which it itself owns or by lines which it leases or operates) to all known gas fields in Kansas and to the Hogshooter field of Oklahoma; but on a cold winter day with the thermometer fifteen degrees above zero or lower, it cannot, even with every well from which it is entitled to take gas turned into its pipe line system and with every compressor station running to its fullest capacity meet the demands upon it by its domestic consumers, and a shortage follows.

Nineteenth. That, by the year 1908, the enormous drain upon the gas fields of Kansas had so depleted them that it was apparent to the Kansas Natural Gas Company, as well as other pipe line companies competing with it in the producing fields, that the output of gas from the Kansas fields could no longer supply their several consumers. At

that time, gas fields of almost unlimited area and output 1349 were supposed to exist in Oklahoma and the pipe line companies operating in Kansas and western Missouri began the extension of their respective lines into Oklahoma, but were met with the most determined opposition by the officials of that state. The pipe lines of one company as it was being laid across the line dividing Oklahoma and Kansas was torn up and destroyed by armed men acting under instructions from the Oklahoma state officials. A line of armed men patrolled the Oklahoma side of the state line, ordered and directed by the said state officials to prevent, with force and violence, any pipe line being laid across such state line. The most prohibitory legislation was passed by the state of Oklahoma to prevent the transportation of natural gas beyond its borders. The Kansas Natural Gas Company, as well as The Marnet Mining Company, a West Virginia corporation, instituted a suit in the Circuit Court of the United States in and for the Eastern District of Oklahoma, and secured a preliminary injunction against the state officials of Oklahoma to prevent interference with the construction and operation of their respective lines. Under the protection of this preliminary injunction the Marnet Mining Company expended approximately a million dollars in Oklahoma and extended its lines first to the "Vanderpool field," so called, which lies immediately south of the Oklahoma-Kansas state line, and later to the "Hogshooter field," so called, which lies about twenty-five miles south of such state line. Later this preliminary injunction was made permanent and an appeal taken

by Charles West, Attorney General of Oklahoma, to the Supreme Court of the United States, where the decree was affirmed and is reported, sub nomine, *West v. Kansas Natural Gas Company*, 221 U. S. 229. Although the Supreme Court affirmed the decree, yet afterwards upon the motion of Attorney General West it remanded the case to the Circuit Court for the Eastern District of Oklahoma with instructions to permit either party to move to modify the decree. Upon the return of the record to the said Circuit Court Attorney General West moved for its modification, which motion being opposed by the Kansas Natural Gas Company, was denied and overruled. Thereupon he again appealed the cause to the Supreme Court, where the order or decree of the Circuit Court refusing to modify was affirmed and is reported subnominee, *Haskell v. Kansas Natural Gas Company*, 224 U. S. 217. That while this litigation resulted in a victory for the company, yet while it was at its height, with no protection but a preliminary injunction, the Kansas Natural Gas Company and its subsidiary company, The Marnet Mining Company, expended 1350 approximately a million dollars in lines and betterments in the state of Oklahoma. It did this in order to supply the consumers of natural gas in Eastern Kansas and Western Missouri with natural gas for the winter of 1909-1910. It was an investment which no business man, in the face of the fierce opposition to it in Oklahoma, would have made with no other protection than a preliminary injunction. The Company, however, assumed the risk and made the investment and thereby its patrons received a fairly good supply of natural gas for the said winter, and without the gas from Oklahoma there would have been in the cities which the company supplied, a great famine of natural gas during the said winter and each succeeding winter.

Twentieth. That, in the spring of 1912, the northern terminus of the pipe line system of the Marnet Mining Company was and is a short distance north of the Kansas-Oklahoma state line, at a point where it connects with the southern terminus of the pipe line system of the Kansas Natural Gas Company. From such point the system extended southerly across the said state line and about twenty-five miles further to a point in the southern part of the said "Hogshooter field." A map of the lines then owned and operated by the Kansas Natural Gas Company and including therein those leased from the Kansas City Pipe Line Company and from The Marnet Mining Company, marked "Exhibit B" is to the court now exhibited and made a part hereof as fully as though incorporated at length herein. Lines owned by the Kansas Natural Gas Company are indicated on the map in red ink; those owned by the Kansas City Pipe Line Company in green ink; those owned by the Marnet Mining Company in blue ink. The major compressor stations at Scipio, Petrolia and Grabham are indicated by black circles with a yellow center. In the Grabham station there are nine compressors, six of which were and are owned by the Kansas Natural Gas Company and three by the Kansas City Pipe Line Company. In the Petrolia pumping station there are nine compressors, three of which were and are owned by the Kansas City Pipe Line Company. In the Scipio station there were six compressors, three of which are owned by the Kansas Nat-

ural Gas Company, and three by the Kansas City Pipe Line Company. All of the trunk lines of the Kansas City Pipe Line Company are sixteen inches in diameter. The trunk lines of the Kansas Natural Gas Company north of its southern terminus in Wilson county are sixteen inches in diameter, excepting the branches to Topeka, Atchison and Leavenworth, which are of smaller diameter.

The lines of the Kansas Natural Gas Company running from 1351 the Grabham station eastwardly to Carthage are principally of sixteen inch pipe. Those running southwardly from Grabham to connect with the Marnet Mining Company lines are generally eighteen inches in diameter. The main line of the Marnet Mining Company running southwardly to the "Hogshooter" is eighteen inches in diameter. That the distance between the southerly terminus of the company's system in the Hogshooter field and the northerly terminus thereof at St. Joseph, Missouri, is about two hundred and fifty miles. That about five-sixths of the traffic and transportation of natural gas carried on by the company is wholly and exclusively interstate commerce.

Twenty-first. That there has been a substantial diminution of the pressure of gas in the Oklahoma gas fields since 1909 and 1910 when the Marnet lines were constructed into Oklahoma and connected with wells in the Vanderpool and Hogshooter fields. That in the spring of 1912, taking the entire supply of gas of the Kansas Natural Gas Company, it was evident that to enable it to meet the demands for gas along its system and supply the consumers on its lines with gas, it must erect a compressing or forcing station in the Hogshooter field and also extend its pipe lines southerly from the present southerly terminus of the Marnet Mining Company in the Hogshooter to what are known as the "Collinsville Field," the "Tulsa Field" and the "Glenn Field," east of the city of Sapulpa. That to make all of the extensions, improvements and betterments, is impossible for the company in its present financial condition as the cost thereof would aggregate over \$588,000.60 and the company on July 1, 1912, had [—] its treasury only \$86,046.66, and was then in default in two monthly payments into its sinking fund of \$33,333.33 each. That its financial credit was exhausted and it was unable to make any loans in the market. That, nevertheless, it proceeded with the said extensions, betterments and improvements, for without them there would be a most severe famine in gas during the winter of 1912-1913 with great suffering and want. The Company removed its compressors from its Scipio station to a new site in the said Hogshooter field, and also induced the Kansas City Pipe Line Company to permit the Kansas Natural Gas Company to remove its compressors which it, the Pipe Line Company, owned in the said station to the said new site in the Hogshooter field. That the Company has taken up and is now relaying as extensions to its present leased lines in

Oklahoma about forty miles of pipe, and has induced the 1352 said Kansas City Pipe Line Company to permit seventeen miles of its line to be removed from Kansas and relaid in Oklahoma, and the Kansas Natural Gas Company is now extending its said lines as fast as possible to the said "Collinsville, Tulsa and Glenn



Fields," but the cost of the labor in making these changes, the freight, the hauling and other necessary expense will aggregate over \$332,000.00 and the Kansas Natural Gas Company does not have that amount nor is it able to borrow the same, its credit being exhausted.

Twenty-second. That in the construction of its said pipe line system and the purchase of gas in Oklahoma The Marnet Mining Company created a bond issue of three thousand bonds of one thousand dollars each, of which about two thousand have been issued, the remainder lying un-issued and unsold in the treasury of the Company. These bonds are secured by a first mortgage upon the pipe lines of the company and all of its property, including therein any lines which it may afterwards lay and any property which it may afterwards acquire. Each of the said bonds has interest coupons attached to it at the rate of six per cent per annum, which fall due successively in the first days of June and December in each year. The bonds as well as the mortgage securing them bind the Company, beginning with December 1, 1911, to pay each year into a sinking fund ten per cent of the amount of the bonds then outstanding. This ten per cent is to be paid in monthly installments as follows:

- 9% on December first of each year;
- 12% on January first of each year;
- 15% on February first of each year;
- 14% on March first of each year;
- 12% on April first of each year;
- 11% on May first of each year;
- 8% on June first of each year;
- 5% on July first of each year;
- 4% on August first of each year;
- 3% on September first of each year;
- 3% on October first of each year;
- 4% on November first of each year;

But

The bonds and mortgage give to the Company the right to purchase its own bonds in the open market and, in lieu of the said monthly cash payments, turn into the sinking fund enough of its bonds so purchased as will at their face value equal the amount of the required monthly payments. The company has solicited offers of bonds with which to meet each of its sinking fund payments and has succeeded in buying sufficient bonds with which to make each of its said payments. The price at which it purchased the said bonds being as follows:



## Sinking Fund:

Payment for—	Price paid per bond.
December, 1911 .....	\$830.00
January, 1912 .....	\$790.00
February, 1912 .....	\$738.00
March, 1912 .....	\$630.00
April, 1912 .....	\$580.00
May, 1912 .....	\$590.90
June, 1912 .....	\$555.00
July, 1912 .....	\$600.00

Twenty-third. That the leasing of the lines of the said The Marnet Mining Company and the output of gas through its system was absolutely necessary for the successful operation of the system of the Kansas Natural Gas Company, the fields of Kansas having become exhausted or substantially so, and therefore, upon the completion of the pipe line system of The Marnet Company the Kansas Natural Gas Company succeeded in leasing the same for the payment of all taxes and operating expenses and a rental equal to the payment of interest on the said bonds and the monthly payments into the sinking fund as detailed in the last preceding or twenty-second paragraph hereof. That the Kansas Company has been able to pay the stipulated amount of rental each month, including and since December, 1911, with which to purchase sufficient bonds of the Marnet Company to meet the monthly sinking fund payments recited in the twenty-second paragraph hereof, except those for the months of August, September and October, 1912, in which payments the Kansas Company is in default and consequently, the Marnet Company having no other source of income is in default in its sinking fund payments of the said months.

Twenty-fourth. That natural gas is pre-eminently a domestic fuel. By reason of its distinctive and peculiar qualities it is a fuel for home use alone. When once installed in the home it can be used for periods long or short as the housewife may desire. Its use may be immediately commenced and immediately discontinued at the pleasure of the consumer. There is no dirt, smoke, refuse or odor connected with its use. Its use requires no fuel to be carried into and no ashes or other refuse to be carried out of the home. By the use of Wellsbach mantles it gives a more brilliant light than manufactured gas. It is rich in heat units, containing 960 British Thermal units to the cubic foot, while ordinary manufactured gas contains 1354 only from 550 to 650 of such units. It takes approximately sixteen hundred to seventeen hundred cubic feet of manufactured gas to secure the same amount of heat that can be gotten from one thousand cubic feet of natural gas. That by reason of its peculiar and beneficial qualities the intrinsic worth of natural gas used in domestic consumption when compared with other kinds of light, heat and fuel and the cost thereof in use for domestic purposes in Western Missouri and eastern Kansas is as follows: For lighting

and cooking purposes when compared with manufactured gas at one dollar, \$1.50 to \$1.75; when compared with coal for heating and fuel purposes at the current price thereof in eastern Kansas and western Missouri, forty to fifty cents per thousand cubic feet. That natural gas being so peculiarly fitted for use in the home, should be preserved for domestic use alone and should never be used for "boiler gas" purposes, a term explained in the eleventh paragraph hereof.

Twenty-fifth. That with the exception of the cities of St. Joseph and Nevada, Missouri and Fort Scott, Kansas, the ruling price at which the Kansas Natural Gas Company has sold its gas for domestic purposes since it first began the marketing thereof, has been twenty-five cents per thousand cubic feet. It is a fact, however, that the price has always been grossly inadequate and far beneath the true value and worth of the article sold. That never since the Company first began business has it in any year realized enough money from its sales of gas for domestic purposes to meet its interest, operating expenses and fixed charges, including therein payments into its sinking fund; but each year during the summer months, when its system would otherwise be practically idle, the sales for domestic purposes during the summer being very small, the Company has been forced to sell great quantities of "boiler gas" in order to meet the deficiency in its said operating expenses, interest and fixed charges. For example, during the year ending December 31, 1910, the company sold 19,146,000,000 cubic feet of gas for domestic purposes and realized therefrom the sum of \$3,075,559.00 and 14,514,000,000 cubic feet of gas for boiler purposes and realized therefrom \$1,140,398.00. During the year 1911 the company sold approximately 20,000,000,000 cubic feet of gas for domestic purposes and realized therefrom the sum of \$3,300,000.00 and 12,000,000,000 cubic feet for boiler purposes and realized therefrom the sum of \$850,000.00.

Twenty-sixth. That when gas is sold for twenty-five cents per thousand cubic feet the profit which the company makes on each thousand cubic feet of gas is negligible. That during the year 1910 after deducting all operating expenses and the price of gas purchased by it, the company realized on each thousand cubic feet of gas sold a profit of only six and 67/100 cents, and during the year 1911, after making the same deductions, its profits on each thousand cubic feet of gas *was* approximately four and 99/100 cents, substantially all of which was applied upon the floating debts of the company, betterments and its interest and fixed charges. Your orator now exhibits to the court a statement showing the receipts and expenditures of the company for the year ending December 31, 1910, in dollars and cents per thousand cubic feet, marked the same "Exhibit C," files the same herewith and makes the same a part hereof as fully as though incorporated at length herein. He also now exhibits to the court a similar statement for the year ending December 31, 1911, marks the same "Exhibit D" and makes the same a part hereof as fully as though incorporated at length herein.

Twenty-seventh. That if the company continues the sale of gas at

twenty-five cents or even twenty-seven cents per thousand cubic feet for domestic purposes, it will not realize therefrom sufficient each year to meet its operating expenses, interest, fixed charges and absolutely necessary betterments and, so long as the fields produce it, the Company will be compelled to sell gas for boiler purposes to prevent a deficiency; but each summer's sales of boiler gas hastens the approach of the total exhaustion of the fields of supply.

Twenty-eighth. That the gas fields of Kansas and Oklahoma reached by the pipe line system operated by the Kansas Natural Gas Company, if the Company continues to draw upon them for both domestic and boiler sales as it has in the past, will become depleted and exhausted within three years and the Company will be wholly unable to meet and pay its outstanding bonds. That if the sales of boiler gas are discontinued by the company the life of the fields will be about doubled and the Company's customers will enjoy the luxury of natural gas as a domestic fuel for that period of time; but in order to enable the Company to meet its operating expenses, interest and fixed charges during that period the price of natural gas should be raised to at least fifty cents per thousand cubic feet. That, realizing this, the officials of the Company in September, 1910, appeared before the Utilities Commission of Kansas City, Missouri, and informed the Commission fully of the Company's finances and the rapid depletion of its fields and the necessity for the good of the public of discontinuing the sales of boiler gas, and urging the substantial increase in the price of domestic gas. This request the Commission refused. In December of the same year the officials of the Company again appeared before the Commission and again attempted to secure an increase in domestic prices, and 1356 again failed. In July, 1911, although the Commission had no jurisdiction over it whatever, it summoned the Company to appear before it. -he Company having been before the Commission twice seeking an increase, declined to appear again, and believing the situation acute wrote the Commission a letter, and believing the people of Kansas City, Missouri, should be fully informed of the facts, published the same in the daily newspapers of the city. A copy of the letter is to the court now exhibited, is marked "Exhibit E" and filed herewith and made a part hereof as fully as though incorporated at length herein. Upon the publication of this letter the councils of the city sent an expert, Erasmus Haworth, Professor of Geology in the University of Kansas to examine the condition of the fields of Kansas and Oklahoma. After an exhaustive examination this expert, in the latter part of November, 1911, reported to the councils that the gas fields of Kansas and Oklahoma were substantially exhausted and if the sales of boiler gas were continued, could not last over three years; but that if such boiler gas sales were discontinued the fields would last six years. A statement, which your orator avers is true. The Commission however, again refused to raise the price.

Twenty-ninth. That the plaintiff is the owner and holder of twelve second mortgage bonds of the Kansas Natural Gas Company.

The Amount in controversy in this suit, exclusive of interest and costs, exceeds three thousand dollars.

Thirtieth. That the natural gas fields of *Oklahoma and Kansas*, by reason of the heavy drain made upon them by the *Kansas Natural Gas Company* and other gas companies drawing their source of supply from the said fields and running therefrom to the cities of *Oklahoma, Kansas and Missouri* have become so depleted and near to exhaustion that, if the present drain upon them is continued, they will become wholly exhausted and totally barren of gas within three years from this date and long before the said second mortgage bonds are fully paid, to the great and serious loss and damage of your orator and other bond holders of the company; that the said drain is largely caused by the sale of the said gas for "boiler gas" purposes, for use in furnaces in dwelling houses and for domestic lighting, heating and cooking purposes; that it is for the great and lasting good of the people of the States of *Kansas and Missouri* that the use of natural gas be restricted to domestic lighting, heating and cooking and that the use thereof for boiler gas purposes and for furnaces in dwelling houses should be stopped and prevented; that

the price of natural gas for such domestic lighting, heating  
1357 and cooking purposes be immediately fixed at fifty cents per thousand cubic feet, which price your orator avers is less than the true worth and value thereof for such purposes and still not so great a price that it will return to the *Kansas Natural Gas Company*, more than its investment in its pipe lines and gas producing systems, before the total exhaustion of the *Kansas and Oklahoma* gas fields; but which price will enable the company to acquire gas producing wells and leases and to buy the output of gas from owners of gas wells and property and to lay and extend its present pipe line system to new fields and pools and *and* to erect thereon the necessary compressor or forcing stations; that by so increasing the price of gas and so curtailing its use, the life of the gas fields of *Kansas and Oklahoma* will be conserved and prolonged for at least six years from this date; that propositions to so increase the price of gas and so curtail and restrict its use, have been made to the officials of *Kansas City, Missouri*:

Yet

Notwithstanding that such action would result in prolonging the life of the said gas fields and conserving the supply of natural gas for domestic use, a use to which it is by its peculiar qualities eminently fitted, the said officials of *Kansas City, Missouri*, have refused or neglected to comply with such proposals or accept the same, and have refused to so raise the price of gas and so restrict its use and, as your orator is informed and believes and hence avers, have advised all consumers of gas to refuse to pay their gas bills when the pressure of the gas is low and, if the local distributing company threatens to discontinue service of gas to customers so refusing to pay bills to enjoin the gas company from collecting its gas bills so delinquent. That your orator believes other cities will give similar advice to consumers when there are shortages upon the company's lines during

the coming fall and winter and which shortage will come as surely as do fall and winter and for which the company is not in fault or to blame, but caused wholly through the waning of the Kansas and Oklahoma fields.

Thirty-first. That during the winter of 1911-1912 numerous suits were instituted against the Kansas Natural Gas Company by the Attorney General of the State of Kansas, based upon certain exclusive clauses in its contracts with local distributing companies, alleged to be a violation of the Anti-Trust laws of Kansas; but which exclusive clauses if in reality violations of the said laws, were technical ones only, for they were never operated under or enforced and never, in any degree or way whatsoever hurt or injured either the

State of Kansas or any of its citizens; that such suits were brought at a time when the minds of the Company's consumers were inflamed by the severe shortage of the said winter, over its entire system caused by severe cold weather and the officials of the company deemed it best to compromise such suits by the payment of large sums of money and attorneys' fees, which were done, with the hope of preserving the company's credit, which was seriously impaired thereby

But

Notwithstanding the Company moved promptly and compromised the said litigation, its credit was greatly injured thereby and well nigh destroyed and the company is today without credit and funds, having in its Treasury only about \$12000.00 and with betterments and extensions under way which are absolutely necessary for even a partial supply of gas for its patrons during the coming fall and winter, and no funds or credit with which to meet the cost and expense thereof;

And

By reason of its present financial condition, the company will be unable to meet its monthly sinking fund payments on its first mortgage bonds; or its semi annual interest thereon maturing November 1, 1912 and amounting to \$48000.00 or the annual rental of the lines of the Kansas City Pipe Line Company due on February 1, 1913 and amounting to \$626,350.00 or pay the balance of the cost and expense of making the said betterments and extensions to its system now under way, and which balance will amount to \$325,000.00.

And

By reason of such default, the company will be subjected to divers suits, and attachments and its assets and properties dissipated and wasted to the great injury of your orator and other second mortgage bond holders, by the loss of their bonds and the interest thereon.

Thirty-second. That during the winter of 1911-1912 the city of Kansas City, Missouri, passed an ordinance imposing a daily fine upon the local distributing company in that city and imprisoning its officers whenever the pressure in the mains of that company fell below five inches of water. That this diminution of pressure was caused solely by the waning and failure of the supply of gas from

the gas fields of the Kansas Natural Gas Company and was no fault of either the local distributing company or of the Kansas Natural Gas Company, and the attempt to enforce such fine and imprisonment was both childish and brutal. Your orator avers 1359 the United States District Court sitting in said Kansas City has by preliminary injunction restrained the enforcement of such ordinance, but the effect of attempts to enforce it and the necessity of the local distributing company in a supposed enlightened community being compelled to apply to the courts for protection against such a foolish ordinance has also had an injurious effect upon the attempts of the Kansas Natural Gas Company to borrow money.

Thirty-third. That for many years, the Kansas Natural Gas Company has carried a heavy floating indebtedness upon the individual indorsement of certain of its directors and officers and was thereby enabled to conduct and carry on needed betterments and improvements.

But

The individual indorsers upon such commercial paper, influenced by the above suits and knowing the rapid falling off in the volume and pressure of the Oklahoma and Kansas gas fields and recognizing the hostile feeling in Kansas City, Missouri, to the local distributing company and to Kansas Natural Gas Company withdrew their endorsements from the said paper and the company was compelled to pay off and take up the same, as the banks would not carry the company without such personal endorsements.

Thirty-fourth. That all the pipe lines, leases and properties of the defendant are situate in the Eighth Judicial Circuit, and in the Western District of Missouri, the District of Kansas (and the first and third divisions thereof) and the Eastern District of Oklahoma. Its pipe line system, both owned and leased, extends from St. Joseph and Kansas City, Missouri on the north to and into Washington County, Oklahoma with a branch running eastwardly to Joplin and Carthage, Missouri.

Thirty-fifth. That your orator brings this suit and files this suit for and in the interest of all bondholders of the Kansas Natural Gas Company.

Wherefore, your orator avers and charges

(A) That the gas fields to which the pipe line system operated by the Kansas Natural Gas Company now extends, or is being extended, are substantially all the known gas fields of Kansas and Oklahoma of a size sufficiently accessible to warrant the extension of its system.

1360 (B) That the gas now remaining in the said fields will if the Kansas Natural Gas Company continues its sales of boiler gas, be wholly depleted in three years from this date and the receipts therefrom will be wholly insufficient to meet and discharge the said second bonds of the Company, and a substantial number thereof will be wholly lost to the holders thereof.

(C) That if the sales of boiler gas be discontinued and the sales



of the company's gas be made at the present prevailing prices, or even at twenty-seven cents per thousand cubic feet wherever twenty-five cents is now the prevailing price, the receipts from such sales will not be sufficient to meet and discharge the said second bonds of the company and a substantial number thereof will be wholly lost to the holders thereof.

(D) That if the sales of boiler gas be discontinued and the sales of the Company's gas be made for domestic consumption alone at the price of fifty cents which is less than a fair reasonable price for the same, the gas now remaining in the said gas fields which the Kansas Natural Gas Company now owns or is entitled to receive under contracts of purchase, will be sufficient to supply its consumers for at least six years yet to come, and the receipts from such sales will be sufficient to meet and discharge all of the floating indebtedness of the company, all of its operating expenses, all interest on its bonds (including therein those of the Kansas City Pipe Line Company and of The Marnet Mining Company) all of its bonds, including therein those of the Kansas City Pipe Line Company and The Marnet Mining Company, which it has agreed to pay as rental of the respective lines of those companies.

(E) That fifty cents for each thousand feet of gas sold in the cities of western Missouri and eastern Kansas now supplied by the Kansas Natural Gas Company, is less than the worth and value of the said gas at the several points of consumption, and less than a fair reasonable price for the same.

(F) That the receipts of the Kansas Natural Gas Company from the sale of gas during the year 1912 and January of 1913, as well as its receipts from all other sources whatsoever, will not be sufficient for it to meet and discharge its sinking fund payments as the same mature, and the rental on the lease of the Kansas City Pipe Line Company, which rental falls due February 1, 1913 and amounts to six hundred and fifty thousand dollars, and the company will be threatened and harassed with suits for the payment of the said rental, and collection of its bonds, and its properties may be subjected to attachment execution and to seizure in various 1361 actions and proceedings in the courts of Pennsylvania, Oklahoma, Kansas and Missouri, in all of which states it has assets and properties, which, however, upon such execution and attachments and seizures would be rapidly dissipated and sacrificed and the true value thereof not realized. Proceedings against it for collection of debts or foreclosure of mortgage or enforcement of any kind of liens or claims or other proceedings which will result in interference with its business and dissipation of its assets in detail, and in different states would work irreparable injury and great financial loss to the creditors—the stockholders of the Company, the employees of the Company and to thousands of its customers who rely upon it to furnish them a supply of gas for domestic purposes.

(G) That a fair value of its corporate assets can only be had and realized by holding, protecting, preserving and operating its property (including therein its leased lines) as a whole with a view of



realizing the present actual value and worth of the gas which the Company distributes, markets and sells. This could not be done by a forced sale of its properties, which would result in a great sacrifice thereof and no return upon the stock and serious loss to all the Company's creditors.

(H) That the Kansas Natural Gas Company has never paid any dividends upon its stock except only dividends for eighteen months ending with July, 1909, at the rate of one-half of one per cent per month. That the Company at the present time has upwards of one hundred and fifty thousand consumers whom it supplies with natural gas for light, heat and fuel and who are wholly dependent thereon. It has hundreds of employees who are dependent upon it for work. In view of the necessities of the consuming public served by the Company and the conflicting claims of creditors, the early maturity of its obligations and the inability of the Company to borrow money, the Kansas Natural Gas Company is and will be unable to meet the demands upon it, and any attempt upon the part of any creditor, bondholder, interest coupon holder in any single proceeding other than for the benefit of all that may be interested in the property, would precipitate like and similar action on the part of others which in turn would lead to wasteful strifes and controversy and various and conflicting suits in separate and different courts, and that the intervention of a court of equity for the protection of the rights of your orator, as well as of other creditors of the company and of the consuming public is imperatively necessary, and inasmuch as  
1362 your orator has no adequate remedy at common law and can only have relief in a court of equity, he has filed this bill asking the interposition of this Honorable Court.

(I) That The Marnet Mining Company as well as the Kansas Natural Gas Company has no credit or standing to borrow money, and the bonds of The Marnet Mining Company now lying unissued in the treasury of that company cannot be sold or floated in the open market, and the money necessary for (a) the removal and reconstruction of the new compressor or forcing station, referred to heretofore, and (b) the extension of its lines to new fields or pools of gas, cannot be raised and as a consequence the defendant company will be wholly without the necessary funds or means to make the said betterments. That the Kansas Natural Gas Company has no other means with which to make the said betterments except the moneys realized from the sale of its gas and that at the present price at which it is permitted to sell its gas it cannot pay its operating expenses, fixed charges and make the betterments necessary to furnish its consumers with gas. That the city of Kansas City, Missouri, has so far refused to permit the Kansas Natural Gas Company to charge more than twenty-seven cents per thousand cubic feet, and during the winter of 1911-1912 it impounded sixty-two thousand five hundred dollars of the defendant's money and refused to permit the same to be paid over to it because during the winter there was a shortage in the defendant's gas supply in that city, a shortage which the defendant was unable to prevent owing to the depletion of its gas fields.

Wherefore, your orator prays:

First. That his rights and those of all the creditors, including interest coupon holders and bondholders and landlords, may be ascertained and protected.

Second. That the court will take charge of the properties of the defendant, fully administer the funds in which your orator and those upon whose behalf this suit is brought are interested, and for such purpose marshal all the assets of the defendant, ascertain the respective liens and properties existing in favor of creditors and the amounts due, and enforce the rights, liens and priorities of all creditors of the Kansas Natural Gas Company as the same may be finally ascertained and decreed upon respective interventions or applications of persons interested or otherwise, and make such orders and decree.

1363 Third. To make such orders and decree in the premises as may be necessary to hold the property of the Kansas Natural Gas Company (including therein that under lease from the Kansas City Pipe Line Company and The Marnet Mining Company) to this end and for this purpose.

Fourth. To appoint receivers of all the properties of the Kansas Natural Gas Company, with such powers in the premises as are used in such cases and deemed proper by this court.

Fifth. To issue preliminary and permanent injunctions against the defendant, its officers, servants, agents and employees, to restrain them from in any wise interfering with the receivers and from receiving, collecting or attempting to transfer, use, operate or deal in any of the property, leaving the same to be managed solely under the direction and management of this court.

Sixth. After notice duly given to all parties in interest, to order and decree a sale of all the property of the said Company and distribute the proceeds therefrom to and among those legally entitled thereto.

Seventh. For such other and further relief as to this Honorable Court may appear just and equitable.

And

May it please your Honor to grant a writ of subpoena to or ordered directed to the said defendant, requiring it to appear on a day certain before this Court and then and there full, true and direct answer make to all and singular the premises; and further, to perform and abide by such further order, direction and decree herein as may be just and equitable and to this Honorable Court may seem proper.

And your orator will ever pray.

JOHN L. McKINNEY.

CHAS. BLOOD SMITH,  
*Of Counsel.*

ROSSINGTON, SMITH & BARNUM,  
*Solicitors for Complainant.*

STATE OF PENNSYLVANIA,

*County of Allegheny, ss:*

Be It Remembered that on this fifth day of October in the year of our Lord one thousand nine hundred and twelve, before me, a Notary Public in and for the said county and state, personally appeared John L. McKinney, who being by me first duly sworn 1364 according to law did depose and say that he is the complainant above named and has read the foregoing bill of complaint and knows the contents thereof, and that the same are true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to such matters that he believes them to be true.

JOHN L. MCKINNEY.

Sworn to and subscribed before me the day and year last above written.

In witness whereof I have hereunto set my hand and affixed my notarial seal.

My commission expires May 24, 1915.

[SEAL.]

B. S. HARE,  
*Notary Public.*

Endorsed: Bill of Complaint. Filed in Dist. Court on Oct. 7, 1912. Morton Albaugh, Clerk.

1365 (*Bill of Complaint of Fidelity Title and Trust Co.*)

In the District Court of the United States for the District of Kansas,  
First Division.

In Equity.

1-N.

THE FIDELITY TITLE &amp; TRUST COMPANY, Complainant,

vs.

THE KANSAS NATURAL GAS COMPANY and THE DELAWARE TRUST  
COMPANY, Defendants.

To the Honorable the Judges of the District Court of the United States of America in and for the District of Kansas, First Division:

The Fidelity Title & Trust Company brings this its bill of complaint against The Kansas Natural Gas Company and The Delaware Trust Company, and thereupon your orator complains and alleges:

## I.

That your orator is a corporation created by and existing under the laws of the State of Pennsylvania, and a citizen and resident of the State of Pennsylvania.

## II.

That the Kansas Natural Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is a citizen and resident of said State of Delaware; that the Delaware Trust Company is a corporation created and existing under the laws of the State of Delaware, with its principal office and place of business at Wilmington, Delaware, and is a citizen of said State of Delaware.

## III.

That the Kansas Natural Gas Company was incorporated April 9th, 1904, under the laws of the State of Delaware with an authorized capital stock of \$6,000,000.00 divided into 60,000 shares of the par value of \$100.00 each; but afterwards, on or about May 4, 1904, by due, regular and corporate action the said authorized capital stock was legally increased to \$12,000,000.00 divided into 120,000 shares of the par value of \$100.00 each; that said The Kansas Natural Gas Company was duly authorized by the Kansas State Charter Board to transact business in the state of Kansas as a foreign corporation; and your orator shows that by said act of incorporation the said defendant, The Kansas Natural Gas Company became and was authorized to produce, purchase and acquire natural gas, and to pipe, convey and transport the same from the place or places where the same was produced, purchased or acquired to such cities, towns and villages and places as might afford a convenient and satisfactory market for such natural gas, and to lay, maintain, operate, repair and remove such pipe lines as might be necessary or convenient in piping, conveying and transporting such natural gas, and to build, construct and operate pumping stations, compressors, station tanks and machinery as might be necessary or convenient in the production, transportation and supply of natural gas, and to purchase, acquire, own and hold such real and personal estate, including rights of way as might be necessary or convenient in connection with the construction and operation of such pipe lines.

And your orator further shows that by virtue of said act of incorporation, the said defendant, The Kansas Natural Gas Company became and was authorized to purchase, acquire, hold and own stocks, bonds and securities in other corporations, and to enter into various contracts, leases and arrangements for the construction, operation and maintenance of other pipe lines, and to purchase and acquire stocks and bonds of other companies, and your orator begs

leave to refer to said Articles of Incorporation to the same extent as if they were fully and specifically set out in this bill.

Your orator further shows that under and by virtue of the powers, franchises and authorities conferred upon it by law the said defendant, The Kansas Natural Gas Company, did on or about July 1, 1904, acquire a large acreage of oil and gas *mining lands, leases and leaseholds* in the counties of Elk, Coffey, Neosho, Chautauqua, Anderson, Woodson, Allen, Wilson, Labette and Montgomery in the State of Kansas aggregating over 165,000 acres, upon which many gas wells had been drilled and found to produce gas in paying quantities, and which were believed by natural gas experts of great and varied experience to be fully capable for many years of supplying all consumers in the cities of Western Missouri and Eastern Kansas with natural gas for light, heat and fuel, and return the money invested with substantial interest thereon.

And your orator further alleges upon information and belief that by reason of the great measured volume or capacity of the wells drilled on the said lands, leases and leaseholds, and the very limited market therefor in the immediate neighborhood thereof, the value of said gas could not be realized unless piped to a market therefor in the cities of Kansas City, St. Joseph, Joplin, Webb City, Carthage, and other smaller cities, towns and villages in Western Missouri, and in the cities of Kansas City, Topeka, Lawrence, Leavenworth, Atchison, Ottawa, Pittsburg, Galena, Oswego and other smaller cities, towns and villages in Eastern Kansas; and The Kansas Natural Gas Company, upon its acquiring the title to the said lands, leases and leaseholds, planned to build a system of pipe lines from its said gas fields to the said cities, towns and villages in the manner following:

(a) One line from Montgomery County eastwardly to Joplin, Webb City and Carthage, Missouri, and to the zinc and lead mines in Southwestern Missouri, with branches therefrom to Pittsburg, Oswego and Galena, Kansas, and other smaller cities, towns and villages along its route.

(b) One line from Wilson and Anderson counties northwardly to St. Joseph, Missouri, with branches therefrom to Topeka, Lawrence, Atchison, Leavenworth and other smaller cities, towns and villages along its route.

(c) One line to Kansas City, Kansas, and Kansas City, Missouri, and other smaller cities, towns and villages along its route.

And your orator further shows that under and by virtue of the powers, franchises and authorities conferred upon it by law, the said Kansas Natural Gas Company did build and construct the two pipe lines described in sub-paragraphs (a) and (b) as follows:

(a) One line from Montgomery County Eastwardly to Joplin, Webb City and Carthage, Missouri, and to the zinc and lead mines in Southwestern Missouri, with branches therefrom to Pittsburg, Oswego and Galena, Kansas, and other smaller cities, towns and villages along its route.

(b) One line from Wilson and Anderson counties Northwardly to St. Joseph, Missouri, with branches therefrom to Topeka, Law-

rence, Atchison, Leavenworth and other smaller cities, towns and villages along its route and erected a compressor or forcing station at Petrolia, Allen County, Kansas, with four compressors or units.

And your orator further alleges upon information and belief that the defendant, The Kansas Natural Gas Company, was unable to itself furnish the money and build the pipe line system described in sub-paragraph (c) to-wit: A line to Kansas City, Kansas, and to Kansas City, Missouri, and other smaller cities, towns and villages along its route, and in order to furnish the money to build such line there was organized under the laws of the state of New Jersey a corporation known as the Kansas City Pipe Line Company, which company built and constructed said pipe line from the gas fields of Kansas to Kansas City, Kansas, and Kansas City, Missouri. That upon the organization of said Kansas City Pipe Line Company it immediately authorized and issued 3,000 bonds of \$1,000.00 each, and secured the same by a first mortgage upon its pipe lines, being those in sub-paragraph (c) and also upon an acreage of oil and gas lands, leases, lease holds and other assets which it had taken over in exchange for its total authorized capital stock, to-wit, three million dollars, and also one hundred and seventy of said bonds. To each of the said bonds were attached interest coupons at the rate of six per centum per annum, falling due successively on the first days of February and August in each year. Two thousand one hundred and seventy-six of these bonds of the Kansas City Pipe Line Company were sold at par and the whole proceeds thereof were expended in the construction of the pipe line in sub-paragraph (c) and which will be hereinafter referred to as The Kansas City Pipe Line. That immediately upon its completion, such pipe line and the said lands, leases and leaseholds were leased to The Kansas Natural Gas Company upon its agreement to pay all taxes and operating expenses and a rental sufficient to meet and discharge the interest coupons on the said bonds as they matured, and also the bonds themselves, as they from time to time fell due. The said lease is in writing and from time to time changes were made therein by the mutual consent of the parties thereto. A true copy of the same as it now reads, marked Exhibit A, is now exhibited to the court and is filed herewith and made a part hereof as fully as though incorporated at length herein.

And your orator further alleges and avers the fact to be that immediately upon said lease being executed by the Kansas City Pipe Line Company to the said The Kansas Natural Gas Company, the said pipe line was and has been operated, controlled and managed by The Kansas Natural Gas Company to the end that such line should be operated in connection with the other lines of said Natural Gas Company and as a part of a single system of pipe lines.

#### IV.

And your orator avers that upon the completion of the pipe lines referred to in sub-paragraphs (a), (b) and (c) The Kansas Natural



Gas Company began supplying gas to the cities served upon said lines, but it was soon discovered that what was at first believed to be a great gas belt extending from Anderson county, in the State of Kansas, on the north, to and into Oklahoma on the south was not one solid gas field, but made up of various so-called "pools" limited in their respective areas in which wells were found, which while at first being drilled into produced gas in large quantities soon began to wane rapidly in both volume and rock pressure and soon became barren, or nearly so.

1369 That upon such discovery being made, the said Kansas Natural Gas Company caused to be extended the line of The Kansas City Pipe Line, as well as the line of the Kansas Natural Gas Company southwardly and into Montgomery county, Kansas, and erected forcing or compressor stations upon its lines, one at Seipio, in Anderson county, and another at Grabham, in Montgomery County, and increased the capacity of the one already built at Petrolia, Allen county, Kansas, from four to nine units, and acquired among others the gas lands, leases and lease holds of the Prairie Oil and Gas Company and of the Peoples' Gas Company.

#### V.

And your orator further avers that by the year 1908 the enormous drain upon the gas fields of Kansas had so depleted them that it was apparent to The Kansas Natural Gas Company that the output of gas from the Kansas fields could no longer supply their customers, and thereupon The Kansas Natural Gas Company began the extension of its pipe line system into the State of Oklahoma, and for such purpose there was organized under the laws of the State of West Virginia the Marnet Mining Company, which company was duly authorized to construct a pipe line system and to purchase and acquire gas leases and gas lands; that upon the construction of the pipe lines by the Marnet Mining Company in Oklahoma the said pipe lines and the gas leases, lands and output of the said Marnet Mining Company were duly leased by The Kansas Natural Gas Company and ever since have been and are still operated as a part of the single system of pipe lines of The Kansas Natural Gas Company. That said lease is in writing and a true copy of the same is now exhibited to the court and made a part hereof, marked Exhibit B as fully as though incorporated at length herein.

That the leasing of the lines of the said Marnet Mining Company and the output of gas through its system was absolutely necessary for the successful operation of the system of The Kansas Natural Gas Company, the fields of Kansas having become exhausted or substantially so.

#### VI.

And your orator further shows that under and by virtue of the powers, authorities and franchises so conferred upon The Kansas Natural Gas Company, the said Kansas Natural Gas Company has,



by its own construction and through leases, contracts and arrangements with other companies for the operation, control and management of the pipe lines of such other companies, built up and  
1370 is now operating a complete pipe line system for the production and transportation of natural gas, and has an entire single system of pipe lines, leases and properties that are situated in the Eighth Judicial Circuit, and in the Western District of Missouri the District of Kansas (1st and 3rd Divisions thereof) and the Eastern district of Oklahoma. Its pipe line system bought, owned and leased extends from St. Joseph and Kansas City, Missouri, on the north to and into Washington county, Oklahoma, with a branch running eastwardly to Joplin and Carthage, Missouri. A map of the lines owned and operated by The Natural Gas Company, and including therein those lines from The Kansas City Pipe Line Company, and from the Marnet Mining Company, is hereto attached, marked Exhibit C and made a part of your orator's bill as fully as though incorporated at length herein. Lines owned by the Kansas Natural Gas Company are indicated on the map in red ink; those owned by the Kansas Pipe Line Company in green ink; those owned by The Marnet Mining Company in blue ink. The compressor stations at Scipio, Petrolia and Grabham are indicated by black circles with a yellow center. In the Grabham station there are nine compressors six of which were and are owned by The Kansas Natural Gas Company and three by The Kansas City Pipe Line Company. In the Petrolia pumping station there are nine compressors, three of which were and are owned by The Kansas City Pipe Line Company. In the Scipio station there are six compressors, three of which are owned by The Kansas Natural Gas Company, and three by The Kansas City Pipe Line Company. All of the trunk lines of The Kansas City Pipe Line Company are sixteen inches in diameter. The trunk lines of The Kansas Natural Gas Company north of Sumner county, Kansas are sixteen inches in diameter, except the branches to Topeka, Atchison and Leavenworth, which are of smaller diameter. The lines of The Kansas Natural Gas Company running from the Grabham station eastwardly to Carthage, Missouri, are principally of sixteen inch pipe. Those running southwardly from Grabham to connect with the Marnet lines are generally eighteen inches in diameter. The main line of The Marnet Mining Company running southwardly to the (Hogshooter) is eighteen inches in diameter. That the distance between the southern terminus of the Company's system in the Hogshooter field, and the northeastern terminus thereof, St. Joseph, Missouri, is about 250 miles. That about five-sixths of the traffic and transportation of natural gas carried on by the company is wholly and exclusively inter-state commerce.

1371 And your orator further avers upon information and belief and charges the fact to be that in addition to the foregoing pipe lines owned and controlled by the defendant, the Kansas Natural Gas Company, there have been constructed other and additional lines, and other and additional gas wells, lands and leases have been

acquired by the receivers heretofore appointed over the properties of the defendant, The Kansas Natural Gas Company, a more complete and full description of said leases and lands is to your orator unknown.

## VII.

And your orator further shows that on or about the 20th day of June, in the year 1894, the said defendant, The Kansas Natural Gas Company, for the purpose of procuring funds for the transaction of the business of said company, and in the exercise of its corporate rights, privileges and franchises and in pursuance of the determination and resolution of its Board of Directors and of said corporate action, and as thereunto duly authorized by law, did make, execute and deliver to your orator as Trustee a certain mortgage or deed of trust dated the 20th day of June, 1904, to secure its First Mortgage Twelve year, Six Per Cent Sinking Fund Gold Bonds to the amount of \$4,000,000.00.

Your orator further shows that in and by said mortgage or deed of trust the said Kansas Natural Gas Company did grant, bargain, sell, alien remise, release, convey, confirm, assign, transfer, set over and mortgage unto your orator its successors, or assigns in the trust to be created, all of the property, leases and the leaseholds therein described, and all gas wells, oil wells machinery, fittings, appliances, and appurtenances, then or thereafter placed thereon or connected therewith; all right, title, claim and interest in and to or by, through or under certain oil and gas leases upon certain lands in Elk County, Coffey County, Neosho County, Chautauqua County, Anderson County, Woodson County, Allen County, Wilson County, Labette County and Montgomery County, all in the State of Kansas, held either as original lessee or as assignee of such leases, or prior assignment, a description of which said leases, giving the date of each, the name of the lessor the land therein described, and the book and page in the office of the recorder of deeds of said county whereof record is more fully set forth in the said mortgage, marked Exhibit D, now exhibited to the Court and filed herewith, and made a part of this, your orator's bill, as if fully set forth herein. That since the execution of said mortgage or trust deed certain of the leases therein mentioned and described have been duly released by  
1372 your orator from the lien created by said mortgage or trust deed, which releases are indicated upon the margins of said mortgage.

And your orator further alleges that it was especially covenanted and agreed by and on behalf of said The Kansas Natural Gas Company in said mortgage or deed of trust that from time to time thereafter it would sell, convey, assign, transfer and mortgage to your orator as Trustee any other or additional property, including stocks, bonds and securities in other company or companies which said Kansas Natural Gas Company should own, purchase or acquire, as additional security under the said mortgage or trust deed for the payment of the principal and interest of its first mortgage bonds se-

cured by said indenture, and that your orator as Trustee should receive and should hold and apply any such additional property, including stocks, bonds and securities of other companies under and in accordance with the terms of such mortgage or trust deed. That in pursuance of the terms and provisions of said trust deed or mortgage The Kansas Natural Gas Company has from time to time since the execution of said mortgage sold, conveyed, assigned, transferred and mortgaged to your orator, certain additional properties, stocks, bonds and securities in other companies which The Kansas Natural Gas Company has acquired, owned and purchased since the date of said mortgage, all of which are now held by your orator as additional security under said mortgage or deed of trust as follows:

440 Shares of Caney Gas Company of the par value of.....	\$100.00 per share
440 Shares of Caney Gas Oil & Mining Co. of the par value of.....	\$100.00 per share
22,500 Shares of Kansas Pipe Line Co., of the par value of.....	\$100.00 per share
19,625 Shares of Marnet Mining Co., of the par value of.....	\$100.00 per share
119,990 Shares of Kansas Natural Gas Oil Pipe Line & Improvement Co. of the par value of .....	\$.10 per share
25,000 Shares of the Jasper Co. Light & Fuel Co., of the par value of.....	\$1.00 per share
100,000 Shares of Kaw Gas Company of the par value of.....	\$1.00 per share
1373	
1 Share of Columbus Local.	
885 Bonds of the Marnet Mining Co., num- bered from 426 to 800 inclusive and 1341 to 1850, inclusive of the par value of .....	\$1,000.00 per bond

A bond of The Kansas Natural Gas Oil Pipe Line & Improve- Company dated October 2, 1905, to the Kansas Natural Gas Company for the sum of \$2,656,000.00 with interest at the rate of six per centum per annum payable semi-annually on the 1st days of May and November of each year, together with a mortgage duly executed by The Kansas Natural Gas Oil Pipe Line & Improvement Company of even date with said bond to secure said bond, both of which bond and mortgage have been duly assigned in writing by said Kansas Natural Gas Oil Pipe

Line and Improvement Company to The Fidelity Title & Trust Company, Trustee.

A certain lease dated the first day of December, 1909, between the Mar-net Mining Company and The Kansas Natural Gas Company assigned by The Kansas Natural Gas Company to The Fidelity Title & Trust Company, Trustee, on the 8th day of February, 1911. A copy of which lease, together with assignment is now exhibited, to the Court, and is filed herewith, Marked Exhibit E, and made a part hereof as fully as though incorporated at length herein.

And your orator further avers that said conveyance by said mortgage or trust deed to your orator was made in trust nevertheless under and subject to the conditions and provisions contained in said trust deed, and as therein set forth for the equal and proportionate benefit and security of the holders of all of the bonds secured thereby, and that said grant was made upon the express condition that upon the payment of the principal sums and interest due upon all of the bonds and coupons for interest secured by said trust deed by said Gas Company, or the providing for such payment by said Gas Company by depositing with said Trustee the entire amount due upon said bonds, principal and interest, and upon said Gas Company well and truly keeping and performing all things required to be kept and performed by it according to the true intent and meaning of said trust deed, then in that case all stocks, bonds, corporate securities and any and all property of any kind, nature or description conveyed or pledged should revert to said Gas Company, and the estate, right, title and interest of said Trustee should thereupon cease, determine and become void, and the said Trustee should execute proper instruments acknowledging satisfaction of said mortgage, and should also transfer, assign and convey to the said Gas Company all stocks, bonds and other securities held by it as Trustee under and in pursuance of the terms of such indenture.

And your orator further alleges that in pursuance of the resolution of its Board of Directors, and of due corporate action, and being thereunto duly authorized by law, The Kansas Natural Gas Company did on or about the 20th day of June, 1904, and at various dates, thereafter, duly make, execute, and issue under its corporation seal, and did deliver to various persons, firms and corporations for value, and for considerations and purposes, and in the manner provided by said mortgage or trust deed, its bonds to the number of 4,000 and in the aggregate of \$4,000,000.00 each of which bonds

was dated on the 20th day of June, 1904, and promised to pay to the bearer at the office of The Fidelity Title & Trust Company in Pittsburgh, Pennsylvania, the sum of \$1,000.00 in gold coin of the United States of America, on the first day of May, 1916, and to pay interest thereon semi-annually at the rate of six per centum per annum from the first day of May, 1904, payable in like gold coin at the office of The Fidelity Title & Trust Company in Pittsburgh, Pennsylvania, on the 1st days of May and November in each year, on presentation and surrender of interest coupons thereto attached. A copy of each of said bonds, except as to the serial number thereof is set forth and included in said mortgage, a copy of which is as aforesaid exhibited to the court and filed herewith.

That of the bonds so issued by said Kansas Natural Gas Company \$2,400,000.00 have been retired and surrendered and cancelled as in the manner contemplated by the provisions of said mortgage or trust deed, and that the amount of said bonds so issued which now remain outstanding is \$1,600,000.00 numbered as follows:

1375

Bonds.	Number.	Bonds.	Number.
7.....	21- 27	21.....	3320-3340
47.....	36- 82	2.....	3995-3996
15.....	101- 115	1.....	3998
5.....	126- 130	1.....	1284
1.....	134	10.....	1293-1302
6.....	176- 181	2.....	1323-1324
4.....	197- 200	2.....	1332-1333
2.....	273- 274	3.....	1373-1375
4.....	291- 294	5.....	1439-1443
1.....	309	1.....	1445
5.....	344- 348	21.....	1447-1467
4.....	370- 373	1.....	1485
11.....	413- 423	5.....	1488-1492
1.....	427	3.....	1508-1510
5.....	429- 433	12.....	1564-1575
1.....	444	6.....	1586-1591
1.....	464	2.....	1609-1610
5.....	466- 470	1.....	1612
1.....	499	1.....	1703
7.....	505- 511	23.....	1764-1786
7.....	601- 607	218.....	1789-2006
1.....	614	7.....	2012-2018
13.....	634- 646	2.....	2040-2041
2.....	656- 657	16.....	2071-2086
17.....	659- 675	5.....	2254-2258
45.....	686- 730	39.....	2261-2299
1.....	2069	99.....	2301-2399
1.....	2237	186.....	2450-2635
65.....	761- 825	11.....	2646-2656
225.....	846-1070	125.....	2677-2801
9.....	1129-1137	5.....	2804-2808
5.....	1142-1146	5.....	2810-2814
5.....	1148-1152	22.....	2832-2853
2.....	1164-1165	11.....	2862-2872
40.....	2900-2939	1.....	2877
139.....	2950-3088	5.....	2879-2883
4.....	3296-3299	6.....	2888-2893

1600 Bonds Total Outstanding.

## VIII.

That upon the execution and delivery of said trust deed to your orator the same was duly filed and recorded both as a real estate and chattel mortgage in the respective offices of the Register of Deeds in and for the Counties in the State of Kansas, wherein the property of the Kansas Natural Gas Company was located and thereupon became a first and superior lien on all the

property of The Kansas Natural Gas Company then in existence or that was subsequently acquired by it.

### IX.

Your orator further shows that it accepted the said trust deed or mortgage as Trustee thereunder and has continued and now is the Trustee under said mortgage.

And your orator further shows that the said \$1,600,000.00 of first mortgage bonds issued and outstanding as aforesaid and secured by said first mortgage to your orator, as Trustee, were duly certified by your orator, and have been issued as in the manner and for the consideration and purposes provided and defined by the provisions of said trust deed or first mortgage.

### X.

Your orator further avers that said mortgage or trust deed among other things provided as follows:

(2) That no bond shall be issued or held valid or obligatory hereunder, or entitled to the benefit and security hereof unless the same shall be authenticated by a certificate endorsed thereon by the Trustee that it is one of the bonds herein described and issued hereunder. All of the bonds issued hereunder shall be a first lien on the property, rights, privileges, and franchises herein described and referred to, and upon all of the stock and bonds heretofore assigned and transferred to the trustee, and upon all of the property, including stocks, bonds and corporate securities hereinafter acquired by the Gas Company, and which are to be transferred to the Trustee as hereinbefore provided, and shall be equally secured under this mortgage or deed of trust without preference, priority or distinction of one over another as to lien, payment or otherwise on account of the times of the actual issue of said bonds or any thereof, and without distinction as to the dates of the maturity of said bonds or of any of them over any of the others."

\* \* \* \* \*

(3) "Duly and punctually the Gas Company will pay the principal and interest of every bond issued and secured hereunder at the dates and places, and in the manner mentioned in said bonds or the coupons thereto belonging, according, to the true intent and meaning thereof without deduction from either principal or interest of any tax or taxes imposed by the United States, or by any State or County or Municipality which the Gas company may be required to pay thereon, or to retain therefrom, under or by reason of any present or future law. The interest on the coupons shall be payable only on presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be cancelled. The payment of all bonds and interest coupons shall be made when presented at the office



of the Fidelity Title & Trust Company in the City of Pittsburgh, Pennsylvania."

\* \* \* \* \*

(5) "The Gas Company, its successors or assigns from time to time, on written demand of the Trustee, or its successors, will make, do, execute, acknowledge, and deliver all such further acts, deeds, assignments, conveyances and assurances in law as may be reasonably advised, devised or required for effecting the intention of these presents, and for the better assuring or confirming under the Trustee, or its successors, in the trust hereby created upon the trusts for the purpose herein expressed, all and singular the property hereby assigned and transferred to the Trustee or intended so to be.

(6) "The Gas Company, from time to time, will assign and transfer unto the Trustee to be held subject to the trusts hereof as fully and completely as though expressly and specifically assigned and transferred to the Trustee at the time of the execution thereof, all the property, stocks, bonds and securities named in the granting clause hereof, or which it shall secure or acquire."

\* \* \* \* \*

(7) From time to time the Trustee shall cause to be transferred in its name as Trustee for the Gas Company, or as Trustee under this indenture, all shares of stock which shall have been pledged with it hereunder, but in such case the corporation or association which issued such shares shall be notified that such shares are held by the Trustee under this indenture, and the Trustee shall cause such corporation or association to indicate upon the face of the certificates for such shares the fact that such shares are held by the Trustee hereunder."

\* \* \* \* \*

(13) "In case default shall be made in the payment of any interest on any bond or bonds hereby secured and outstanding, and any such default shall have continued for the period of ninety  
1378 days after demand of payment, then in every such case of such continuing default upon the written request of the holders of 25 per cent in amount of the bonds hereby secured and then outstanding the Trustee by notice in writing delivered to the Gas Company shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be due immediately, anything in this indenture or in said bond to the contrary notwithstanding.

(14) "In case (1) default shall be made in the payment of any interest on any bond hereby secured, and such default shall continue for a period of ninety days, or in case (2) default shall be made in the due and punctual payment of the principal on any bond hereby secured, or in case (3) default shall be made in the due observance or

performance of any other covenant or condition herein required to be kept or performed by the Gas Company, and such last mentioned default shall continue for a period of six months after written notice thereof to the Gas Company from the Trustee, or from the holders of 25 per cent, in amount of the bonds hereby secured, then in every such case, the Trustee, personally or by attorney, and in its discretion (a) may sell to the highest bidder all and singular the shares of capital stock, bonds and other property held by the Trustee under this indenture and all rights, title, interest, claim and demand therein, and the right of redemption thereof, in one lot as an entirety, or as separate lots, such as the Trustee shall deem best, which said sale or sales shall be made at public auction at such places in the City of Pittsburgh, in the State of Pennsylvania, or at such other places and at such time, and upon such terms as the Trustee may fix on, briefly specifying in the notice of sale to be given as herein provided, or as may be required by law, or (b) may proceed to protect and enforce its rights and the rights of the bond holders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee being advised by counsel learned in the law, shall deem most effectual to protect and enforce the rights aforesaid."

\* \* \* \* \*

(21) The Gas Company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for a period of ninety days, or (2) in case default shall be made in the payment of the principal of any said bonds when the same shall have become payable, whether by the maturity of said bonds or by declaration as authorized by this indenture, or by sale, as hereinbefore provided, then, upon demand of the Trustee, the Gas Company will pay to the Trustee for the benefit of the holders of the bonds and coupons hereby secured and outstanding the whole amount due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of six per cent, per annum upon the overdue principal, and the instalment of interest, and in case the Gas Company shall fail to pay the same forthwith upon such demand the Trustees, in its own name and as Trustee of an expressed trust, shall be entitled to recover for the whole amount so due and unpaid."

\* \* \* \* \*

(27) "Said Gas Company shall establish a sinking fund for the purchase, redemption and retirement of said bonds by paying to the said Fidelity Title & Trust Company, as Trustee, within fifteen days after the first of every month (beginning with the first day of May,

1906) a sum equal to 20 per cent. of the net profits of the Gas Company for the preceding month, and such additional amounts as it may determine, the said Gas Company guaranteeing that its payment to the sinking fund for the aforesaid purpose shall not aggregate less than a sum necessary to retire semi-annually five per cent of the maximum number of bonds ever sold with any unpaid interest accrued on the same.

\* \* \* \* \*

"If when the bonds hereby secured shall become due and payable, the Gas Company shall well and truly pay or cause to be paid the whole amount of the principal sums and interest due upon all of the bonds and coupons for interest thereon hereby secured then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for payment of such bonds and coupons, the entire amount then due thereon, of principal and interest, and also shall pay or cause to be paid all other sums payable hereunder by the Gas Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it, according to the true intent and meaning of this indenture, then, in that case, all stocks, bonds, corporate securities and any or all property of any kind, nature or description hereby conveyed or pledged shall revert to the Gas Company, and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and the Trustee  
1380 in such case, on demand of the Gas Company, and at its cost and expense, shall execute proper instruments, acknowledging satisfaction of this indenture, and shall also assign, transfer and convey to the Gas Company all stocks, bonds and other securities held by it as Trustee under and in pursuance of the terms of this indenture."

## XI.

And your orator further alleges that on the 2nd day of May, 1911, the said Kansas Natural Gas Company, in conformity with the provisions of said mortgage or trust deed providing that if said Gas Company should thereafter acquire any additional property it would upon demand of your orator, by supplemental papers or deeds of assignment, convey and assign such additional and subsequently acquired property to your orator, as Trustee, as security for any of said bonds then remaining unpaid, and in conformity with the demand made upon it by your orator for such purpose, duly executed and delivered to your orator, as Trustee, a supplemental mortgage or trust deed, wherein and whereby it granted, bargained, sold, aliened, released, remised, conveyed, confirmed, transferred, assigned, set over and mortgaged unto your orator, as Trustee, its successors, and assigns in the trust by said mortgage created all of its property located in the county of Montgomery, in the State of Kansas, consisting of certain oil and gas mining leases, more specifically set forth in said mortgage together with all of its gas transportation plant, consisting of a system of pipe lines which commence in Montgomery

County, Kansas, near the Oklahoma state line and run north and northeasterly to Kansas City and St. Joseph, Missouri, Kansas City, Atchison, Leavenworth, Lawrence and Topeka, Kansas, and eastwardly to Carthage, Joplin, Webb City and other points in south-western Missouri, and Pittsburg, Galena, Oswego, and other towns in southeastern Kansas, together with all drips, valves, reducers, meters, pumping or compressor stations and engines, appliances, fittings, equipment, structures, machinery and property belonging to or connected with said pipe line plant or system and all extensions, feeders, branch lines and gathering lines connected therewith, all of said property being more specifically and fully set forth and described in said supplemental mortgage, which is now exhibited to the court and filed herewith, marked Exhibit F, and made a part of this your orator's bill, as if fully set forth herein.

And your orator further alleges that said supplemental mortgage or deed of trust was by its terms made a part of said original mortgage or trust deed to your orator, and was given as additional security for all of said bonds then outstanding, and subject to all the 1381 terms, conditions, provisions, recitals and trusts made and contained in said first mortgage, and covered all thereafter acquired property of the said defendant, The Kansas Natural Gas Company, and that said supplemental mortgage or deed of trust was duly filed and recorded both as a real estate and chattel mortgage in the office of the Register of Deeds in and for Montgomery County, State of Kansas, on the 8th day of May, 1911, and that thereafter affidavits of renewal of said chattel mortgage were duly filed from time to time; That said supplemental mortgage or trust deed and chattel mortgage has never been discharged or satisfied of record and that the same is at this time in full force and effect.

And your orator further alleges that on or about the 2nd day of May, 1911, the said Kansas Natural Gas Company duly executed and delivered to your orator sixteen other and like supplemental mortgages or trust deeds, each of which by its terms was made a part of said original mortgage or trust deed, similar in all respects to the supplemental mortgage or trust deed, aforesaid except that each of said supplemental mortgages or trust deeds was upon property situated in the respective counties of Kansas and Missouri, as follows: Neosho, Crawford, Cherokee, Labette, Wilson, Allen, Anderson, Franklin, Johnson, Douglas, Shawnee, Leavenworth and Atchison, State of Kansas, and Buchanan, Platte and Jasper counties, state of Missouri. That each of said supplemental mortgages or deeds of trust was duly filed and recorded both as a real estate and chattel mortgage in the respective offices of the Registers of Deeds in and for said respective counties. That thereafter affidavits of renewal of said mortgages were duly filed from time to time, and that each of said supplemental real estate and chattel mortgages, and all of them, are at this time in full force and effect. For a more definite and particular description of the properties described in each of said supplemental mortgages your orator begs leave to refer to each of said mortgages which are now exhibited to the court and filed herewith, marked respectively Exhibits G to V, inclusive, and made a

part of this, your orator's bill, as if each of said supplemental mortgages were fully set forth herein.

## XII.

And your orator further shows that the interest due on each and all of said first mortgage bonds outstanding, which fell due on the first day of November, 1912, was not paid by the defendant, The Kansas Natural Gas Company, or by anyone in its behalf, or otherwise, but that the said defendant, The Kansas Natural Gas Company, made default in the payment of said interest, and the same 1382 and every part thereof has ever since remained unpaid and in default.

Your orator further says that on the first day of November, 1912, the coupons representing the instalments of interest then due upon said outstanding first mortgage bonds were duly presented for payment, and payment thereof duly demanded and refused and that the same remained unpaid.

## XIII.

And your orator further alleges that on or about the 7th day of October, 1912, one John L. McKinney, as a creditor of the said Kansas Natural Gas Company, and the holder and owner of certain of its second mortgage bonds brought in this court a creditor's bill against the said, The Kansas Natural Gas Company. That said bill alleged in detail the stock capitalization, bonds and mortgaged indebtedness, guarantees and liabilities of The Kansas Natural Gas Company, and particularly alleged the several mortgages executed by said The Kansas Natural Gas Company upon its property and pipe lines; and alleged further that the gas fields, to which the pipe line system operated by The Kansas Natural Gas Company then extended, or to which it would be extended would in a short period of time be wholly depleted, and the receipts from the sale of gas would not be sufficient to meet and discharge the bonds of said company for the causes set forth in said bill. That the receipts of The Kansas Natural Gas Company for the sale of gas for the years 1912 and 1913, as well as the receipts from all the sources, would not be sufficient to meet and discharge the sinking fund payment as it matured, or the rental on its leases, nor to pay interest on its outstanding bonds; and that said Company was without funds to make any extension of its pipe line system to acquire an additional supply of gas; that said company was insolvent and that said company could not meet or pay its indebtedness or liabilities as they fell due or accrued in the ordinary and usual course of business.

That said bill prayed:

"First. That his rights and those of all the creditors, including interest coupon holders and bond holders and landlords, may be ascertained and protected.

"Second. That the court will take charge of the properties of the defendant, fully administer the funds in which your orator and

those upon whose behalf this suit is brought are interested, and for such purpose marshal all the assets of the defendant, ascertain the respective liens and properties existing in favor of creditors 1383 and the amounts due, and enforce the rights, liens and priorities of all creditors of The Kansas Natural Gas Company as the same may be finally ascertained and decreed upon respective interventions or applications of persons interested or otherwise, and make such orders and decree.

"Third. To make such orders and decree in the premises as may be necessary to hold the property of the Kansas Natural Gas Company (including therein that under lease from The Kansas City Pipe Line Company and The Marnet Mining Company) to this end and for this purpose.

"Fourth. To appoint receivers of all the properties of The Kansas Natural Gas Company, with such powers in the premises as are used in such cases and deemed proper by this court.

"Fifth. To issue preliminary and permanent injunctions against the defendant, its officers, servants, agents and employees, to restrain them from in any wise interfering with the receivers and from receiving, collecting or attempting to transfer, use, operate, or deal in any of the property, leaving the same to be managed solely under the direction and management of this court.

"Sixth. After notice duly given to all parties in interest, to order and decree a sale of all the property of the said company and distribute the proceeds therefrom to and among those legally entitled thereto.

"Seventh. For such other and further relief as to this Honorable Court may appear just and equitable."

That upon the filing of said bill by said John L. McKinney your orator as Trustee under the first mortgage executed by the said Kansas Natural Gas Company by leave of court, was permitted to intervene in said suit instituted by the said John L. McKinney as a joint complainant with said McKinney, and thereupon it filed its petition of intervention and bill of complaint in said suit nunc pro tunc as of October 7, 1912.

And your orator in its bill of intervention made similar and like charges as were made by the complainant, John L. McKinney against the said Kansas Natural Gas Company, and also alleged that The Kansas Natural Gas Company was insolvent and unable to pay its debts, and would make default on the 1st day of November, 1912, in the payment of its interest on its first mortgage bonds secured by the mortgage or trust deed of which your orator is the Trustee.

1384 Your orator in said petition of intervention also prayed for the appointment of receivers of said company. That upon the filing of said original bill by the said John L. McKinney, as well as on the filing of the petition of intervention by your orator, the said Kansas Natural Gas Company appeared in said suit and filed answers to both the original bill filed by John L. McKinney as well as the petition of intervention filed by your orator, and admitted the charges and allegations in said bill of complaint as well as said petition of intervention to be true, and its inability to pay the interest



about to become due on the 1st day of November, 1912, and joined with the complainants for the appointment of receivers over the property of the said Kansas Natural Gas Company.

And your orator further alleges that neither the bill filed by said John L. McKinney nor the petition of intervention or the bill of complaint filed by your orator were bills for the foreclosure of either the first or second mortgage, but were bills filed by the holder of the second mortgage bonds of The Kansas Natural Gas Company and by your orator as a general creditor of said Kansas Natural Gas Company for the marshalling of the assets of The Kansas Natural Gas Company and the distribution thereof among its creditors.

That thereafter and upon the — day of October, 1912, this court made an order appointing Receivers as in said bill of complaint prayed, and upon the filing by your orator of its petition of intervention and bill of complaint in said suit, this court by its order duly extended the receivership to your orator's petition of intervention and bill of complaint. That said Receivers so appointed by this court qualified as such, and thereupon took possession of all the property of said Kansas Natural Gas Company, and have since continuously held and now hold possession thereof, control, use, operate and manage the same as in said order directed and prescribed.

That your orator was at that time unable to file a bill of foreclosure of this mortgage because of the fact that there was then no actual default under the conditions of said mortgage by said Kansas Natural Gas Company.

Your orator prays leave to refer to said suit and the record thereof, being No. 1351 pending in this court, or a duly authenticated copy thereof, when the same shall be produced upon the final hearing or upon any hearing herein with the same force and effect as if said record was herein set out at length.

And your orator further alleges that in said suit in which said receivers were as aforesaid appointed all the property the subject of said suit, was within different states in the same judicial circuit, to-wit: within the states of Kansas, Missouri and Oklahoma, in the Eighth Judicial Circuit of the United States.

That immediately upon the appointment of such receivers, as aforesaid, there were filed and entered in the District court for each District of the Circuit, in which any portion of the property of the said Kansas Natural Gas Company was located, and within ten days thereafter such appointment, to-wit: The District Court at Kansas City for the Western District of the District of Missouri, and Muskogee, in the Eastern District of the District of Oklahoma, duly certified copies of said bill of complaint, and petition of intervention, and the order of the appointment of such receivers, and there have subsequently been entered of record in each of said Districts all orders made by the court affecting property that may lie or be within said Districts.

#### XIV.

And your orator further alleges that default having been made in the payment of the interest on said mortgage bonds outstanding,



which as aforesaid, became due on the 1st day of November, 1912, and such default having continued for the period of ninety days after demand of the payment of said interest, your orator, upon the written request of the holders of more than 25% in amount of said bonds secured by said mortgage and then outstanding, duly declared the principal of all of the bonds secured and then outstanding to be immediately due and payable by notice in writing delivered by your orator to the said Kansas Natural Gas Company, and your orator avers that upon such declaration being made, as aforesaid, the entire principal amount of said bonds outstanding, to-wit, the sum of \$1,600,000.00 of said bonds became immediately due and payable, anything in said mortgage or in said bonds to the contrary notwithstanding.

And your orator avers that by reason thereof, and by reason of the covenants and agreements contained in said mortgage or trust deed there is now immediately due and payable from the said The Kansas Natural Gas Company to your orator, as Trustee, for the benefit of the holders of said bonds and coupons secured by said mortgage and now outstanding, the entire amount of principal and interest thereon, to-wit: \$48,000.00 with interest thereon at the rate of 6% per annum from November 1, 1912; \$1,600,000.00 with interest thereon at the rate of 6% per annum from November 1, 1912.

1386 And your orator alleges that by reason of said default in the payment of both principal and interest on said outstanding bonds, your orator brings this its bill of foreclosure to protect and enforce its rights under the provisions of said trust deed and the rights of the bondholders under the same, it having been advised by its counsel learned in the law that such is the most effectual means to protect and enforce its rights and the rights of the holders of said bonds.

## XV.

And your orator further alleges that it was provided by the terms of said mortgage and the bonds secured thereby, that the said defendant, The Kansas Natural Gas Company, should establish a sinking fund for the purchase, redemption and retirement of said bonds by paying to your orator, as Trustee, within fifteen days after the 1st of every month a sum equal to 20% of the net profits of the said Company for the preceding month, and that by the terms of said mortgage the said Natural Gas Company guaranteed unto your Orator that its payment to the sinking fund for the purpose of retiring said bonds should not aggregate less than a sum necessary to retire semi-annually 5% of the maximum number of bonds that might be sold with any unpaid interest accruing thereon thereby guaranteeing that the said Kansas Natural Gas Company should pay to your orator not less than \$200,000.00 every six months to provide for said sinking fund.

And your orator alleges that these semi-annual sinking fund redemptions were to be paid on the 1st days of May and November of

each year. That on the first day of November, 1912, the said defendant, The Kansas Natural Gas Company should have paid into said sinking fund the sum of \$200,000.00, but that through a lack of funds the said Kansas Natural Gas Company was unable to meet and discharge its final monthly payment for the month of October, 1912, although it had provided and paid into said sinking fund the monthly payments for the months of May, June, July, August and September, amounting in the aggregate to \$166,666.66, but your orator avers that said Natural Gas Company is in default and has failed to pay into said sinking fund within fifteen days after the first of the months of October, November and December, 1912, and January, 1913, its monthly sinking fund payment of \$33,333.33 for each of said months.

And your orator alleges that by reason thereof the said Gas Company failed and neglected between the 1st and 10th days of October, in the year 1912, to advertise for offers for the purchase of said  
 1387 outstanding bonds to the extent of the amounts to the credit of said sinking fund as provided by the terms of said trust deed or mortgage, or proceed as otherwise directed therein to exhaust the amount of the sinking fund provided for the redemption of said bonds.

## XVI.

And your orator further shows that The Delaware Trust Company has or claims some lien upon or interest in the property described in and conveyed by said first mortgage and supplemental mortgage to your orator as Trustee, but your orator avers that after the execution and delivery of the mortgage hereinbefore referred to by the said Kansas Natural Gas Company to your orator, it, the said Kansas Natural Gas Company, on or about the 1st day of March, A. D. 1906, executed its certain other mortgage or deed of trust, hereinafter called its second mortgage, to the defendant, The Delaware Trust Company, as Trustee, whereby it conveyed to the said Delaware Trust Company, as Trustee, certain described lands, mining rights, grants, oil and gas mining leases, and the lease holds therein mentioned, and all gas wells, oil wells, machinery, pipe lines, fittings, appliances and appurtenances subject to the prior and superior lien of the mortgage or deed of trust of your orator, and it was expressly and specifically provided in said second mortgage as follows:

"This mortgage is given by the Gas Company and accepted by the Trustee, and by all bondholders and persons claiming through it, subject to the lien of a first mortgage on the lands, mining rights, grants, oil and gas mining leases, and the lease holds therein described, and all gas wells, oil wells, machinery, pipe lines, fittings, appliances and appurtenances now or hereafter placed thereon and connected therewith given by the said Gas Company to the Fidelity Title & Trust Company of Pittsburgh under date of June 20, 1904, and it is understood and agreed that said first mortgage shall remain and continue and be at all times hereafter a first lien upon the property therein described and prior to the present indenture of mort-

gage, and shall be first paid out of any moneys realized out of the sale of the property and premises mortgaged hereby, and this mortgage is subject to all and every, the covenants and agreements in said first mortgage made and to be kept and performed by the said Gas Company."

And it is further provided in said second mortgage as follows:

"This mortgage is given by the Gas Company and accepted by the Trustee and by all bondholders and persons claiming through it subject to the lien of a first mortgage on the gas pipe lines 1388 and the property appurtenant thereto and hereinbefore described, heretofore given by The Kansas Natural Gas Oil Pipe Line & Improvement Company to the said Gas Company under date of October 2, 1905, and heretofore assigned by the Gas Company to the Fidelity Title & Trust Company of Pittsburgh, Pa., by an assignment endorsed thereon dated October 2, 1905, and it is understood and agreed that said first mortgage shall remain, continue and be at all times hereafter a first lien upon the property therein described and prior to this present indenture or mortgage and shall be first paid out of any moneys realized from the sale of the premises mortgaged thereby under foreclosure proceedings upon this present indenture or upon such prior mortgage."

And your orator alleges that by reason of the provisions of said second mortgage your orator as Trustee under the first mortgage has a prior and superior lien upon all the property mentioned and described in said second mortgage, as well as all other property owned or acquired by the defendant, The Kansas Natural Gas Company.

## XVII.

Your orator avers that in addition to the sums hereinbefore found to be due upon said bonds issued under said first mortgage, said defendant, The Kansas Natural Gas Company is indebted in large sums, the payment of which is overdue, and has made default in the payment thereof, and is unable to pay the same, and is wholly insolvent; that it is necessary for the protection of the holders of said bonds and of said other indebtedness of said defendant, The Kansas Natural Gas Company, and for the best interest of all concerned, that the pipe lines, property and franchises of the said defendant, The Kansas Natural Gas Company shall be sold without delay, and that the proceeds thereof be applied to the payment of said indebtedness and bonds in due order of priority.

That the property of said defendant, The Kansas Natural Gas Company is so situated that the same cannot be sold in parcels without great injury to all parties in interest, and that it is expedient and for the best interests of all concerned that the same shall be sold as an entirety.

To the end therefore, that your orator may have such remedy as is proper in the case in a court of equity, where alone such matters are cognizable, and that it may be ascertained what stocks of other companies, whether then owned or since acquired by the defendant, The

Kansas Natural Gas Company, to the possession of which pursuant to the terms of said mortgage or trust deed, as well as said supplemental mortgages, your orator is entitled, and now in the possession or under the control of the defendant, The Kansas Natural Gas Company may be directed to transfer and deliver the same to your orator, and that it may be ascertained and adjudged what is the amount, number, character and description of the first mortgage bonds which are outstanding and secured by said mortgage or deed of trust, as well as said supplemental mortgages, and that it may be ascertained and adjudged what is the amount of principal and interest due from the defendant, The Kansas Natural Gas Company upon said bonds secured by said first mortgage and said supplemental mortgages; and that the defendant, The Kansas Natural Gas Company be adjudged at a time to be fixed to pay the same; that in default thereof all and singular the property described in said mortgage or deed of trust and said supplemental mortgages may under the direction of the Court be sold by Special Master Commissioner to be appointed by this Court, and the proceeds of such sale be brought into Court and applied, as follows:

(1) To the payment of costs and expenses of such sale including reasonable compensation to your Orator, as Trustee, and to its agents, attorneys and counsel, and all expenses, liabilities and advances made or incurred by your orator as such Trustee;

(2) To the payment of the whole amount then owed or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of six per centum per annum upon the overdue instalments of interest; and in case such proceeds shall be insufficient to pay in full the amounts so due and unpaid upon the said bonds, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any instalments of interest over any other instalment of interest, ratably to the aggregate of such principal and accrued and unpaid interest;

(3) To the payment of the surplus, if any, to the Gas Company, its successors or assigns or to whomsoever may be lawfully entitled to receive the same; and to the end, that a receiver or receivers may be appointed by this Court over the said mortgaged property, and that a temporary injunction may issue out of this Court commanding and restraining the defendant, The Kansas Natural Gas Company, and its officers, from in any way interfering with the property described in said mortgage and with the possession of the said receivers thereof; that the property so described in said mortgage and sold under and by the direction of this Court may be delivered to the purchasers thereof; and that upon delivery by your orator to the purchasers at such sale of all of the property held by your orator, your orator may be discharged of its trust in the premises, except as to the distribution of any money in its hands, and as to the entry, collection and distribution of any deficiency judgment which it may obtain; and that the defendants, The Kansas Natural Gas Company and The Delaware Trust Company, and

all persons, including your orator, claiming under the defendants subsequent to said mortgage as security for the sums due upon the said mortgage bonds, may be barred and foreclosed of all equity of redemption in said property, and that any party to this suit may be directed to join in the conveyance to be made by said Master, or to make separate conveyances, and that your orator may have such other and further relief as may be just in the premises.

May it please your Honors to grant unto your orator the writ of subpoena to be directed to The Kansas Natural Gas Company and The Delaware Trust Company, commanding the said defendants, and each of them, at a certain day, and under a certain penalty to be therein mentioned, to be and appear before the Judges of this Honorable Court, and then and there full, true, direct and perfect answer make, but not under oath, an answer under oath being hereby expressly waived, to all and singular the premises, and further to stand to and abide by whatever order may be therein made.

And your orator will ever pray.

ROSSINGTON, SMITH & BARNUM,  
*Solicitors for Complainant.*

CHAS. BLOOD SMITH,  
*Of Counsel.*

STATE OF PENNSYLVANIA,  
*County of Allegheny, ss:*

Be it remembered that on this first day of February, in the year of our Lord one thousand nine hundred and thirteen, before me, a Notary Public in and for the said county and state, personally appeared Cyrus S. Gray, who, being by me first duly sworn according to law, did depose and say that he is President of the Fidelity Title and Trust Company, the complainant above named, and has read the foregoing bill of complaint and knows the contents thereof, and that upon information he verily believes them to be true.

CYRUS S. GRAY.

1391 Sworn to and subscribed before me the day and year last above written. In witness whereof I have hereunto set my hand and affixed my notarial seal.

My commission expires Mch. 29, 1913.

[SEAL.]

CARL K. DEVLIN,  
*Notary Public.*

Endorsed; Filed in the District Court on Feby. 3, 1913. Morton Albaugh, Clerk.

1392 In the District Court of the United States for the District of  
Kansas, First Division.

I-N. In Equity.

THE FIDELITY TITLE & TRUST COMPANY, Complainant,

vs.

THE KANSAS NATURAL GAS COMPANY and THE DELAWARE TRUST  
COMPANY, Defendants.

*Separate Answer of Defendant Kansas Natural Gas Company.*

To the Honorable the Judges of the District Court of the United States  
of America in and for the District of Kansas, First Division:

The Kansas Natural Gas Company for its answer to the bill of  
complaint of the Fidelity Title & Trust Company, complainant  
herein, admits and alleges:

1.

That the complainant is a corporation created by and existing under  
the laws of the State of Pennsylvania, and is a citizen and resident of  
the State of Pennsylvania.

2.

That the defendant Kansas Natural Gas Company is a corporation  
duly organized and existing under the laws of the State of Delaware,  
and is a citizen and resident of the State of Delaware; that the Dela-  
ware Trust Company is a corporation created and existing under the  
laws of the State of Delaware, with its principal office and place of  
business at Wilmington, Delaware, and is a citizen and resident of  
the State of Delaware.

3.

That this defendant was incorporated April 4th, 1904,  
1393 under the laws of the State of Delaware, with an authorized  
capital stock of \$6,000,000.00 divided into 60,000 shares of  
the par value of \$100.00 each; but afterwards, on or about May 4th,  
1904, by due, regular and corporate action said authorized capital  
stock was legally increased to \$12,000,000.00, divided into 120,000  
shares of the par value of \$100.00 each; That the said Kansas Natural  
Gas Company was duly authorized by the Kansas State Charter  
Board to transact business in the State of Kansas as a foreign cor-  
poration; and was by its incorporation authorized to produce, pur-  
chase and acquire natural gas, and to pipe, convey and transport the  
same from the place or places where the same was produced, pur-  
chased or acquired to such cities, towns, villages and places as might



afford a convenient and satisfactory market for such natural gas, and to lay, maintain, operate, repair and remove such pipe lines as might be necessary or convenient in piping, conveying and transporting such natural gas, and to build, construct and operate pumping stations, compressors, station tanks, and machinery as might be necessary or convenient in the production, transportation and supply of natural gas and to purchase, acquire, own and hold such real and personal estate, including rights of way as might be necessary or convenient in connection with the construction and operation of such pipe lines.

That by virtue of said act of incorporation this defendant became and was authorized to purchase, acquire, hold and own stocks, bonds and securities in other corporations, and to enter into various contracts, leases and arrangements for the construction, operation and maintenance of other pipe lines, and to purchase and acquire stocks, and bonds of other companies, and refers to said articles of incorporation to the same extent as if they were fully set out in this answer.

That under and by virtue of the powers, franchises and 1394 authorities conferred upon it by law, it did on or about July 1st, 1904, acquire a large acreage of oil and gas mining lands, leases and leaseholds in the counties of Elk, Coffey, Neosho, Chautauqua, Anderson, Woodson, Allen, Wilson, Labette and Montgomery, in the State of Kansas, aggregating over 165,000 acres, upon which many gas wells had been drilled and found to produce gas in paying quantities, and which were believed by natural gas experts of great and varied experience to be fully capable for many years of supplying all consumers in the cities of Western Missouri and Eastern Kansas with natural gas for light, heat and fuel, and return the money invested with substantial interest thereon.

That by reason of the great measured volume or capacity of the wells drilled on said lands, leases and leaseholds and the very limited market therefor in the immediate neighborhood thereof, the value of said gas could not be realized unless piped to the market therefor, in the cities of Kansas City, St. Joseph, Joplin, Webb City, Carthage, and other smaller cities, towns and villages of Western Missouri, and in the cities of Kansas City, Topeka, Lawrence, Leavenworth, Atchison, Ottawa, Pittsburg, Galena, Oswego, and other smaller cities, towns and villages in Eastern Kansas; and this defendant upon its acquiring title to said lands, leases and leaseholds, planned to build a system of pipe lines from its said gas fields to the said cities, towns and villages in the manner following:

(a) One line from Montgomery County eastwardly to Joplin, Webb City and Carthage, Missouri, and to the zinc and lead mines in Southwestern Missouri, with branches therefrom to Pittsburg, Oswego, and Galena, Kansas, and other smaller cities, towns and villages along its route.

(b) One line from Wilson and Anderson counties northwardly to St. Joseph, Missouri, with branches therefrom to Topeka, Lawrence, Atchison, Leavenworth, and other smaller cities, towns 1395 and villages along its route.

(c) One line to Kansas City, Kansas, and Kansas City, Missouri, and other smaller cities, towns and villages along its route.



That under and by virtue of its powers, franchises and authorities conferred upon it by law, the Kansas Natural Gas Company did build and construct the two pipe lines described in sub-paragraphs (a) and (b).

(a) One line from Montgomery County eastwardly to Joplin, Webb City and Carthage, Missouri, and to the zinc and lead mines in South-western Missouri, with branches therefrom to Pittsburg, Oswego and Galena, Kansas, and other smaller cities, towns and villages along its route.

(b) One line from Wilson and Anderson Counties Northwardly to St. Joseph, Missouri, with branches therefrom to Topeka, Lawrence, Atchison, Leavenworth and other smaller cities, towns and villages along its route, and erected a compressor or forcing station at Petrolia, Allen County, Kansas, with four compressors or units.

That it was unable to furnish the money to build the pipe line system described in sub-paragraph (c) to-wit: A line to Kansas City, Kansas, and to Kansas City, Missouri, and other smaller cities, towns and villages along its route and in order to furnish the money to build such line there was organized under the laws of the State of New Jersey, a corporation known as the Kansas City Pipe Line Company, which company built and constructed said pipe line from the gas fields of Kansas to Kansas City, Kansas, and Kansas City, Missouri. That upon the organization of said Kansas City Pipe Line Company it immediately authorized and issued 3,000 bonds of \$1,000.00 each and secured the same by a first mortgage upon its pipe lines, being those in sub-paragraph (c) and also upon an 1396 acreage of oil and gas lands, leases, leaseholds and other assets which it had taken over in exchange for its total authorized capital stock, to-wit: Three million dollars, and also one hundred and seventy-six of said bonds. To each of said bonds were attached interest coupons at the rate of six per centum per annum, falling due successively on the first days of February, and August in each year. Two thousand one hundred seventy-six of these bonds of the Kansas City Pipe Line Company were sold at par and the whole proceeds therefrom were expended in the construction of the pipe line in sub-paragraph (c), which will be hereinafter referred to as the Kansas City Pipe Line. That immediately upon its completion, such pipe line and the said lands, leases and leaseholds were leased to the Kansas Natural Gas Company upon its agreement to pay all taxes and operating expenses and a rental sufficient to meet and discharge the interest coupons on the said bonds as they matured, and also the bonds themselves as they from time to time fell due. The said lease is in writing and from time to time changes were made therein by the mutual consent of the parties thereto. A true copy of the same as it now reads, marked Exhibit A, was exhibited and filed with the bill of complaint herein.

That immediately upon said lease being executed by the Kansas Natural Gas Company, the said pipe line was and has been operated, controlled and managed by the Kansas Natural Gas Company, and that such line should be operated in connection with the other lines

of said Natural Gas Company and as a part of a single system of pipe lines.

## 4.

That upon the completion of the pipe lines referred to in subparagraphs (a), (b) and (c) the Kansas Natural Gas Company began supplying gas to the cities served upon said lines, but it was soon discovered that what was at first believed to be a great gas belt extending from Anderson County, in the State of Kansas, on the North, to and into Oklahoma on the South, was not one solid gas field, but made up of various so-called "pools" limited in their respective areas in which wells were found, which while at first being drilled into produced gas in large quantities soon began to wane rapidly in both volume and rock pressure and soon became barren, or nearly so.

That upon such discovery being made, the said Kansas Natural Gas Company caused to be extended the line of the Kansas City Pipe Line, as well as the line of the Kansas Natural Gas Company southwardly and into Montgomery County, Kansas, and erected forcing or compressor stations upon its lines, one at Scipio, in Anderson County, and another at Grabham, in Montgomery County, and increased the capacity of the one already built at Petrolia, Allen County, Kansas, from four to nine units, and acquired among others, the gas lands and leases and leaseholds of the Prairie Oil & Gas Company and the Peoples' Gas Company.

## 5.

That by the year 1908 the enormous drain upon the gas fields of Kansas had so depleted them that it was apparent to the Kansas Natural Gas Company that the output of gas from the Kansas fields could no longer supply their customers and thereupon the Kansas Natural Gas Company began the extension of its pipe line system into the State of Oklahoma, and for such purpose there was organized under the laws of the State of West Virginia, the Marnet Mining Company, which company was duly authorized to construct a pipe line system and to purchase and acquire gas leases and gas lands; that upon the construction of the pipe lines by the Marnet Mining Company in Oklahoma, the said pipe lines and gas leases, lands and output of the said Marnet Mining Company were duly leased by the Kansas Natural Gas Company and ever since have been and still are operated as a part of the single system of pipe lines of the Kansas Natural Gas Company. That said lease is in writing and a true copy of the same was exhibited to the court marked Exhibit B, and made a part of the bill of complaint herein.

That the leasing of the lines of the said Marnet Mining Company and the output of gas through its system was absolutely necessary for the successful operation of the system of the Kansas Natural Gas

Company, the fields of Kansas having become exhausted or substantially so.

## 6.

That under and by virtue of the powers, authorities, and franchises so conferred upon the Kansas Natural Gas Company, the said Kansas Natural Gas Company has by its own construction and through leases, contracts and arrangements with other companies for the operation, control or management of the pipe lines of such other companies, built up and is now operating a complete pipe line system for the production and transportation of natural gas, and has an entire single system of pipe lines, leases and properties that are situated in the Eighth Judicial Circuit, and in the Western District of Missouri, the District of Kansas (1st and 3rd Divisions thereof) and the Eastern District of Oklahoma. Its pipe line system bought, owned and leased extends from St. Joseph and Kansas City, Missouri, on the North to and into Washington County, Oklahoma, with a branch running eastwardly to Joplin and Carthage, Missouri. A map of the lines owned and operated by the Kansas Natural Gas Company, and included therein those lines from the Kansas City Pipe Line Company, and from the Marnet Mining Company, is attached to the original bill of complaint marked Exhibit C. Lines owned by the Kansas Natural Gas Company are indicated on the map in red ink; those owned by the Kansas City Pipe Line Company in green ink; those owned by the Marnet Mining Company in blue ink. The compressor stations at Scipio, Petrolia and 13999 Grabham are indicated by black circles with a yellow center.

In the Grabham station there are nine compressors, six of which are owned by the Kansas Natural Gas Company, and three by the Kansas City Pipe Line Company. In the Petrolia station there are nine compressors, three of which were and are owned by the Kansas City Pipe Line Company. In the Scipio station there are six compressors, three of which are owned by the Kansas Natural Gas Company, and three by the Kansas City Pipe Line Company. All of the trunk lines of the Kansas City Pipe Line Company are sixteen inches in diameter. The trunk lines of the Kansas Natural Gas Company north of Sumner County, Kansas, are sixteen inches in diameter, except the branches to Topeka, Atchison and Leavenworth which are of smaller diameter. The lines of the Kansas Natural Gas Company running from the Grabham station eastwardly to Carthage, Missouri, are principally of sixteen inch pipe. Those running southwardly from Grabham to connect with the Marnet Lines are generally eighteen inches in diameter. The main line of the Marnet Mining Company running southwardly to the (Hogshooter) is eighteen inches in diameter. The distance between the southern terminus of the Company's system in the Hogshooter field, and the northeastern terminus thereof, St. Joseph, Missouri, is about 250 miles. That about five-sixths of the traffic and transportation of natural gas carried on by the company is wholly and exclusively interstate commerce.

That in addition to the foregoing pipe lines owned and controlled by the defendant, the Kansas Natural Gas Company, there have been constructed other and additional lines and other and additional gas wells, lands and leases have been acquired by the receivers heretofore appointed over the properties of the defendant, the Kansas Natural Gas Company.

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7.

That on or about the 20th day of June, in the year 1904, the said defendant, the Kansas Natural Gas Company, for the purpose of procuring funds for the transaction of the business of said company, and in the exercise of its corporate rights, privileges and franchises and in pursuance of the determination and resolution of its Board of Directors and of said corporate action, and thereunto duly authorized by law, did make, execute and deliver to the complainant, as trustee, a certain mortgage or deed of trust dated the 20th day of June, 1904, to secure its first mortgage, twelve years, six per cent sinking fund gold bonds to the amount of \$4,000,000.00.

That in and by said mortgage or deed of trust the said Kansas Natural Gas Company did grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, set over and mortgage unto the complainant, its successors, and assigns, in the trust to be created, all of the property, leases and leaseholds therein described, and all gas wells, oil wells, machinery, fittings, appliances and appurtenances, then or thereafter placed thereon or connected therewith; all right, title, claim and interest in and to or by, through or under certain oil and gas leases upon certain lands in Elk County, Coffey County, Neosho County, Chautauqua County, Anderson County, Woodson County, Allen County, Wilson County, Labette County and Montgomery County, all in the State of Kansas, held either as original lessee, or as an assignee of such leases, a description of which said leases, giving the date of each, the name of the lessor, the land therein described, and the book and page in the office of the recorder of deeds of said county whereof record is more fully set forth in said mortgage, marked Exhibit D, was exhibited to the court and made a part of the complainant's bill herein. That since the execution of said mortgage or trust deed certain of the leases therein mentioned and described have been duly released by the complainant from the lien created by said mortgage or trust deed, which releases are indicated upon the margin of said mortgage.

That it was especially covenanted and agreed by and on behalf of the said the Kansas Natural Gas Company in the said mortgage or deed of trust that from time to time thereafter it would sell, convey, assign, transfer and mortgage to the complainant, as trustee, any other or additional property including stocks, bonds and securities in other company or companies which the said Kansas Natural Gas Company should own, purchase or acquire, as additional security under the said mortgage or trust deed for the payment of the principal and interest of its first mortgage bonds secured by said indenture, and that the complainant as Trustee should receive and should hold and apply any such additional property, including

stocks, bonds and securities of other companies under and in accordance with the terms of such mortgage or trust deed. That in pursuance of the terms and provisions of said trust deed or mortgage the Kansas Natural Gas Company has from time to time since the execution of said mortgage, sold, conveyed, assigned, transferred and mortgaged to the complainant certain additional properties, stocks, bonds and securities in other companies which the Kansas Natural Gas Company has acquired, owned and purchased since the date of said mortgage, all of which are now held by said trustee as additional security under the said mortgage or deed of trust, as follows:

440 Shares of Caney Gas Company of the par value of.....	\$100.00 per share
440 Shares of Caney Gas Oil & Mining Co. of the par value of.....	100.00 per share
22,500 Shares of Kansas Pipe Line Co., of the par value of.....	100.00 per share
19,625 Shares of Marnet Mining Company, of the par value of.....	100.00 per share
1402	
119,990 Shares of the Kansas Natural Gas, Oil, Pipe Line & Improvement Co., of the par value of.....	.10 per share
25,000 — of the Jasper Co. Light & Fuel Company at the par value of.....	1.00 per share
100,000 Shares of Kaw Gas Company of the par value of.....	1.00 per share
1 Share of Columbus Local.	
885 Bonds of the Marnet Mining Co., num- bered from 426 to 800 inclusive and 1341 to 1850, inclusive of the par value of .....	\$1,000.00 per bond
A bond of The Kansas Natural Gas, Oil & Pipeline & Improvement Company dated October 2, 1905, to the — sum of \$2,656,000.00 with interest at the rate of six per centum per annum payable semi-annually on the 1st days of May and Novem- ber of each year, together with a mortgage duly executed by The Kansas Natural Gas, Oil, Pipe Line & Improvement Company of even date with said bond to secure said bond, both of which bond and mort- gage have been duly assigned in writing by the Kansas Natural Gas, Oil, Pipe Line & Improvement Com- pany to The Fidelity Title & Trust Company, Trustee.	

A certain lease dated the first day of December, 1909, between the Mar-net Mining Company and The Kansas Natural Gas Company assigned by The Kansas Natural Gas Company to The Fidelity Title & Trust Company, Trustee, on the 8th day of February, 1911. A copy of which lease, together with assignment is now exhibited to the Court, and is filed herewith, Marked Exhibit E, and made a part hereof as fully as though incorporated at length herein.

That said conveyance by said mortgage or trust deed to the complainant herein was made in trust nevertheless under and subject to the conditions and provisions contained in said trust deed, and as therein set forth for the equal and proportionate benefit and security of the holders of all the bonds secured thereby, and that said grant was made upon the express condition that upon the payment of the principal sums and interest due upon all of the bonds and coupons for interest secured by said trust deed by said Gas Company, 1403 or the providing for such payment by said Gas Company by depositing with said Trustee the entire amount due upon said bonds, principal and interest, and upon said Gas Company well and truly keeping and performing all things required to be kept and performed by it according to the true intent and meaning of said trust deed, then in that case all stocks, bonds, corporate securities and any and all property of any kind, nature or description conveyed or pledged, should revert to said Gas Company, and the estate, right, title and interest of said trustee should execute proper instruments acknowledging satisfaction of said mortgage, and should also transfer, assign and convey to the said Gas Company all stocks, bonds and other securities held by it as Trustee under and in pursuance of the terms of such indenture.

That in pursuance of the resolution of its Board of Directors, and of due corporate action, and being thereunto duly authorized by law, the Kansas Natural Gas Company did on or about the 20th day of June, 1904, and at various dates thereafter, duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations for value, and for considerations and purposes, and in the manner provided by said mortgage or trust deed, its bonds to the number of 4,000 and in the aggregate of \$4,000,000.00 each of which bonds was dated on the 20th day of June, 1904, and promised to pay to the bearer at the office of the Fidelity Title & Trust Company, in Pittsburgh, Pennsylvania, the sum of \$1,000.00 in gold coin of the United States of America, on the first day of May, 1916, and to pay the interest thereon semi-annually at the rate of six per centum per annum from the first day of May, 1904, payable in like gold coin at the office of the Fidelity Title &

Trust Company, Pittsburgh, Pennsylvania, on the 1st days of May, and November in each year, on presentation and surrender of interest coupons thereto attached. A copy of each of said 1404 bonds, except as to the serial number thereof is set forth and included in said mortgage.

That the bonds so issued by said Kansas Natural Gas Company, \$2,400,000.00 have been retired and surrendered and cancelled as in the manner contemplated by the provisions of said mortgage or trust deed, and that the amount of said bonds so issued which now remain outstanding is \$1,600,000.00 numbered as follows:

Bonds.	Number.	Bonds.	Number.
7.....	21- 27	2.....	1332-1333
47.....	36- 82	3.....	1373-1375
15.....	101- 115	5.....	1439-1443
5.....	126- 130	1.....	1445
1.....	134	21.....	1447-1467
6.....	176- 181	1.....	1485
4.....	197- 200	5.....	1488-1492
2.....	273- 274	3.....	1508-1510
4.....	291- 294	12.....	1564-1575
1.....	309	6.....	1586-1591
5.....	344- 348	2.....	1609-1610
4.....	370- 373	1.....	1612
11.....	413- 423	1.....	1703
1.....	427	23.....	1764-1786
5.....	429- 433	218.....	1789-2006
1.....	444	7.....	2012-2018
1.....	464	2.....	2040-2041
5.....	466- 470	16.....	2071-2086
1.....	499	5.....	2254-2258
7.....	505- 511	39.....	2261-2299
7.....	601- 607	99.....	2301-2399
1.....	614	186.....	2450-2635
13.....	634- 646	11.....	2646-2656
2.....	656- 657	125.....	2677-2801
17.....	659- 675	5.....	2804-2808
45.....	686- 730	5.....	2810-2814
1.....	2069	22.....	2832-2853
1.....	2037	11.....	2862-2872
65.....	761- 825	1.....	2877
225.....	846-1070	5.....	2879-2883
9.....	1129-1137	6.....	2888-2893
5.....	1142-1146	40.....	2900-2939
5.....	1148-1152	139.....	2950-3088
2.....	1164-1165	4.....	3296-3299
1.....	1284	21.....	3320-3440
10.....	1293-1302	2.....	3995-2996
2.....	1323-1324	1.....	3998

1600 Bonds Total Outstanding.



That upon the execution and delivery of said trust deed to the complainant the same was duly filed and recorded both as a  
1405 real estate and chattel mortgage in the respective offices of the Register of Deeds in and for the counties in the State of Kansas, wherein the property of the Kansas Natural Gas Company was located, and thereupon became a first and superior lien on all the property of the Kansas Natural Gas Company then in existence or that was subsequently acquired by it.

## 9.

That the complaint accepted the said trust deed or mortgage as trustee thereunder and has continued and now is the Trustee under said mortgage.

That the said \$1,600,000.00 of first mortgage bonds issued and outstanding as aforesaid and secured by said first mortgage to the complainant, as Trustee, were duly certified by the complainant and have been issued in the manner and for the consideration and purposes provided and defined by the provisions of said trust deed or first mortgage.

## 10.

That said mortgage or trust deed among other things provided as follows:

(2) "That no bond shall be issued or held valid or obligatory hereunder or entitled to the benefit and security hereof unless the same shall be authenticated by a certificate endorsed thereon by the Trustee that it is one of the bonds herein described and issued hereunder. All the bonds issued hereunder shall be a first lien on the property, rights, privileges and franchises herein described and referred to, and upon all of the stock and bonds heretofore assigned and transferred to the Trustee, and upon all the property, including stocks, bonds, and corporate securities hereinafter acquired by the Gas Company, and which are to be transferred to the Trustee as hereinbefore provided, and shall be equally secured under this mortgage or deed of trust without preference, priority or distinction of one over another as to lien, payment or otherwise on  
1406 account of the times of the actual issue of said bonds, or any thereof, and without distinction as to the date of the maturity of said bonds or any of them over any of the others."

\* \* \* \* \*

(3) "Duly and punctually the Gas Company will pay the principal and interest of every bond issued and secured hereunder at the dates and places, and in the manner mentioned in said bonds or the coupons thereto belonging, according to the true intent and meaning thereof without deduction from either principal or interest of any tax or taxes imposed by the United States or by any State or County or municipality which the Gas Company may be required to pay thereon, or to retain therefrom under or by reason of any present

or future law. The interest on the coupons shall be payable only on presentation and surrender of the several coupons for such interest as they respectively mature, and when such coupons shall forthwith be cancelled. The payment of all bonds and interest coupons shall be made when presented at the office of the Fidelity Title & Trust Company in the City of Pittsburgh, Pennsylvania."

\* \* \* \* \*

(5) "The Gas Company, its successors or assigns, from time to time, on written demand of the Trustee, or its successors, will make, do, execute, acknowledge and deliver all such further acts, deeds, assignments, conveyances and assurances in law as may be reasonably advised, devised or required for effecting the intention of these presents, and for the better assuring or confirming under the Trustee, or its successors, in the trust hereby created upon the trusts for the purposes herein expressed, all and singular the property hereby assigned and transferred to the Trustee or intended so to be."

(6) "The Gas Company, from time to time, will assign 1407 and transfer unto the Trustee to be held subject to the trusts thereof as fully and completely as though expressly and specifically assigned and transferred to the Trustee at the time of the execution thereof, all the property, stocks, bonds and securities named in the granting clause hereof, or which it shall secure or acquire."

\* \* \* \* \*

(7) "From time to time the Trustee shall cause to be transferred in its name as Trustee for the Gas Company, or as Trustee under this indenture, all shares of stock which shall have been pledged with it hereunder, but in such case the corporation or association which issued such shares shall be notified that such shares are held by the Trustee under this indenture, and the Trustee shall cause such corporation or association to indicate upon the face of the certificate for such shares the fact that such shares are held by the Trustee hereunder."

\* \* \* \* \*

(13) "In case default shall be made in the payment of any interest on any bond or bonds hereby secured and outstanding, and any such default shall have continued for the period of ninety days after demand of payment, then in every such case of such continuing default upon the written request of the holders of 25 per cent in amount of the bonds hereby secured and then outstanding the trustee by notice in writing delivered to the Gas Company shall declare the principal of all bonds hereby secured and then outstanding to be due and payable, immediately, and upon any such declaration the same shall become and be due immediately, anything in this indenture or in said bond to the contrary notwithstanding.

(14) "In case (1) default shall be made in the payment of any

interest on any bond hereby secured, and such default shall continue for a period of ninety days, or in case (2) default shall be made in the due and punctual payment of the principal on any bond  
 1408 hereby secured, or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Gas Company, and such last mentioned default shall continue for a period of six months after written notice thereof to the Gas Company from the Trustee or from the holders of 25 per cent in amount of the bonds hereby secured, then in every such case, the Trustee, personally or by attorneys, and in its discretion (a) may sell to the highest bidder all and singular the shares of the capital stock, bonds and other property held by the Trustee under this indenture, and all rights, title, interest, claim and demand therein and the right of redemption thereof, in one lot as an entirety, or as separate lots, such as the Trustee shall deem best, which said sale or sales shall be made at public auction at such places in the city of Pittsburgh, in the State of Pennsylvania, or at such other places and at such time and upon such terms as the Trustee may fix on, briefly specifying in the notice of sale to be given as herein provided, or as may be required by law, or (b) may proceed to protect and enforce its rights and the rights of the bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the trustee being advised by counsel, learned in the law, shall deem most effectual to protect and enforce the rights aforesaid."

\* \* \* \* \*

(21) "The Gas Company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for a period of ninety days, or (2) in case default shall be made in the payment of the principal, of any of said bonds when the same shall have become payable, whether  
 1409 by the maturity of said bonds or by declaration as authorized by this indenture, or by sale, as hereinbefore provided, then, upon demand of the trustee, the Gas Company will pay to the Trustee for the benefit of the holders of the bonds and coupons hereby secured and outstanding the whole amount due and payable on all such bonds and coupons then outstanding, for interest and principal, or both, as the case may be, with interest at the rate of six per cent per annum upon the overdue principal, and the installment of interest and in case the Gas Company shall fail to pay the same forthwith upon such demand the Trustee, in its own name and as Trustee of an expressed trust, shall be entitled to recover for the whole amount so due and unpaid."

\* \* \* \* \*

(27) "Said Gas Company shall establish a sinking fund for the purchase, redemption and retirement of said bonds by paying to the said Fidelity Title & Trust Company, as Trustee, within fifteen days after the first of every month (beginning with the first day of May, 1906) a sum equal to 20 per cent of the net profits of the Gas Company for the preceding month, and such additional amounts as it may determine, the said Gas Company guaranteeing that its payment to the sinking fund for the aforesaid purpose shall not aggregate less than a sum necessary to retire semi-annually five per cent of the maximum number of bonds over sold with any unpaid interest accrued on the same."

\* \* \* \* \*

"If, when the bonds hereby secured shall become due and payable, the Gas Company shall well and truly pay or cause to be paid the whole amount of the principal sums and interest due upon all of the bonds and coupons for interest thereon hereby secured then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for payment of such bonds and coupons,

1410 the entire amount then due thereon, of principal and interest, and also shall pay or cause to be paid all other sums payable hereunder by the Gas Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then in that case, all stocks, bonds corporate securities, and any or all property of any kind, nature or description hereby conveyed or pledged shall revert to the Gas Company and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and the trustee in such case, on demand of the Gas Company, and at its cost and expense, shall execute proper instruments acknowledging satisfaction of this indenture, and shall also assign, transfer and convey to the Gas Company, all stocks, bonds and other securities held by it as Trustee under and in pursuance of the terms of this indenture."

11.

That on the 2nd day of May, 1911, the said Kansas Natural Gas Company, in conformity with the provisions of said mortgage or trust deed providing that if said gas company should thereafter acquire any additional property, it would, upon demand of the complainant, by supplemental papers or deeds of assignment, convey and assign such additional and subsequently acquired property to the complainant as Trustee, as security for any of such bonds then remaining unpaid, and in conformity with the demand made upon it by the complainant, for such purpose, duly executed and delivered to the complainant, as Trustee, a supplemental mortgage or trust deed, wherein and whereby it granted, bargained, sold, aliened, released, remised, conveyed, confirmed, transferred, assigned, set over and mortgaged unto the complainant, as Trustee, its successors,

and assigns, in the trust by said mortgage created, all of its property located in the County of Montgomery, in the State of Kansas, consisting of certain oil and gas mining leases, more specifically set forth in said mortgage together with all of its gas transporting plant, consisting of a system of pipe lines which commence in Montgomery County, Kansas, near the Oklahoma State line and run North and northeasterly to Kansas City, and St. Joseph, Missouri, Kansas City, Atchison, Leavenworth, Lawrence and Topeka, Kansas, and eastwardly to Carthage, Joplin, Webb City, and other points in Southwestern Missouri, and Pittsburg, Galena, Oswego and other towns in southwestern Kansas, together with all drips, valves, reducers, meters, pumping or compressor stations and engines, appliances, fittings, equipment, structures, machinery and property belonging to or connected with said pipe line plant or system, and all extensions, feeders, branch lines and gathering lines connected therewith, all of said property being more specifically and fully set forth and described in said supplemental mortgage, which is exhibited to the court and filed as Exhibit F, of the original bill of complaint.

That said supplemental mortgage or deed of trust to the complainant was given as additional security for all of said bonds then outstanding, and subject to all the terms, conditions, provisions, recitals, and trusts made and contained in said first mortgage and covered all thereafter acquired property of the said defendant, the Kansas Natural Gas Company, and that said supplemental mortgage or deed of trust was duly filed and recorded both as a real estate and chattel mortgage in the office of the Register of Deeds in and for Montgomery County, State of Kansas, on the 8th day of May, 1911, and that thereafter affidavits of renewal of said chattel mortgage were duly filed from time to time; that said supplemental mortgage or trust deed and chattel mortgage has never been discharged or satisfied of record and that the same is at this time in full force and effect.

That on or about the 2nd day of May, 1911, the said Kansas Natural Gas Company duly executed and delivered to the complainant sixteen other and like supplemental mortgages or trust deeds, each of which by its terms was made a part of said original mortgage or trust deed, similar in all respects to the supplemental mortgage or trust deed, aforesaid, except that each of said supplemental mortgages or trust deeds was upon property situated in the respective counties of Kansas, and Missouri, as follows: Neosho, Crawford, Cherokee, Labette, Wilson, Allen, Anderson, Franklin, Johnson, Douglas, Shawnee, Leavenworth and Atchison, State of Kansas, and Buchanan, Platte and Jasper Counties, State of Missouri. That each of said supplemental mortgages or deeds of trust was duly filed and recorded both as a real estate and chattel mortgage in the respective offices of the Register of Deeds in and for said respective counties. That thereafter affidavits of renewal of said mortgages were duly filed from time to time, and that each of said supplemental real estate and chattel mortgages, and all of

them are at this time in full force and effect. For a more definite and particular description of the properties described in each of said supplemental mortgages this defendant begs leave to refer to each of said mortgages which were exhibited to the court and filed as part of complainant's bill of complaint, Exhibits G to V, inclusive.

## 12.

That the interest due on each and all of said first mortgage bonds outstanding, which fell due on the first day of November, 1912, was not paid by the defendant, the Kansas Natural Gas Company, or by anyone in its behalf, or otherwise, but that the said defendant, the Kansas Natural Gas Company made default in the payment of said interest, and the same and every part thereof has ever since remained unpaid and in default.

That on the first day of November, 1912, the coupons representing the installments of interest then due upon said outstanding first mortgage bonds were duly presented for payment, and payment thereof duly demanded and refused, and that the same remain unpaid.

## 13.

That on or about the 7th day of October, 1912, one John L. McKinney, as a creditor of the said Kansas Natural Gas Company and the holder and owner of a certain of its second mortgage bonds brought in this court a creditor's bill against the said Kansas Natural Gas Company. That said bill alleged in detail the stock, capitalization, bonds and mortgaged indebtedness, guarantees and liabilities of the Kansas Natural Gas Company, and particularly alleged the several mortgages executed by the Kansas Natural Gas Company upon its property and pipe lines; and alleged further that the gas fields to which the pipe line system operated by the Kansas Natural Gas Company then extended, or to which it would be extended, would in a short period of time be wholly depleted, and the receipts from the sale of gas would not be sufficient to meet and discharge the bonds of said company for the causes set forth in said bill. That the receipts of the Kansas Natural Gas Company and for the sale of gas for the years 1912, and 1913, as well as the receipts from all sources would not be sufficient to meet and discharge the sinking fund payment as it matured, or the rental on its leases, nor to pay interest on its outstanding bonds, and that said company was without funds to make any extension of its pipe line system to acquire an additional supply of gas, and that said company could not meet or pay its indebtedness or liabilities as they fell due or accrued in the ordinary course of business.

That bill prayed:

"First. That his rights and those of all the creditors, including interest coupon holders and bond holders and landlords may be ascertained and protected."



1414 "Second. That the court will take charge of the properties of the defendant, fully administer the funds in which your orator and those upon whose behalf this suit is brought are interested, and for such purpose marshal all the assets of the defendant, ascertain the respective liens and properties existing in favor of the creditors and the amounts due, and enforce the rights, liens and priorities of all creditors of the Kansas Natural Gas Company as the same may be finally ascertained and decreed upon, respective interventions or applications of persons interested or otherwise, and make such orders and decree.

"Third. To make such orders and decree in the premises as may be necessary to hold the property of the Kansas Natural Gas Company (including therein that under lease from The Kansas City Pipe Line Company and the Marnet Mining Company) to this end for this purpose.

"Fourth. To appoint receivers of all the properties of the Kansas Natural Gas Company, with such powers in the premises as are used in such cases and deemed proper by this court.

"Fifth. To issue preliminary and permanent injunctions against the defendant, its officers, servants, agents and employees, to restrain them from in any wise interfering with the receivers and from receiving, collecting or attempting to transfer, use, operate or deal in any of the property leaving the same to be managed solely under the direction and management of this court.

"Sixth. After notice duly given to all parties in interest, to order and decree a sale of all the property of the said Company and distribute the proceeds therefrom to and among those legally entitled thereto.

"Seventh. For such other and further relief as to this Honorable Court may appear just and equitable."

That upon the filing of said bill by said John L. McKinney, 1415 the complainant as trustee under the first mortgage executed by the said Kansas Natural Gas Company by leave of court, was permitted to intervene in said suit instituted by the said John L. McKinney, as a joint complainant with said McKinney, and thereupon it filed its petition of intervention and bill of complaint in said suit nunc pro tunc as of October 7, 1912.

And the complainant in its bill of intervention made similar and like charges as were made by the complainant, John L. McKinney, against the said Kansas Natural Gas Company and also alleged that the Kansas Natural Gas Company was insolvent and unable to pay its debts, and would make default on the 1st day of November, 1912, in the payment of its interest on its first mortgage bonds secured by the mortgage or trust deed of which the complainant is Trustee.

The complainant in said petition of intervention also prayed for the appointment of receivers of said company. That upon the filing of said original bill by the said John L. McKinney, as well as on the filing of the petition of intervention by the complainant, the said Kansas Natural Gas Company appeared in said suit and filed answer to both the original bill filed by John L. McKinney, as well as the



petition of intervention filed by the complainant herein, and admitted the charges and allegations in said bill of complaint, as well as said petition of intervention to be true, and its inability to pay the interest to become due on the 1st day of November, 1912, and joined with the complainants for the appointment of receivers over the property of the said Kansas Natural Gas Company.

That neither the bill filed by said John L. McKinney nor the petition of intervention or the bill of complaint filed by the complainant were bills for the foreclosure of either the first or second mortgage, but were bills filed by the holder of the second mortgage bonds of the Kansas Natural Gas Company and by the complainant as a general creditor of said Kansas Natural Gas Company, for the marshalling of the assets of the Kansas Natural Gas Company and the distribution thereof among its creditors.

That thereafter and upon the 9th day of October, 1912, this court made an order appointing receivers as in said bill of complaint prayed, and upon the filing by the complainant of its petition of intervention and bill of complaint in said suit, this court by its order duly extended the receivership to the complainant's petition of intervention and bill of complaint. That said Receivers so appointed by this court qualified as such, and thereupon took possession of all the property of said Kansas Natural Gas Company and have since continuously held and now hold possession thereof, control, use, operate and manage the same as in said order directed and prescribed.

That the complainant was at that time unable to file a bill of foreclosure of its mortgage because of the fact that there was then no actual default under the conditions of said mortgage by said Kansas Natural Gas Company.

This defendant prays leave to refer to said suit and the record thereof, being No. 1351, pending in this court, or a duly authenticated copy thereof, when the same shall be produced upon the final hearing or upon any hearing herein with the same force and effect as if said record was herein set out at length.

That in said suit in which said receivers were as aforesaid appointed, all the property, the subject of said suit, was within different states in the same judicial circuit, to-wit: within the states of Kansas, Missouri, and Oklahoma in the Eighth Judicial Circuit of the United States.

That immediately upon the appointment of such receivers, as aforesaid, there were filed and entered in the District Court for each district of the Circuit, in which any portion of the property of the said Kansas Natural Gas Company was located, and within ten days after such appointment, to-wit: The District Court at Kansas City for the Western District of the District of Missouri, and Muskogee, in the Eastern District of the District of Oklahoma, duly certified copies of said bill of complaint and petition of intervention, and the order of the appointment of such receivers, and there have subsequently been entered of record in each of said Districts all orders made by the court affecting property that may lie or be within said Districts.

## 14.

That default having been made in the payment of the interest on said mortgage bonds outstanding, which as aforesaid, became due on the 1st day of November, 1912, and such default having continued for the period of ninety days after demand of the payment of said interest the complainant, upon written request of the holders of more than 25% in amount of said bonds secured by said mortgage and then outstanding duly declared the principal of all of the bonds secured and then outstanding to be immediately due and payable by notice in writing delivered by the complainant to the said Kansas Natural Gas Company, and this defendant avers that upon such declaration being made, as aforesaid, the entire principal amount of said bonds outstanding, to-wit: the sum of \$1,600,000.00 of said bonds became immediately due and payable, anything in said mortgage or in said bonds to the contrary notwithstanding.

That by reason thereof, and by reason of the covenants and agreements contained in said mortgage or trust deed there is now immediately due and payable from the said the Kansas Natural Gas Company to the complainant, as Trustee, for the benefit of the holders of said bonds and coupons secured by said mortgage and now outstanding, the entire amount of principal and interest thereon, to-wit: \$48,000.00 with interest thereon at the rate of 6% per annum from November 1, 1912, \$1,600,000.00 with interest thereon at the rate of 6% per annum from November 1, 1912.

That by reason of said default in the payment of both the principal and interest on said outstanding bonds, the complainant  
1418 brought its bill of foreclosure to protect and enforce its rights under the provisions of said trust deed and the rights of the bondholders under the same, it having been advised by its counsel learned in the law that such is the most effectual means to protect and enforce its rights and the rights of the holders of said bonds.

## 15.

That it was provided by the terms of said mortgage and the bonds secured thereby, that the said defendant, the Kansas Natural Gas Company, should establish a sinking fund for the purchase, redemption and retirement of said bonds by paying to the complainant, as Trustee, within fifteen days after the 1st of every month a sum equal to 20% of the net profits of the said company for the preceding month, and that by the terms of said mortgage the said Natural Gas Company guaranteed unto the complainant that its payment to the sinking fund for the purpose of retiring said bonds should not aggregate less than a sum necessary to retire semi-annually 5% of the maximum number of bonds that might be sold with any unpaid interest accruing thereon thereby guaranteeing that the said Kansas Natural Gas Company should pay to the complainant not less than \$200,000.00 every six months to provide for said sinking fund.

That these semi-annual sinking fund redemptions were to be paid

on the 1st days of May and November of each year. That on the first day of November, 1912, the said defendant, the Kansas Natural Gas Company should have paid into said sinking fund the sum of \$200,000.00 but that through a lack of funds the said Kansas Natural Gas Company was unable to meet and discharge its final monthly payment for the month of October, 1912, although it had provided and paid into said sinking fund the monthly payments for the months of May, June, July, August and September, amounting in the aggregate to \$166,000.00, but this defendant avers that said Natural Gas Company is in default and has failed to pay into  
1419 said sinking fund within fifteen days after the first of the months of October, November, and December, 1912, and January, 1913, its monthly sinking fund payment of \$33,333.33 for each of said months.

That by reason thereof the said Gas Company failed and neglected between the 1st and 10th days of October, in the year 1912, to advertise for offers for the purchase of said outstanding bonds to the extent of the amounts to the credit of said sinking fund as provided by the terms of said trust deed or mortgage, or proceed as otherwise directed therein to exhaust the amount of the sinking fund provided for the redemption of said bonds.

16.

That the Delaware Trust Company has or claims some lien or interest in the property described in and conveyed by said first mortgage and supplemental mortgages to the complainant as Trustee, and this defendant avers that after the execution and delivery of the mortgage hereinbefore referred to by the said Kansas Natural Gas Company to the complainant, it, the said Kansas Natural Gas Company, on or about the 1st day of March, A. D. 1906, executed its certain other mortgage or deed of trust, hereinafter called its second mortgage, to the defendant, the Delaware Trust Company, as Trustee, whereby it conveyed to the said Delaware Trust Company, as Trustee, certain described lands, mining rights, grants, oil and gas mining leases and lease holds therein mentioned, and all gas wells, oil wells, machinery, pipe lines, fittings, appliances and appurtenances subject to the prior and superior lien of the mortgage or deed of trust of the complainant, and it was expressly and specifically provided in said second mortgage, as follows:

"This mortgage is given by the Gas Company and accepted by the Trustee, and by all bondholders and persons claiming through it, subject to the lien of a first mortgage on the lands, mining rights, grants, oil and gas mining leases, and leaseholds therein de-  
1420 scribed, and all gas wells, oil wells, machinery, pipe lines, fittings, appliances and appurtenances now or hereafter placed thereon and connected therewith given by the said Gas Company to the Fidelity Title & Trust Company, of Pittsburgh, under date of June 20th, 1904, and it is understood and agreed that said first mortgage shall remain and continue and be at all times hereafter a first lien upon the property therein described and prior to the present in-

indenture of mortgage, and shall be first paid out of any moneys realized out of the sale of the property and premises mortgaged hereby, and this mortgage is subject to all and every the covenants and agreements in said first mortgage made and to be kept and performed by the said Gas Company."

And it is further provided in said second mortgage, as follows:

"This mortgage is given by the Gas Company and accepted by the Trustee and by all bondholders and persons claiming through it subject to the lien of a first mortgage on the gas pipe lines and the property appurtenant thereto and hereinafter described, heretofore given by The Kansas Natural Gas, Oil, Pipe Line & Improvement Company to the said Gas Company under date of October 2, 1905, and heretofore assigned by the Gas Company to the Fidelity Title & Trust Company of Pittsburgh, Pa., by an assignment endorsed thereon dated October 2, 1905, and it is understood and agreed that said first mortgage shall remain, continue and be at all times hereafter a first lien upon the property therein described and prior to this present indenture of mortgage and shall be first paid out of any moneys realized from the sale of the premises mortgaged thereby under foreclosure proceedings upon this present indenture or upon 1421 such prior mortgage."

And this defendant alleges that by reason of the provisions of said second mortgage the complainant, as Trustee, under the first mortgage has a prior and superior lien upon all the property mentioned and described in said second mortgage, as well as all other property owned or acquired by the defendant, Kansas Natural Gas Company.

Wherefore, Having fully answered the bill of complaint herein, this defendant prays that such judgment, orders and decrees be entered herein as may be equitable and just.

KANSAS NATURAL GAS COMPANY,  
By JOHN J. JONES,  
*Its Solicitor.*

Endorsed: Eq. No. 1-N. In the District Court of the United States for the District of Kansas, First Division. The Fidelity Title & Trust Company, Complainant, vs. The Kansas Natural Gas Company and The Delaware Trust Company, Defendants. Separate Answer of Defendant Kansas Natural Gas Company. Filed April 12, 1913, Morton Albaugh, Clerk.

1422 *Intervening Petition of the Kansas City Pipe Line Company.*

In Equity.

No. 1351.

JNO. L. MCKINNEY, Plaintiff; THE FIDELITY TITLE &amp; TRUST COMPANY and THE DELAWARE TRUST COMPANY, Intervening Plaintiffs,

vs.

KANSAS NATURAL GAS COMPANY, Respondent.

To the Honorable the Judge of the District Court of the United States for the District of Kansas:

Now comes The Kansas City Pipe Line Company, leave of court having been first duly obtained, and files this its intervening petition and enters a special appearance herein for the sole and only purpose of moving the court to order the allowance and payment 1423 of certain pipe line rentals accruing February 1, 1913, under a certain instrument of lease hereinafter more fully described, under which lease and the order of this court appointing the receivers herein the defendant and receivers acquired possession and are now holding, using and operating certain pipe lines, compressor stations and appurtenances and other property owned by your petitioner; and your petitioner states that this appearance and petition is not for the purpose of submitting either the person or the property of your petitioner to the jurisdiction of the court in this cause for the purposes of administration or otherwise; and your petitioner hereby expressly reserves all its rights under said instrument of lease and in and to its property hereinafter described; and without prejudice to any of its said rights and its property under said lease, and upon such special appearance and for such purpose only your petitioner represents and shows to the court the following facts, to-wit:

1. That it is now and was at all times herein mentioned a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in Camden, New Jersey, and that it was and is duly authorized to do business in the State of Kansas.

2. That at all the times herein mentioned your petitioner was and now is the sole owner of certain pipe lines, compressor stations and engines, rights-of-way and other properties, constituting approximately fifty per cent of the entire and intricately interwoven pipe line transportation system used and operated by the respondent herein and its receivers for transporting natural gas from southern Kansas and northern Oklahoma and furnishing the same to distributing companies and consumers in the cities, towns and villages in eastern Kansas and western Missouri; said properties so owned exclusively by your petitioner being described generally as follows, to-wit:

(a) A double sixteen-inch pipe line extending from Kansas City, Missouri, and Kansas City, Kansas, to a point at or near Olathe, Johnson County, Kansas, a distance of approximately sixteen miles.

(b) A single sixteen-inch pipe line extending from said point at or near Olathe in a southwesterly direction to a point at or near Ottawa, Franklin County, Kansas; thence south passing the site of the compressor station formerly located at Scipio, Anderson County, Kansas (now removed to a new location near Bartlesville, 1424 Oklahoma), to a point at or near Iola, Allen County, Kansas; thence in a southerly direction to the compressor station at Petrolia, Allen County, Kansas, with which it is connected, a total distance of approximately ninety-four miles.

(c) A double sixteen-inch pipe line from said compressor station at Petrolia to the compressor station at Grabham, Montgomery County, Kansas, with which they are connected, a distance of approximately forty-seven miles.

(d) A single sixteen-inch pipe line beginning at the southern terminus of the Marnet Mining Company's line in Washington County, Oklahoma; thence in a southerly direction to the southern extension of the respondent's line, a distance of about seventeen miles into and through what is commonly known as the Hogshooter gas field.

(e) The compressor station formerly located at Scipio, Anderson County, Kansas, now removed and relocated near Bartlesville, Oklahoma, consists of six large compressing engines of units of 1,000 horse power each, together with all necessary auxiliary apparatus and appurtenances; three of said engines or units and a large part of said auxiliary apparatus and appurtenances are owned exclusively by your petitioner, and the remainder by the respondent.

(f) The said compressor station at Petrolia is built and situate partly upon real estate owned by your petitioner and partly upon lands owned by the respondent; said station consisting of nine large compressing engines or units of 1,000 horse power each, together with all necessary auxiliary apparatus and appurtenances; six of said engines or units and a large part of said auxiliary apparatus and appurtenances are owned by your petitioner and the remainder by the respondent.

(g) The said compressor station at Graham consists of six large compressing engines or units of 1,000 horse power each and all necessary auxiliary apparatus and appurtenances; three of said engines or units and a large part of said auxiliary apparatus and appurtenances are owned by your petitioner, the remainder by the respondent.

(h) Certain pipe line rights-of-way and other real estate, grants, franchises, leases, contracts, rights and gas lands situate in Allen, Anderson, Montgomery, Wilson, Leavenworth, Neosho, Franklin, Douglas, Johnson and Wyandotte counties, all in the State of Kansas.

3. That the above described property, so owned exclusively by your petitioner, consists of 242.94 miles of sixteen-inch trunk



1425 main pipe line and twelve of the twenty-one large 1,000 horse power compressing engines or units connected therewith and certain buildings and all necessary auxiliary apparatus and appurtenances, together with all necessary real estate, rights-of-way, grants, leases and other property, real, personal and mixed.

4. True and correct descriptions of all said property, real, personal and mixed, are set forth in certain mortgages and supplemental mortgages and a certain instrument of lease hereinafter specifically referred to, exhibited to the court, filed herewith and made a part hereof as fully and completely as if written at full length herein.

5. Your petition- shows to the court that, except the aforesaid lines owned by your petitioner, neither the respondent nor its receivers own, have or hold any transportation lines between the recent southern extension of respondent's lines into the Collinsville gas field in Oklahoma and the southern terminus of the Marnet Company's line, a distance of seventeen miles; or between said compressor station at Grabham and said compressor station at Petrolia, a distance of approximately forty seven-miles; or between Olathe and Kansas City, a distance of approximately sixteen miles, where the largest market is found for the natural gas transported by the defendant and its receivers; that no gas can be transported out of the heart of the Hogshooter gas field or from the Collinsville gas fields, or north from Grabham or northeasterly from Olathe without the use and operation of the aforesaid main trunk pipe lines, compressing engines, rights-of-way, buildings, apparatus and appurtenances owned by your petitioner.

6. A true and correct map showing the trunk pipe lines, branch lines, compressor stations, compressing engines or units and properties constituting said joint transportation system, now being used and operated by your receivers, in so far as your petitioner is able to give the same, is here now exhibited to the court, filed herewith, marked Exhibit "A" and made a part hereof. The pipe lines, compressor stations, buildings and compressing engines of your petitioner are indicated on said map in red, those of the respondent in green, and those of the Marnet Mining Company in yellow. The marks within the diagrams designating the buildings indicate the number of compressing engines or units. The stations shown in the margin as located at Fisher's Big Creek, Vilas, Altoona and Neodesha, are small compressing stations connected with branch or gathering lines.

1426 7. Your petitioner avers that on August 1, 1907, it duly executed and delivered to the Fidelity Trust Company, a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, whose principal office and place of business is at Philadelphia, Pennsylvania, its first mortgage and deed of trust; that on the 1st day of April, 1909, your petitioner duly executed and delivered to said trustee a supplemental mortgage and deed of trust; that on the 1st day of May, 1909, your petitioner duly executed and delivered to said trustee a second supplemental mortgage and deed of trust, and that on June 1, 1910, your petitioner duly executed and delivered to said trustee a third supplemental



mortgage and deed of trust; that each of said successive supplemental mortgages and trust deeds was by its terms made a part of said original mortgage and trust deed and all preceding supplemental mortgages and deeds of trust and covered all theretofore after-acquired property of your petitioner; that each of said mortgages and deeds of trust and supplemental mortgages and deeds of trust were duly filed and recorded, both as real estate and chattel mortgages, in the respective offices of the registers of deeds in and for the counties of Montgomery, Wilson, Neosho, Allen, Anderson, Franklin, Douglas, Johnson and Wyandotte all in the State of Kansas; that thereafter affidavits of renewal of said chattel mortgages were duly filed from time to time and that none of said original and supplemental real estate and chattel mortgages have ever been discharged or satisfied of record, and that the same and each, every and all of them are at this time in full force and effect.

8. That by the terms of said several mortgages and trust deeds, your petitioner did grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, set over and mortgage unto said trustee, its successors and assigns, all its said pipe lines, compressor stations, engines, apparatus, rights-of-way, also all its rents, tolls, earnings, revenue and income and all its property real, personal and mixed of every kind and description then owned or thereafter to be acquired, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining in trust to secure an authorized issue of bonds of your petitioner, The Kansas City Pipe Line Company, aggregating \$5,000,000 at par, bearing interest at the rate of six per cent per annum, dated August 1, 1907, both principal and interest payable in lawful gold coin of the United States of America at the office of Fidelity Trust Company in the City of Philadelphia, Pennsylvania, in series: the series, maturity, 1427 numbers and amounts of said bonds being in words and figures as follows, to-wit:

*Total Bonds Authorized.*

Series.	Maturity.	Serial numbers.	Amount.
A .....	February 1, 1908	1 to 300	\$300,000
B .....	February 1, 1909	301 to 700	400,000
C .....	February 1, 1910	701 to 1100	400,000
D .....	February 1, 1911	1101 to 1650	550,000
E .....	February 1, 1912	1651 to 2200	550,000
F .....	February 1, 1913	2201 to 2750	550,000
G .....	February 1, 1914	2751 to 3300	550,000
H .....	February 1, 1915	3301 to 3850	550,000
I .....	February 1, 1916	3851 to 4250	400,000
J .....	February 1, 1917	4251 to 4650	400,000
K .....	February 1, 1918	4651 to 5000	350,000
			<hr/>
			\$5,000,000

9. Your petitioner avers that of said bonds so authorized, there have been issued, certified, delivered and sold in the manner provided in said mortgages a total of \$4,745,000 as follows:

*Total Bonds Certified, Issued, Delivered and Sold.*

Series.	Maturity.	Amount.
A .....	February 1, 1908	\$300,000
B .....	February 1, 1909	400,000
C .....	February 1, 1910	400,000
D .....	February 1, 1911	550,000
E .....	February 1, 1912	550,000
F .....	February 1, 1913	550,000
G .....	February 1, 1914	550,000
H .....	February 1, 1915	516,000
I .....	February 1, 1916	400,000
J .....	February 1, 1917	400,000
K .....	February 1, 1918	129,000
		<hr/> \$4,745,000

10. That all of said bonds which have heretofore matured amounting to \$2,200,000 have been paid, surrendered and canceled, and that there now remains outstanding and unpaid the bonds of your petitioner amounting to \$2,545,000 as follows:

1428 *Bonds Now Outstanding.*

Series.	Maturity.	Amount.
F .....	February 1, 1913	\$550,000
G .....	February 1, 1914	550,000
H .....	February 1, 1915	516,000
I .....	February 1, 1916	400,000
J .....	February 1, 1917	400,000
K .....	February 1, 1918	129,000

11. Your petitioner avers that, by the terms of said mortgages and trust deeds, it is entitled to remain in possession of and to use, lease, let and control, and receive and enjoy the rents and income from all its said pipe lines, leaseholds, plants, franchises and property, so conveyed and pledged under said mortgages so long, and only so long, as it permits or makes no default in the payment of the principal and interest on said bonds as the same shall from time to time mature and become due and payable, and pays all taxes, assessments and governmental charges laid upon said property, real, personal and mixed and performs certain other obligations set forth in said mortgages.

12. Your petitioner further shows to the court that if it shall default in the payment of any of said maturing bonds or of any interest accruing upon any one or more of said bonds, secured by said

mortgage according to the terms thereof, and such default shall continue as specified in said mortgages, then and in that event your petitioner is bound under the terms of said mortgage, upon demand of said trustee to surrender the actual possession of all its aforesaid property, and said trustee will be entitled forthwith, with or without process of law to enter into and upon and take possession of all and singular the property and premises so mortgaged, and exclude your petitioner and its lessees, the respondent Kansas Natural Gas Company and your receivers, thier agents, representatives and servants wholly therefrom; and said trustee, under the terms of said mortgage is entitled to and may and will thereupon declare the whole principal of all the aforesaid bonds secured by said mortgage to be due and payable, and the same shall thereupon immediately become due and payable. And it will become the duty of said trustee upon request of the bondholders to institute the proper proceedings at law and in equity to foreclose and enforce the lien created and secured by said mortgages, and to sell said properties and apply the proceeds thereof to the costs of said suit and sale and the payment of said bonds and accrued interest, according to the terms and provisions of said mortgages and deeds of trust.

1429 13. That upon the commencement of any such suit in equity or action at law to enforce the lien or rights of the trustee and said bondholders under said mortgages, said trustee is entitled to the appointment of receivers of all and singular the aforesaid estate and property of your petitioner, which said receivership will be an additional and unnecessary charge and expense upon your petitioner.

14. Your petitioner further avers that by the terms of said mortgages it is liable in person to said bondholders for any and all deficiency after exhausting said mortgage security, and that if said security is impaired, it will entail upon your petitioner a large and unsecured indebtedness, rendering it insolvent and in failing circumstances.

15. True and correct copies of said original mortgage and deed of trust dated August 1, 1907; said supplemental mortgage and trust deed dated April 1, 1909; said second supplemental mortgage and trust deed dated May 1, 1909; and said third supplemental mortgage and trust deed dated June 1, 1910, are here now exhibited to the court, filed herewith, marked Exhibits "B," "B 1," "B 2," "B 3," respectively, and made a part hereof, as fully and completely as if written at full length herein.

16. Your petitioner further alleges and shows to the court that thereafter and on January 1, 1908, your petitioner and the respondent Kansas Natural Gas Company, duly entered into a certain instrument of writing or lease-contract, hereinafter called the lease, whereby your petitioner did grant, lease and demise unto the respondent herein, its successors and assigns, all and singular its aforesaid pipe lines, gas lands, gas wells, gas leases, leaseholds, buildings and other structures and all easements, right-of-way, and appurtenances thereunto belonging, also all equipment, machinery, tools, appliances, and all contracts, rights, privileges and franchises, constituting and in-

cluding all its estate and property real, personal and mixed, of every kind and description.

17. To have and to hold all and singular the aforesaid demised property unto the said lessee, The Kansas Natural Gas Company and its successors and assigns, for and during the term of ninety-nine years from and after the 2d day of February, 1906 (said lease being a substitute for a prior lease executed on said date), on certain terms and conditions therein provided and agreed to by and between your petitioner and the respondent.

18. The said lessee, the respondent herein, covenanted, agreed and bound itself to pay as rentals for the use, possession and enjoyment of said pipe line and property so leased and demised by your petitioner in each year during the existance of said lease, the following:

a. The amount of all taxes, rates, imposts, excises, duties, charges, licenses, and assessments, general and special, ordinary and extraordinary, of every nature and description which may be lawfully imposed or assessed during the continuance of said lease in any way upon the lessor your petitioner, with reference to its capital stock or property, contracts, rights, privileges or franchises thereby demised, or upon the bonds of the lessor, your petitioner, which it may be required to pay or deduct, or upon all dividends declared during the continuance of said lease upon the capital stock of the lessor, your petitioner, and all sums of money which the lessor may now or hereafter become liable to pay by law, contract or otherwise, for the protection, enjoyment or perpetuation of any of its rights, powers, privileges or franchises, said payments to be made as they become due to the officer or other person entitled by law to receive the same.

b. Interest from time to time as the same shall fall due on all bonds which may be outstanding from time to time issued under the terms of and secured by said mortgage of the lessor, your petitioner, to Fidelity Trust Company, trustee, dated August 1, 1907, said interest shall be paid by the lessee, defendant herein, for the account of the lessor, your petitioner, to The Fidelity Trust Company, trustee under said mortgage of the lessor, your petitioner, semi-annually, on or before the 1st day of February and August in each year, so that payments of the coupons in each and every year representing the amount due upon said bond can be made by the trustee as the same fall due.

c. On or before the 1st day of February, 1908, and on the 1st day of February in each and every year thereafter, the lessee, defendant herein, shall pay a sum equal to the amount which the lessor, your petitioner, shall require to pay over and satisfy so many bonds secured by said mortgage as under the terms of said mortgage lessor, your petitioner, obligates itself to pay over and satisfy upon said dates, which payment shall be made at the time stated to Fidelity Trust Company, trustee under said mortgage of the lessor, your petitioner, so that payments in discharge of the said bonds can be made by the trustee as the same shall fall due.

Ten days before each and every interest paying period the lessor shall certify to the lessee the amount of outstanding bond- upon which

1431 interest shall then be maturing, and ten days before each and every bond retiring period the lessor shall certify to the lessee the amount of outstanding bonds of the series then about to mature, to the end that the lessee shall be advised of the amount of money it must pay to or for account of the lessor to meet the interest coupons and bonds then about to mature.

*d.* The actual expense of maintaining the organization of the lessor, your petitioner, and for providing suitable offices for the accommodation of its officers and directors not exceeding the sum of Five Hundred Dollars (\$500.00), which shall be paid in each year in such amounts as shall be requested by the lessor.

19. Your petitioner avers and shows to the court that the respondent has heretofore substantially done and performed all of the conditions of said lease with reference to the payment of said rentals; that it has paid all the bonds heretofore matured, and the same have been surrendered and canceled, and that it has paid all the interest coupons as the same have heretofore come due and payable; and that all taxes and governmental charges heretofore laid, levied or assessed against your petitioner and its property have been duly and promptly paid as per the terms of said lease.

20. Your petitioner further avers on information and belief that since the appointment of the receivers herein, and the taking over by said receivers of the aforesaid estate, pipe lines and property of your petitioner, and on or about the 20th day of December, 1912, said receivers, pursuant to the terms of said lease, paid, or caused to be paid one-half of all taxes, levied for the year 1912 on all the property of your petitioner by the several counties, municipalities and state, in which it is situated, and required by law and the terms of said lease-contract to be paid at said time.

21. Your petitioner further states that, pursuant to the terms and conditions of said mortgages and deeds of trust it is obligated and will be required to pay on said 1st day of February, 1913, to The Fidelity Trust Company on account of said issued and outstanding bonds a sum sufficient to pay, liquidate and redeem the bonds of your petitioner known and hereinbefore described as Series "F," numbered from 2201 to 2750, inclusive, in the principal sum of \$550,000.00, together with accrued interest thereon and the maturing interest coupons on the remaining outstanding bonds in the sum of \$76,350.00, aggregating a total principal and interest payment of \$626,350.00.

22. That by reason of the terms and conditions of said lease-contract and the covenants and obligations of the lessor The Kansas Natural Gas Company as set forth in sub paragraphs *b* and *c*  
1432 in paragraph 18, aforesaid, the respondent, Kansas Natural Gas Company, and its receivers, are and will be required as per the terms of said lease-contract to pay to your petitioner or to The Fidelity Trust Company on account of said bondholders and as and for rental under said lease for the use, occupation and enjoyment of said pipe lines, compressor stations and properties of your petitioner on or before said 1st day of February, 1913, the principal sum

of \$550,000.00 and accrued interest coupons in the sum of \$76,350.00, aggregating the total rental payment of \$626,350.00.

23. A true and correct copy of said instrument in writing constituting said lease-contract, dated January 1, 1908, is here now exhibited to the court, filed herewith, marked Exhibit "C" and made a part hereof as fully and completely as if written at full length herein.

24. Your petitioner further avers that having leased, demised and delivered all of its pipe lines, compressors, estate and property, real, personal and mixed, over to the respondent herein, as aforesaid, it has no other source of revenue, income, assets or credit with which to pay, liquidate and redeem its maturing bonds and accruing interest and taxes and other fixed charges, and that unless and except said respondent and its receivers pay or cause to be paid and redeemed said maturing bonds and interest coupons or this honorable court allow the same rentals when due your petitioner will soon become insolvent and in failing circumstances and its property taken and the aforesaid mortgages foreclosed by the trustee, and the proceeds thereof applied to the payment of said bonds, interest coupons, taxes and other fixed charges and the costs of said foreclosure proceedings.

25. Your petitioner further alleges and shows to the court that the lessee, respondent herein, entered into said lease-contract and took over your petitioner's said property and assumed the obligations contained in said lease, with full knowledge and understanding of the existence and lien of said mortgages, and the issued and outstanding bonds secured thereby, and that said lease-contract was entered into subject to the rights and interests of said trustee and the bondholders of your petitioner, and that said lease-contract contained the following recital relating thereto: "This lease is made by the lessor and accepted by the lessee subject to the terms of a mortgage hereinbefore referred to, dated August 1, 1907, which shall remain and be a continuing lien upon the property described in said mortgage until the bonds secured by the same are paid and said mortgage satisfied of record."

26. Your petitioner avers that the respondent has heretofore paid as per the terms of said lease all the rentals provided for  
1433 therein and in general performed the terms, conditions and obligations thereof up to the time of the appointment and administration of the receivers herein, and that said lease-contract has not been rescinded, canceled, annulled or suspended by the parties thereto, or otherwise, and that the same is now in full force and effect.

27. Your petitioner is informed and advised by counsel that on or about October 7, 1912, a certain suit in equity, No. 1351, was commenced in this court, wherein Jno. L. McKinney is complainant on behalf of himself and all other creditors and bondholders of the respondent and the said Kansas Natural Gas Company is respondent; alleging among other things the existence of the aforesaid lease-contract, the necessity for the use, possession and operation of said pipe lines and properties of your petitioner by the Kansas Natural Gas Company and its receivers and setting forth the rentals coming due under said lease February 1, 1913, and from time to time there-



after; averring that, in the interest of the public service, said complainant and other creditors and bondholders of the respondent, its receipts, earnings and income from the sale of natural gas should be used and applied to the construction of additional pipe lines, extensions and betterments and preserving and conserving the estate of the defendant and the security of the said complainant and other creditors.

28. That in said bill complainant also averred that a fair value of respondent's corporate assets can only be had and realized by holding protecting, preserving and operating its property, including its leased lines as a whole, with a view of realizing the present actual value and worth of the gas which the Kansas Natural Gas Company distributes, markets and sells, and that such could not be done by a sale of its properties, which would result in a great sacrifice thereof, and no return upon the stock and serious loss to all the Company's creditors.

29. That the relief demanded by the complainant in said suit, among other things, was that this court appoint receivers of all the properties of the Kansas Natural Gas Company with such powers in the premises as are used in such cases; and to make such orders and decrees in the premises as may be necessary to hold the property of the Kansas Natural Gas Company, including therein that under lease from the Kansas City Pipe Line Company and the Marnet Mining Company for the purpose and to the end that complainant's rights and the rights of all the creditors, including interest coupon holders, bondholders and landlords, may be ascertained and protected; and that the court take charge of the estate and properties of the defendant and fully administer the same and for such

1434 purpose marshal all the assets of the defendant, ascertain the respective liens and priorities existing in favor of creditors and the amounts due and enforce the rights, liens and priorities of all creditors of the defendant as the same may be finally ascertained and decreed upon respective interventions or applications of persons interested or otherwise.

30. That in said suit complainant prayed for injunction restraining all persons from interfering with the possession of said receivers and control over the entire estate of the respondent, including the leased lines of your petitioner, and other general relief.

31. That thereupon the respondent entered its appearance and filed answer admitting the truth of all and singular the averments, statements, recitals, declarations and charges made and contained in said bill of complaint and consented to the appointment of such receivers.

32. That thereupon and on October 9, 1912, this honorable court duly appointed as receivers of the estate, property and assets of said respondent Messrs. Conway F. Holmes, George F. Sharritt and Eugene Mackey; and issued an order delivering over unto said receivers the possession, custody, control, management and operation of all and singular the estate, assets, lands, tenements and hereditaments of said respondent, including all pipe lines, compressor stations, pumps, machinery, appliances, fittings and equipment, and all oil



and gas mining lands, leases and leaseholds and all lease-contracts, obligations, choses in action and rights owned or belonging to the respondent, including the said leased lines, compressor stations, apparatus and appurtenances, rights-of-way and all property, real, personal and mixed, owned by your petitioner and theretofore held by the respondent under the aforesaid lease-contract.

33. Your petitioner further avers that, pursuant to said order, the aforesaid receivers did on or about October 10, 1912, duly qualify as required by law and the order of said court and immediately thereafter took over the actual possession, control, custody, management and operation of the respondent's said estate and all and singular the aforesaid leased pipe lines, compressor stations and appurtenances, rights-of-way and property, real, personal and mixed, owned by your petitioner and theretofore held by the respondent under said lease-contract and ever since have been and now are holding, controlling, using, managing and operating the same in the transportation of natural gas from the gas fields in southern Kansas and northern Oklahoma to consumers thereof in cities and towns of 1435 eastern Kansas and western Missouri, and that said receivers are so using your petitioner's said property for the purpose of preserving the respondent's estate, assets and property as a going concern, and applying, under orders of this court, the earnings and income thereof in making extensions and betterments of the respondent's pipe lines and acquiring gas lands and leases, thereby conserving and enhancing the security of the respondent's creditors and bondholders and their trustees, the plaintiffs herein.

34. Your petitioner further avers that on or about October 16, 1912, the Fidelity Title & Trust Company of Pittsburgh, Pennsylvania, trustee of the first mortgage bondholders of the respondent, with leave of court duly obtained, each filed their separate intervening petitions and bills of complaint in the above entitled cause, the same being substantial copies of the original bill of complaint filed by the complainant, alleging the aforesaid lease-contract between your petitioner and the respondent and the necessity of holding, using and operating said pipe lines, compressor stations and properties of your petitioner jointly with those of the respondent; and joining in the prayer of complainant for the appointment of receivers and the issuance of such orders as may be necessary to hold the property of the Kansas Natural Gas Company, including that under lease from The Kansas City Pipe Line Company and the Marnet Mining Company, for the purpose and to the end that their rights and those of all other creditors, interest coupon holders, and bondholders and landlords may be ascertained, protected and decreed, and for other and general relief; that thereupon, by order of court, said trustees were made parties plaintiff, nunc pro tunc, as of the date of the filing of the original bill of complaint; and the order appointing the receivers and giving them custody, possession, use and control of the estate of the respondent, including the leased lines, compressor stations and property owned by your petitioner was re-ordered, re-adjudged and re-decreed as to said interpleading plaintiffs.

35. Your petitioner avers that said first and second mortgages se-

curing the bond issues of the respondent herein contain no after-acquired property provisions covering and including the leasehold estate of the respondent in and to the said pipe lines, compressor stations and properties owned by your petitioner, and that the creditors and bondholders of the respondent, said plaintiffs, and their said trustees, the Fidelity Title & Trust Company and said Delaware Trust Company, have and hold no liens, claims, rights, titles or interest in or to the said estate and property of your petitioner or any part or parcel thereof, and that the rights, titles, interests, claims and demands of your petitioner and its bondholders and their trustee are prior and superior in law and equity to any right, title, interest, claim or demand of said plaintiffs, the intervening trustee and the respondent and its creditors and all other persons.

36. That by reason of the premises the respondent and its bondholders and all parties to the record and their receivers are and will be indebted to your petitioner on February 1st, 1913, as and for rent due as per the terms of said lease-contract for the use, occupation and enjoyment of its aforesaid leased pipe lines, compressors and properties on the principal of Series "F" of said bonds, in the sum of \$550,000, and on accrued interest coupons in the sum of \$76,350, making a total rental due and payable on said date of \$626,350.

Wherefore, your petitioner prays that this honorable court may enter an order in this cause allowing said rents in the sum of \$626,350, accruing under said lease February 1, 1913, and directing the said Conway F. Holmes, Geo. F. Sharitt and Eugene Mackey, receivers, to pay said sum on said date or as soon thereafter as may be, or so much thereof as said receivers are able to pay on account of said rents and the allowance thereof and before the date on which the trustee of your petitioner's bondholders will be entitled, under the terms of its said mortgages and trust deeds, to commence the foreclosure thereof and without prejudice to the full rights of your petitioner under its aforesaid lease-contract or the rights of its bondholders and their trustee under said mortgages and deeds of trust; and your petitioner on its own behalf and on behalf of its bondholders and their trustee, hereby expressly reserve all and singular its and their rights, privileges and powers under its aforesaid lease, dated January 1, 1908, and under said mortgages and trust deeds; and your petitioner further prays that the court may allow the costs and expense of this intervening petition, including reasonable counsel and solicitor fees against the estate of the respondent, and your petitioner will ever pray.

GEO. R. ALLEN AND  
J. W. DANA,

*Solicitors for The Kansas City Pipe Line Company.*

1437 STATE OF KANSAS,

*County of Wyandotte, ss:*

Be It Remembered, That on this 30th day of December, 1912, in the year of our Lord 1913, before me, a notary public in and for

said county and state, personally appeared W. P. Douthirt, who, being by me first duly sworn according to law, did depose and say: That he is the secretary of the Kansas City Pipe Line Company and has read and knows the contents of the foregoing intervening petition; that he is familiar with the facts therein set forth, and that the same are true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to such matters that he believes them to be true.

W. F. DOUTHIRT.

Subscribed in my presence and sworn to before me the day and year last above written.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal this 30th day of December, 1912.

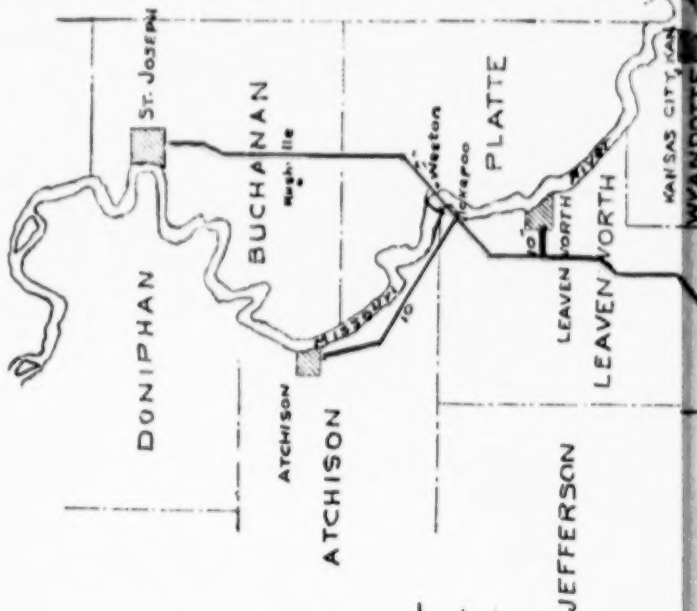
My commission expires February 23, 1914.

[SEAL.]

MAUDE HAYS,  
*Notary Public.*

(Here follows map marked p. 1438.)

no. 8A.  
*Kansas City, Mo.*  
*John McFadden*  
*as Receiver* } P. 1438.



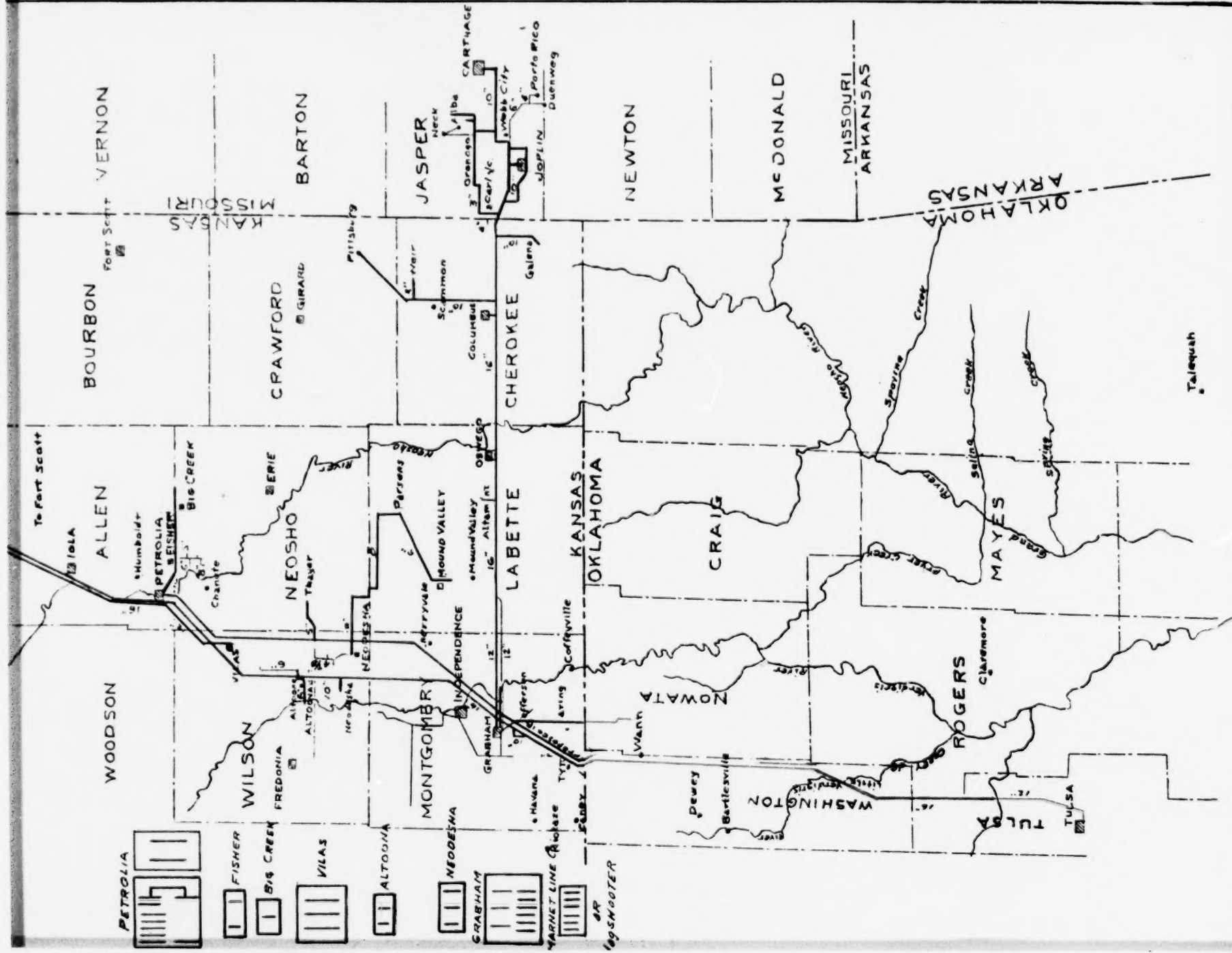
# PIPE LINES

KANSAS NATURAL GAS CO. \_\_\_\_\_

K.C. PIPE LINE CO. \_\_\_\_\_

MARNET LINE CO. \_\_\_\_\_









1439

## EXHIBIT "B."

*Mortgage.*

The Kansas City Pipe Line Company

to

Fidelity Trust Company.

Dated August 1, 1907.

\$5,000,000.

This Indenture, Made this first day of August, 1907, between The Kansas City Pipe Line Company, a corporation organized and existing under the laws of the state of New Jersey, hereinafter called "Pipe Line Company," party of the first part, and Fidelity Trust Company, a corporation organized and existing under the laws of the state of Pennsylvania, hereinafter called "Trustee," party of the second part, Witnesseth

Whereas, The Pipe Line Company has acquired, or is about to acquire, certain real estate, pipe lines, gas leases and leaseholds, with the appliances, machinery, structures and other property thereon or appurtenant thereto, situate in the State of Kansas;

And Whereas, The Pipe Line Company is authorized by law to borrow money and to secure the payment of the same by mortgage or deed of trust, on all its rights, privileges, franchises and property;

And Whereas, It has become desirable for the Pipe Line Company to issue its bonds as hereinafter set forth for the purpose of making payment in part for said property, and for the improvement and extension of its said plant, and for the purpose of providing means for additions to or extensions or betterments of its plant or acquisition of other plants or property, real and personal, and for other proper corporate purposes;

And Whereas, The Pipe Line Company, its stockholders and directors, for the several purposes aforesaid, at meetings duly called for the special purpose, have unanimously resolved and determined to issue the bonds of the Pipe Line Company, to be known as its First Mortgage Six Per Cent. Gold Bonds, consisting of five thousand (5,000) bonds, of one thousand dollars (\$1,000) each, numbered consecutively from one (1) to five thousand (5,000)

1440 both inclusive, all of like date and tenor, except as to date of maturity, divided in the order of their number into eleven (11) series, in which shall each be designated by a letter, and which shall in date of maturity, serial number and amount be as follows:

Series.	Date of maturity.	Serial number.	Amount.
A . . . .	February 1, 1908	1 to 300, inclusive	\$300,000
B . . . .	February 1, 1909	301 to 700, inclusive	400,000
C . . . .	February 1, 1910	701 to 1100, inclusive	400,000
D . . . .	February 1, 1911	1101 to 1650, inclusive	550,000
E . . . .	February 1, 1912	1651 to 2200, inclusive	550,000
F . . . .	February 1, 1913	2201 to 2750, inclusive	550,000
G . . . .	February 1, 1914	2751 to 3300, inclusive	550,000
H . . . .	February 1, 1915	3301 to 3850, inclusive	550,000
I . . . .	February 1, 1916	3851 to 4250, inclusive	400,000
J . . . .	February 1, 1917	4251 to 4650, inclusive	400,000
K . . . .	February 1, 1918	4651 to 5000, inclusive	350,000
Total . . . . .			\$5,000,000

issued or to be issued for an aggregate principal sum not exceeding five million dollars (\$5,000,000), interest payable on the 1st day of February and August in each year, both principal and interest to be payable in gold coin of the United States of America, of or equal to the present standard of weight and fineness;

And Whereas, In order to secure the payment of the principal and interest of all the said bonds so to be issued by the Pipe Line Company, its directors and stockholders have duly resolved and determined that it shall execute and deliver a mortgage or deed of trust to the party of the second part as Trustee, upon the terms hereof, of and upon all its property, rights, privileges, and franchises acquired and to be acquired; each of said bonds, the coupons thereto annexed, and the certificate of said Trustee, signed by a duly authorized officer, to be substantially in the following form:

United States of America,

State of New Jersey,

The Kansas City Pipe Line Company,

*First Mortgage Six Per Cent. Gold Bond.*

No. —

\$1,000.

Series —

The Kansas City Pipe Line Company, a corporation of the State of New Jersey, hereinafter called the "Pipe Line Company,"  
 1441 for value received, acknowledges itself indebted to bearer, or, if this bond be registered, to the registered holder hereof, in the sum of one thousand dollars, which sum it promises to pay in gold coin of the United States of America of or equal to the present standard of weight and fineness, on the — day of —, 19—, at the office of Fidelity Trust Company, hereinafter called the "Trustee," in the city of Philadelphia, state of Pennsylvania, and to pay

interest thereon at the rate of six per centum per annum in like gold coin at the office aforesaid semi-annually, on presentation and surrender of the annexed coupons as they severally mature.

In case of default in the payment of this bond, or of the interest accruing thereon, or otherwise, such consequences shall ensue as are provided for in the mortgage securing the payment of the same hereinafter mentioned.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Pipe Line Company may be required to pay, deduct or to retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein.

There shall be no recourse to the stockholders, directors or officers of the Pipe Line Company for the payment of this bond, or of the interest thereon.

This bond is one of an issue of five thousand bonds of one thousand dollars (\$1,000) each, numbered consecutively from 1 to 5,000, both inclusive, all of like date and tenor except as to date of maturity, divided in the order of their number into eleven series, Series A, the first thereof, consisting of three hundred bonds, being payable on February 1, 1908, Series B and C, consisting of four hundred bonds each, being payable on the first day of February in the years 1909 and 1910 respectively, Series D, E, F, G and H, consisting of five hundred and fifty bonds each, being payable on the first day of February in the years 1911 to 1915 inclusive, Series I and J, consisting of four hundred bonds each, being payable on the first day of February in the years 1916 and 1917 respectively, and Series K, the last thereof, consisting of three hundred and fifty bonds, being payable on the first day of February 1918.

Said bonds shall only be certified and delivered by the Trustee, from time to time, as and when provided for in the mortgage hereinafter mentioned securing the same.

The payment of each and all of said bonds, with the interest coupons attached thereto, according to their tenor and effect, is equally secured without preference, priority or distinction, as to the 1442 lien or otherwise of one bond over another by a mortgage or deed of trust bearing even date herewith executed and delivered by the Pipe Line Company to the Trustee conveying to the Trustee all the real estate, pipe lines, gas leases and leaseholds, franchises, rights, privileges and other property, real and personal, of the Pipe Line Company, mentioned and described in the aforesaid mortgage together with all real estate, pipe lines, gas leases and leaseholds, franchises, rights privileges and other property, real and personal, which it may hereafter acquire, as set forth in said mortgage subject to the terms and conditions of which mortgage this bond is issued and held.

This bond until registered shall pass by delivery. This bond may be registered in books to be kept for that purpose at the office of the Trustee in the city of Philadelphia and, if so registered, will thereafter be transferable only upon the said books at the office of the Trustee by the owner in person, or by attorney, unless the last pre-

ceding transfer shall have been to bearer and the transfer by delivery thereby restored; and it shall continue to be susceptible of successive registrations and transfers to bearer, at the option of the holder, but such registration shall not affect the negotiability of the annexed coupons.

This bond shall not be valid until it shall have been authenticated by a certificate hereon, duly signed by the Trustee under the mortgage aforesaid.

In Witness Whereof the Pipe Line Company has caused its corporate seal to be hereunto affixed, and this bond to be signed by its President and Secretary, and has caused the coupons hereto annexed to be authenticated by the engraved fac simile of the signature of its Treasurer this first day of August 1907.

THE KANSAS CITY PIPE LINE  
COMPANY,

By ———, *President*.

Attest:

———, *Secretary*.

(*Coupon.*)

No. —.

\$30.

Series —.

The Kansas City Pipe Line Company will pay to bearer, on the — day of — at the office of Fidelity Trust Company, in the city of Philadelphia, thirty dollars in gold coin of the United States of America, being six months' interest on its first mortgage six 1443 per cent. gold bond No. —.

———, *Treasurer*.

(*Trustee's Certificate.*)

It Is Hereby Certified, That the within is one of the series of bonds described in the mortgage within referred to.

FIDELITY TRUST COMPANY, *Trustee*,

By ———, *President*.

Now, Therefore, This Indenture Witnesseth, That the Pipe Line Company, in consideration of the premises and of one dollar (\$1), lawful money of the United States of America, to it paid by the Trustee, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the above-mentioned bonds of the Pipe Line Company as and when the same become payable, and to secure the faithful performance of the covenants herein contained, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, set over and mortgaged, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, set over and mortgage unto the Trustee, its successors or assigns in the trust hereby

created, all the property of every kind and nature now owned, or hereafter in any manner acquired, by the Pipe Line Company, to-wit:

The property now owned by the Pipe Line Company is, for convenience of reference, divided into sixteen items, as set out in the Schedule below, and the property covered by each item is then particularly described.

*Schedule.*

I.

Knapp Leases, being certain leasehold interests in Wilson County, Kansas, including also one parcel held in fee.

II.

John Smith Purchase, being certain leasehold interests in Montgomery County, Kansas.

III.

Kansas City 16-Inch Line, being the original gas trunk line, with its branch and gathering lines, laid from a point at or near Altoona, Wilson County, Kansas, to Potomac Heights, Kansas City, Kansas, and to a point at or near the intersection of State Line and 1444 25th Street, Kansas City, Missouri, and to a point at or near the intersection of State Line and 39th Street, Kansas City, Missouri.

IV.

Rights of Way, Kansas City 16-Inch Line.

V.

Petrolia Compressor Station.

VI.

Rosedale Reducing Station.

VII.

Potomac Heights Reducing Station.

VIII.

39th Street Reducing Station.

IX.

25th Street Reducing Station.

## X.

Johnson County 16-Inch Extension.

## XI.

Rights of Way, Johnson County 16-Inch Extension.

## XII.

Petrolia-Smith 16-Inch Line.

## XIII.

Rights of Way, Petrolia-Smith 16-Inch Line.

## XIV.

Altoona-Grabham 16-Inch Line.

## XV.

Rights of Way, Altoona-Grabham 16-Inch Line.

## XVI.

Scipio Compressor Station.

\* \* \* \* \*

(Here follow detailed statements of the property under the foregoing Schedule which are omitted pursuant to Stipulation of the Parties.)

1445 Also all other property, real, personal or mixed, now owned or which may be hereafter acquired or belong to the Pipe Line Company.

Also all rents, tolls, earnings, profits, revenues, or income arising or to arise from the property now owned or hereafter acquired by the Pipe Line Company, or any part thereof.

Also all licenses, patents and patent rights and processes now owned or used or which may hereafter be owned or used by the Pipe Line Company.

Also all corporate, municipal and other franchises, rights, easements or immunities now owned or which may hereafter be owned, held or enjoyed by or in any manner conferred upon the Pipe Line Company.

It being the intention of the Pipe Line Company to include in this mortgage all of the franchises, rights and privileges, and all of

the property, real, personal and mixed, which it now owns and which may be hereafter acquired by it.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, claim and demand whatsoever, as well in law as in equity, of the Pipe Line Company, of, in and to the same and every part and parcel thereof.

To Have And To Hold all and singular the above granted and described real and personal property and franchises, with the appurtenances, unto the Trustee, its successors and assigns, to the only proper use, benefit, and behoof of the Trustee, its successors and assigns, forever; in Trust, However, for the security of the holders of the said bonds in the manner and upon the terms and under the agreements herein contained: Provided, Nevertheless, and these presents are upon the express condition that if the Pipe Line Company, its successors or assigns, shall well and truly pay, or cause to be paid, the several sums of money in the several bonds hereinbefore mentioned, with the interest, according to the true intent and meaning of the said bonds, and each of them, or if the said bonds and the interest thereon shall become in any way paid or satisfied, and if the Pipe Line Company, its successors and assigns, shall well and truly perform and observe all and singular the covenants, promises and conditions in the said bonds and coupons and in this indenture expressed to be kept, performed and observed by or on the part of the Pipe Line Company, then these presents and the estates and rights

hereby granted shall cease, determine and be void, and the  
1446 Trustee, its successors or assigns, shall, on demand, grant, reassign, and deliver to the Pipe Line Company, its successors or assigns, all and singular the property hereby granted, sold and assigned and not previously disposed of as herein provided, otherwise these presents shall be and remain in full force.

It is further covenanted that the trusts, conditions and limitations upon which the property and franchises aforesaid are hereby conveyed to the Trustee, and subject to which the bonds secured hereby are issued to and are accepted by each and every holder hereof, are as follows:

#### Article I.

The issue of bonds to be secured by this mortgage is five thousand bonds of the par value of one thousand dollars (\$1,000) each, aggregating five million dollars (\$5,000,000) at par, dated August 1, 1907, numbered consecutively from 1 to 5,000, both inclusive, all of like date and tenor except as to date of maturity, divided in the order of their number into eleven (11) series, which shall each be designated by a letter, and which shall in date of maturity, serial number and amount be as follows:



Series.	Date of maturity.	Serial number.	Amount.
A . . . .	February 1, 1908	1 to 300, inclusive	\$300,000
B . . . .	February 1, 1909	301 to 700, inclusive	400,000
C . . . .	February 1, 1910	701 to 1100, inclusive	400,000
D . . . .	February 1, 1911	1101 to 1650, inclusive	550,000
E . . . .	February 1, 1912	1651 to 2200, inclusive	550,000
F . . . .	February 1, 1913	2201 to 2750, inclusive	550,000
G . . . .	February 1, 1914	2751 to 3300, inclusive	550,000
H . . . .	February 1, 1915	3301 to 3850, inclusive	550,000
I . . . .	February 1, 1916	3851 to 4250, inclusive	400,000
J . . . .	February 1, 1917	4251 to 4650, inclusive	400,000
K . . . .	February 1, 1918	4651 to 5000, inclusive	350,000
Total . . . . .			\$5,000,000

Upon the recording of this mortgage all of the bonds hereby secured shall be executed by the Pipe Line Company and delivered to the Trustee, and the Trustee shall certify and deliver the same as follows:

1. Three million four hundred and fifty thousand dollars (\$3,450,000) at par of said bonds shall be at once certified by the said Trustee and be delivered to or upon the order in writing of the President or Vice-President of the Pipe Line Company, being the following amounts of each of said series, with their serial numbers as hereinbelow set forth:

1447

Series.	Date of maturity.	Serial number.	Amount.
A . . . .	February 1, 1908	1 to 300, inclusive	\$300,000
B . . . .	February 1, 1909	301 to 700, inclusive	400,000
C . . . .	February 1, 1910	701 to 1100, inclusive	400,000
D . . . .	February 1, 1911	1101 to 1500, inclusive	400,000
E . . . .	February 1, 1912	1651 to 2050, inclusive	400,000
F . . . .	February 1, 1913	2201 to 2600, inclusive	400,000
G . . . .	February 1, 1914	2751 to 3150, inclusive	400,000
H . . . .	February 1, 1915	3301 to 3750, inclusive	450,000
I . . . .	February 1, 1916	3851 to 3950, inclusive	100,000
J . . . .	February 1, 1917	4251 to 4350, inclusive	100,000
K . . . .	February 1, 1918	4651 to 4750, inclusive	100,000
Total . . . . .			\$3,450,000

2. The remaining \$1,550,000 at par of said bonds, being in series, serial number and amount as follows:

Series.	Date of maturity.	Serial number.	Amount.
D . . . .	February 1, 1911	1501 to 1650, inclusive	\$150,000
E . . . .	February 1, 1912	2051 to 2200, inclusive	150,000
F . . . .	February 1, 1913	2601 to 2750, inclusive	150,000
G . . . .	February 1, 1914	3151 to 3300, inclusive	150,000
H . . . .	February 1, 1915	3751 to 3850, inclusive	100,000
I . . . .	February 1, 1916	3951 to 4250, inclusive	300,000
J . . . .	February 1, 1917	4351 to 4650, inclusive	300,000
K . . . .	February 1, 1918	4751 to 5000, inclusive	250,000
Total . . . . .			\$1,550,000

shall be retained by the Trustee and shall be certified and delivered to or upon the order in writing of the President or Vice-President of the Pipe Line Company from time to time by the Trustee, and shall be used by the Pipe Line Company only for the purpose of making additions to or extensions or betterments of the plant and property of the Pipe Line Company, and the acquisition of other property, real and personal.

The Trustee shall deliver any of the bonds in this subdivision 2 referred to upon resolution of the board of directors of the Pipe Line Company calling for such delivery, and further designating the series and numbers of the bonds desired, and stating that the bonds then called for are required for the purpose of making additions or extensions to, or betterments of the plant and property of the Pipe Line Company, or the acquisition of other property, real or personal, and also stating that said bonds, or the proceeds thereof, are to be used for one or more of said purposes; and a certified copy of such resolution, under the seal of the Pipe Line Company, shall be

1448 conclusive evidence to the Trustee of the truth of the matters therein set forth, and shall constitute full and sufficient authority to the Trustee to certify and deliver said bonds in the amounts stated therein to be so required; and the Trustee shall thereupon certify and deliver such amount of bonds to or upon the order in writing of the President or Vice-President of the Pipe Line Company.

In the event that any of said balance of bonds to be so retained by the Trustee should not be certified and delivered by the Trustee in accordance with the terms hereof prior to the date of maturity of said bonds, such bonds together with all attached coupons, upon resolution of the Board of Directors of the Pipe Line Company requesting such action shall at any time after such date of maturity be cancelled and destroyed in the presence of representatives duly appointed on behalf of the Pipe Line Company and of the Trustee, who shall duly certify both to the Pipe Line Company and to the Trustee the fact of such cancellation and destruction.

3. The Trustee shall not be in anywise responsible for the applica-

tion of any bonds or the proceeds of any bonds which may be certified and delivered by it in accordance herewith.

4. Before certifying or delivering any bonds, the coupons thereon then matured shall be cut off, cancelled, and delivered by the Trustee to the Pipe Line Company.

## Article II.

So long as no default shall be made in the payment of the principal or interest, or any part thereof, payable upon the bonds hereby secured as the same shall respectively become due and payable, or in the performance of the covenants herein contained to be performed by the Pipe Line Company, the Pipe Line Company shall be suffered and permitted by the Trustee to remain in full possession, enjoyment, and control of all the real estate, pipe lines, gas leases, leaseholds, plants, franchises, privileges and other property, real, personal, and mixed, hereby mortgaged and shall be permitted to manage the same and to receive, receipt for, take, use, enjoy and dispose of the rents, tolls, earnings, profits, revenues, and income thereof in the same manner and with the same effect as if this indenture had not been made.

It is further understood and agreed that nothing herein contained shall be so construed as to oblige or require the Pipe Line Company to continue to pay rentals for gas lands, gas wells, leases, rights 1449 of way, easements, or other property which by reason of failure or diminution of supply, abandonment of territory, lack or failure of piping facilities, or for any other reason, are no longer advantageous or necessary for the business of the Pipe Line Company, but in any and all such cases the Pipe Line Company may permit its estate or interest in any such property to lapse, and in case it is necessary or desirable that the Pipe Line Company shall execute and deliver evidence of its surrender or abandonment of any previously existing estate or right in or to any such property, said Trustee shall have full power and authority to unite with the Pipe Line Company in the execution and delivery of any releases or other writings requisite and necessary for such surrender or abandonment.

It is further understood and agreed that nothing herein contained shall be construed so as to oblige or require the Pipe Line Company to keep and maintain in their present location the gas wells, holders, machinery, fixtures and appliances now on any of the hereinbefore described leases or leaseholds, or appurtenances thereto, or hereafter to be placed thereon, or to become appurtenant thereto, for the production and sale of natural gas, but if, in order to maintain or increase the production and sale of gas or because they shall become worn out or unfit for use, or otherwise unnecessary or useless, or for any other reason whatsoever, it shall seem to the Pipe Line Company necessary or advantageous to take up or remove any casing or pipe from the gas wells, or any holders, machinery, fixtures, appliances or appurtenances, and to replace or use the same elsewhere, or to sell the same, the Pipe Line Company shall have full power and authority so to do; but in case the Pipe Line Company shall decide

to sell the same or any part thereof, it shall be lawful for the Pipe Line Company to make such sale at a fair and reasonable price; but any proceeds arising from any such sale, or from the sale of any other property mentioned or provided for in the preceding part of this section (except real estate) shall be placed and kept by the Pipe Line Company separate from its other funds, and in a separate account, and shall not be expended by the Pipe Line Company, otherwise than in extension, enlargement or improvement of the plant, equipment of facilities of the Pipe Line Company for the conduct of its business; and the Pipe Line Company shall, at the expiration of such period of six months next ensuing after the day and the date of any such sale, give to said Trustee full and accurate information, in writing, as to what, if any, changes have been made under the provisions hereof with respect to the property and estate hereby granted and conveyed, or intended so to be, by lapse, release, surrender, removal and re-location, sale or otherwise.

1450 The Pipe Line Company shall have the further right at all times, provided no default has been made, as aforesaid, to convey or exchange, freed from the incumbrances and trusts hereof all or any of the real estate now held or which shall hereafter be acquired by it, which shall no longer be either useful or necessary in the proper and judicious management and maintenance of its business or of the property hereby conveyed; but in no case shall any such sale or other disposition of such real estate be made without the express assent in writing of the Trustee; and said Trustee is hereby expressly authorized to release under its seal from the operation and effect of this mortgage any property so sold or exchanged, whether the consideration of such sale be wholly cash or partly cash and partly secured by a mortgage on the premises sold. The certificate of the President or Vice-President, under the seal of the Pipe Line Company, attested by the Secretary, certifying to the adoption of a resolution by the Board of Directors of the Pipe Line Company requesting such release, and stating that the value of the property taken in exchange, or the price obtained in case of sale, is the fair and reasonable value thereof, shall be sufficient evidence of the facts to warrant any such release and shall fully protect the Trustee in respect thereto; but any property so taken in exchange, if such there be, shall forthwith become and be subject to the lien of this mortgage as if the same had been originally included herein; and the net proceeds of real estate so released (if sold) shall be paid over and assigned by the Pipe Line Company to the Trustee, and shall be applied by the Trustee with all convenient speed, at the election of the Pipe Line Company, as follows: Such proceeds and the proceeds of all property subject to the lien of this mortgage taken by the exercise of the power of eminent domain shall either

(a) Be turned over to the Pipe Line Company, for application by it to the betterment or extension of the plants and property owned or controlled by it, upon presentation by the Pipe Line Company of a copy of a resolution by its Board of Directors, duly certified by its Secretary, requesting the payment to it of such proceeds and specifying the nature of the betterments or extensions of the plants and

property above mentioned and certifying that the value of such betterments or extensions is or will be at least equal to the amount of such proceeds so to be used therefor, so that the security of this mortgage shall not thereby be diminished; or else

(b) Shall be applied by the Trustee towards the purchase from time to time, and at such prices as the Trustee shall deem proper, and as shall be approved by the Pipe Line Company, of one or 1451 more of the bonds hereby secured, and all bonds so purchased and the coupons thereto appertaining shall be immediately cancelled and shall cease to be entitled to the benefit of the security hereby provided; or else

(c) If the property so sold or exchanged is at the time subject to any prior mortgage, the proceeds of such sale or exchange shall be applied as required by such prior mortgage to the extent of any such requirement, and the balance of such proceeds, if any, shall be applied as provided in (a) and (b) hereof.

It shall be no part of the duty of the Trustee to see to the application by the Pipe Line Company of the proceeds of any property released by the Trustee as herein provided.

### Article III.

The Pipe Line Company, its successors and assigns, shall and will, upon demand in writing of the Trustee, at any time, make, execute, acknowledge, and deliver all such further acts, deeds, and assurances in the law as may be reasonably advised or required of them, or either of them, for effectuating the intention of these presents, and for the better assuring and confirming unto the Trustee, its successors and assigns, upon the trusts and for the purposes herein expressed, all and singular the property, appurtenances, rights and franchises hereby mortgaged, whether now owned or possessed or hereafter acquired by the Pipe Line Company, its successors or assigns.

### Article IV.

The Pipe Line Company shall pay the principal of all the bonds issued under this mortgage when the same shall become due by the terms of the bonds, or by declaration, as herein provided, upon the surrender of the bonds, and it shall pay the interest thereon according to the terms of the bonds upon the presentation and surrender of the proper coupons for such interest and until the principal of the bonds is paid, without deduction from the principal or interest for any tax or taxes which the Pipe Line Company may be required to pay, deduct, or retain therefrom under any present or future law of the United States of America, or of any state, county, or municipality therein.

No bond shall be valid as secured under this mortgage or deed of trust except such as shall be authenticated by the certificate of the Trustee endorsed thereon, signed by an officer of the said Trustee.

1452 When and as the coupons attached to the said bonds mature and become payable they shall be paid by the Pipe Line Company and the coupons cancelled, and no purchase or sale of the said coupons, or any of them, and no advance or loan thereon, or redemption thereof, by or on behalf of, or at the request of, the Pipe Line Company, after the same shall have been detached from the bonds to which they belong, shall keep such coupons alive or preserve their lien upon the mortgaged property or franchises; but nothing herein contained shall be intended or construed to prevent the Pipe Line Company, by arrangement with the holder or holders of all the bonds then outstanding, from extending the time of payment of or changing the rate of interest on any or all of the said bonds; and any such extended or changed bond and the coupons thereon shall retain all the benefits and protection of this mortgage to the same extent as if such extension or change had not been made.

The Pipe Line Company hereby promises and agrees that it will pay, or cause to be paid, all taxes, rates, levies, or assessments which are or may be lawfully imposed, levied, or assessed upon any or all of the property, real and personal, rights, franchises, dividends, and privileges of the Pipe Line Company and will not permit any judgment or tax lien to remain upon the premises hereby mortgaged. Nothing herein contained shall prevent the Pipe Line Company, its successors and assigns, from contesting in good faith the validity of any tax, rate, levy or assessment which may be imposed upon the Pipe Line Company, its successors and assigns, or upon the bonds hereby secured or upon the said property and franchises of the Pipe Line Company, its successors or assigns.

In case the Pipe Line Company shall fail to pay any such tax or assessment, or shall suffer any such lien to remain unpaid and unsatisfied, then the said Trustee may pay, satisfy, and discharge the same, but shall not be bound so to do, and the Pipe Line Company shall repay to the Trustee all moneys paid by the Trustee for the discharge and satisfaction of any such taxes, assessments, or liens, as above provided, or which said Trustee shall be reasonably required or compelled to pay to protect or preserve the lien hereof, together with interest on such money at the rate of six (6) per cent. per annum from the date of the payments of the same, and the amounts so paid and interest thereon shall be a first lien upon the premises

1453 hereby conveyed superior to the lien of the bonds issued hereunder and shall be secured by these presents in like manner as the principal of said bonds.

The Pipe Line Company further agrees, to the extent that the property of natural gas companies is usually insured, to cause its buildings, machinery, and other property provided for use in connection with its plants and business, of the character usually insured by natural gas companies, to be insured against loss by fire, and to replace said property in the event of its destruction by fire or make substitutes therefor so that the capacity of the works to supply the demands upon them shall not be impaired; provided, however, that the Pipe Line Company, or any of its successors, may adopt such other



plan or method of protection against loss by fire, whether by the establishment of an insurance fund or otherwise, as may be approved by the board of directors of the Pipe Line Company.

#### Article V.

In case the Pipe Line Company shall make default in the payment of any interest accruing upon any one or more of the bonds hereby secured, or intended so to be, according to the terms thereof, and such default shall continue for three (3) months, or shall make default in the performance of any other of the covenants herein contained on its part to be performed, and any such default shall continue for six (6) months, then and in any such case the Pipe Line Company upon demand of the Trustee, shall and will forthwith surrender to the Trustee the actual possession, and the Trustee shall be entitled forthwith, with or without process of law, to enter into and upon and take possession of all and singular the property and premises hereby mortgaged, or intended so to be, and each and every part thereof, with all records, books, papers, and accounts of the Pipe Line Company, and to exclude the Pipe Line Company and its agents and servants wholly therefrom, and to have, hold and use the same, controlling, managing, and operating, by its superintendents, managers, receivers, and other agents or attorneys, the said property with the appurtenances, and conducting the business and operations thereof, and exercising the franchises appertaining thereto, and making from time to time, at the expense of the trust estate, all repairs and replacements, and such additions, alterations, extensions, and improvements thereof and thereto as may become necessary, or as to the said Trustee may seem proper and judicious; and may collect and receive all tolls, incomes, rents, issues, and profits of the same, and every part thereof, and after deducting all expenses of maintaining, managing and operating said property and conducting the business thereof, and 1454 of all repairs, replacements, additions, alterations, and improvements so made, and all payments made for taxes, levies, and assessments, insurance premiums, and other charges upon said property, or any part thereof, and as well just compensation for the services of the Trustee, its agents, clerks, servants, attorneys, and counsel, and their proper disbursements and expenses, shall apply the remainder of the moneys so received by it as follows: In case the principal moneys evidenced by the bonds secured by this mortgage shall not have become due, or shall not have been declared due, to the payment of the interest in default in the order of the maturity of the installments of such interest, and in case said principal moneys shall have become due, or have been declared due, then to the payment of the principal and accrued interest upon said bonds pro rata, without any preference or priority whatsoever, and without preference of interest over principal or of principal over interest.

#### Article VI.

In case the Pipe Line Company shall make default in the payment of any installment of interest upon the bonds secured hereby,



or any of them, and such default shall continue for three (3) months, or in the performance of any other of the covenants herein contained on its part to be performed, other than to pay the principal of the bonds hereby secured, at maturity thereof, and in case such default shall continue for six (6) months, then and in any such case, the Trustee may and if the holders of a majority in value of the outstanding bonds hereby secured shall so elect in writing, and notify the Trustee, the Trustee shall declare the whole principal of all the bonds hereby secured to be and payable, and the same shall thereupon immediately become due and payable, and it shall be the duty of the Trustee, upon request in writing, signed by the holders of a majority in value of said bonds then outstanding, and upon being indemnified to its satisfaction, to institute proper proceedings, at law or in equity, to enforce the lien hereby created, but the exercise by the Trustee of such right shall be subject to revocation or waiver by the holders of a majority in value of the bonds secured hereby, expressed in writing and served upon the Trustee.

Until such request in writing shall be made by the holders of a majority in value of the bonds then outstanding, the Trustee shall have full power and authority to commence and prosecute (but shall not be under any obligation to institute of its own motion) such proceedings at law or in equity from time to time as it may deem necessary 1455 and proper for the due protection and enforcement of the rights of the bondholders, or any of them, under these presents, subject, however, as to any such proceedings commenced by the Trustee, to the right of waiver or revocation on the part of the holders of a majority in value of the said bonds, as hereinabove provided.

The principal of the bonds secured hereby having become due at maturity, or as in this Article provided, and remaining unpaid, it shall be lawful for the Trustee, after entry as in Article V above provided, or without entry, to proceed to sell at public auction unto the highest bidder, all and singular the property and franchises hereby mortgaged, with the appurtenances that shall then be subject to the lien, operation, and effect of this indenture, and all benefit and equity of redemption of the Pipe Line Company, its successors or assigns, therein. Such sale shall be made by the Trustee, or by its attorney or attorneys, agent or agents, in the city of Kansas City, State of Kansas, after notice of the time and place of sale and of the property to be sold shall have been given by the Trustee, by publication thereof in one newspaper published in the city of Pittsburgh, state of Pennsylvania, in two newspapers published in the city of Philadelphia, state of Pennsylvania, and in two newspapers published in the city of New York, state of New York, once in each week for not less than six (6) consecutive weeks (together with such other notice, if any, as may be required by law), and the Trustee may, without further advertising such sale, adjourn the same from time to time for such period or periods *at is* may deem advisable, and after such sale shall execute, acknowledge and deliver to the purchaser or purchasers all necessary conveyances, deliveries and transfers, which shall be a bar against the Pipe Line Company, its suc-

cessors and assigns, and all persons claiming by, through, or under it, or them, with respect to any of the property so sold. The Pipe Line Company shall and will, if and when thereunto requested, thereafter make, execute, and deliver such deeds and other instruments as it shall be reasonably advised or required, to confirm and assure such title and ownership in and to such purchaser or purchasers. The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of all the property so sold, or any part thereof, for his or their purchase money; and the purchaser shall not be bound to see to the application of the purchase money.

Upon the making of any such sale the Trustee shall apply the proceeds thereof as follows:

1456 First. To the payment of the costs and expenses of such sale or sales, including a reasonable compensation to the Trustee, its agents, attorneys, and counsel, and all disbursements, expenses, liabilities, and advances made and incurred by the Trustee and all payments made by it for taxes, assessments, and insurance premiums, and other charges on the hereby mortgaged property.

Second. To the payment of the whole amount of principal and interest which shall then be owing or unpaid upon the said bonds or any of them, whether the said principal by the tenor of said bonds be then due or yet to become due, and in case of the insufficiency of such proceeds to pay in full the whole amount of principal and interest owing and unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them, respectively, without preference of one bond over any of the others, or of interest over principal or of principal over interest.

Third. To pay over the surplus, if any, on demand to the Pipe Line Company, its successors and assigns, or as any court of competent jurisdiction may direct.

#### Article VII.

The foregoing powers of entry and of sale are each and both of them remedies cumulative to all other remedies for the enforcement of this mortgage and the bonds secured thereby.

And it is expressly understood and agreed that no suit or proceeding for the foreclosure of this mortgage shall be instituted or prosecuted by the holder or holders of any bonds of the issue secured hereby until after the Trustee shall have first been requested in writing as hereinbefore provided, by the holders of a majority of said bonds then outstanding, to take such action, and an offer of reasonable indemnity against the cost, expense and liability to be incurred therein or thereby shall have been made to the Trustee and the Trustee shall have refused or failed to comply with such request for the period of thirty (30) days after the same shall have been made.

The Trustee shall have the right to require any person presenting any such request to deposit his bonds or coupons with the Trustee as proof of ownership, and to bind such bonds or coupons by the action to be taken in pursuance of such request, and such request shall be

without effect unless and until said bonds or coupons are so deposited in case such deposit shall be required, and unless and until the Trustee shall have been offered satisfactory indemnity.

1457 Any waiver by the Trustee or bondholders of any default of the mortgagor shall not extend to, or be taken to affect, and subsequent default, or to impair any rights arising thereunder as herein provided.

#### Article VIII.

At any sale or sales of the property hereby mortgaged, or any part thereof, whether made by virtue of any power herein granted, or by judicial authority, the Trustee may, and upon a written request from the holders of a majority in value of the bonds hereby secured and then outstanding shall, bid for and purchase, or cause to be bid for and purchased, the same, for and in behalf of all the holders of the bonds hereby secured and then outstanding who shall join in said request, in the proportion of the respective interests of such bondholders, at a price to be named in such written request. In any such case the bondholders making the request shall be liable for the amount so bid by the Trustee, and the Trustee may require a deposit of cash or other indemnity satisfactory to it as a condition precedent to its making the said bid; Provided, however, that any bondholders not parties to the said request when first made may become parties thereto, and entitled to the benefits and charged with the responsibilities thereof, by notifying the Trustee of their desire to do so, and complying with the terms required of those originally named in the request at any time before the said sale and purchase.

Upon any such sale, as above mentioned, the purchaser or purchasers shall be entitled to turn in, use and apply in making payment of the purchase money bidden upon such sale, the bonds or coupons secured hereby and then outstanding, reckoning such bonds or coupons for such purpose at a sum not exceeding that which shall be payable out of the net proceeds of such sale to the holder or holders of such bonds or coupons for his or their just share of the net proceeds of sale upon due apportionment of and accounting for such net proceeds applicable to the payment of such bonds and coupons, after allowing for the proportion of payment which may be required in cash for the costs and expenses of such sale, and other costs, charges, and expenses properly chargeable under the terms hereof, and if such share of net proceeds shall be less than the amount then due upon said bonds, and coupons, or any of them, such settlement or payment shall be made to the extent of the share of such net proceeds applicable thereto by receipting such amount upon said bonds and coupons and crediting the same thereon.

1458 And it is hereby declared and made a condition of this trust that all persons who shall claim any interest, benefit or advantage by virtue of this instrument, shall take the same subject to all the terms herein contained, and subject to all the rights and powers conferred by this instrument on the Trustee and on the holders of a majority in value of the bonds hereby secured.

## Article IX.

Upon the filing of a bill in equity or commencement of other judicial proceedings to enforce the rights of the Trustee and the bondholders under these presents, the Trustee shall be entitled to the appointment of a Receiver or Receivers of the property hereby mortgaged, and of the tolls, earnings, incomes, rents, issues and profits thereof pending such proceedings, with such powers as the court making such appointment shall confer. And, thereupon, upon the qualification of such Receiver or Receivers, all the estate, property, and rights conveyed by this mortgage shall vest in such Receiver or Receivers upon the trusts herein contained, and the Pipe Line Company shall forthwith assign, transfer, and set over to such Receiver or Receivers, as such all the property, estate, rights, and appurtenances described or embraced in or covered by this mortgage by proper deeds or other instruments necessary and proper for that purpose.

## Article X.

The Pipe Line Company irrevocably waives all benefit of any present or future valuation, stay, extension, or redemption laws and hereby irrevocably waives all right to have the mortgage property and franchises marshaled upon any sale thereof, and consents that the same may be sold as one property.

## Article XI.

The Pipe Line Company shall keep at the Trustee's Office, in the city of Philadelphia, bond transfer books, on which the ownership of any of said bonds shall upon request, be registered without expense to the holder. Each registration of a bond shall be noted on the bond, after which no transfer thereof can be made, except on said books, until registered payable to bearer, when the bond will become transferable by delivery until again registered in like manner in the name of the holder. For the purpose of administering the trust created by this mortgage, the person in whose name any bond is registered on said books shall be taken to be the holder and owner thereof.

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## Article XII.

The Trustee may, and upon the request of the Pipe Line Company shall, cancel and discharge the lien of these presents, and execute and deliver to the Pipe Line Company such deeds or discharges as shall be requisite to discharge the lien hereof, and to reconvey to or revest in the Pipe Line Company the estate and title hereby conveyed or intended to be, whenever all the bonds and coupons secured hereby, which shall have been duly issued, shall be paid and cancelled or destroyed, whether before or after maturity, which cancellation or destruction of bonds and coupons shall take place in the

presence of representatives duly appointed on behalf of the Pipe Line Company and of the Trustee, and upon receiving their certificate of the fact, and upon the payment of its charges and disbursements, including attorney and counsel fees, it shall be the duty of the Trustee to discharge said lien of record and reconvey to the Pipe Line Company the estate and title hereby conveyed or intended to be conveyed. And if at any time the Pipe Line Company shall become the holder and owner of all of the said bonds and unpaid coupons, and shall present the same to the Trustee and request the discharge of the lien of these presents, whether before or after maturity, and upon the payment of its charges and disbursements, including attorney and counsel fees, the Trustee shall cancel or destroy such bonds and coupons in the manner above provided in this Article, and shall discharge said lien of record and reconvey to the Pipe Line Company the estate and title hereby conveyed or intended to be conveyed, at the cost and charge of the Pipe Line Company.

#### Article XIII.

The Trustee herein named may be removed by any court of competent jurisdiction upon application of the owners of a majority in value of the outstanding bonds, and, in case of such removal, a new Trustee may be appointed by said court. In case of the resignation of the Trustee, a successor thereto may be appointed by the Pipe Line Company. Such successor, so appointed, shall, however, be subject to removal, without any cause assigned, upon the application to any court of competent jurisdiction by the holders of a majority in value of the outstanding bonds, and upon the said application a new Trustee may be appointed by said court in place of any successor thus chosen by the Pipe Line Company. In all cases aforesaid, the title hereby conveyed shall devolve upon and become vested in said new Trustee, subject to the trusts herein contained, and the Trustee herein named shall, in that case, make and execute all deeds, conveyances, and instruments necessary to vest and confirm in  
1460 said new Trustee such estates, rights, powers, and duties.

The word "Trustee," as used in this mortgage, shall be construed to mean the Trustee for the time being.

#### Article XIV.

For the debt and bonds secured hereby the Pipe Line Company is liable in personam, and any deficiency after exhausting the mortgage security may be enforced against the Pipe Line Company, but not against its officers, directors, or stockholders individually; and it is expressly agreed between the parties hereto, and by every person who shall take or hold any bond or bonds issued hereunder, that no persons who are now or may hereafter become officers, directors, or stockholders of the Pipe Line Company, shall in anywise be held liable for the payment of either the principal or interest of the bonds secured hereby, or any part thereof.

### Article XV.

If any bond issued hereunder shall be mutilated, lost, or destroyed, the Pipe Line Company may, upon terms and conditions prescribed by its board of directors, and after indemnity satisfactory to it and to the Trustee shall have been given, together with proof of such loss or destruction satisfactory to both the Pipe Line Company and the Trustee, and in the case of the mutilation of a bond, its surrender also to the Trustee for cancellation, issue and deliver in lieu thereof a new bond of like tenor, amount, and date, and bearing the same serial number, which bond, when so issued, shall be certified by the Trustee.

### Article XVI.

All rights, powers, and privileges herein retained to the Pipe Line Company shall inure to and may be exercised by the successors and assigns of the Pipe Line Company whether herein specifically so expressed or not.

### Article XVII.

It is hereby covenanted and agreed, and the within trust is accepted upon the express condition, that neither the said Trustee or any future Trustee or Trustees shall incur any responsibility or liability whatever in consequence of permitting or suffering the Pipe Line Company, or its successors, to retain or be in possession of the franchises, property, and estate hereby mortgaged, or agreed or intended so to be, or any part thereof, and to use and enjoy the same; nor shall the said Trustee or any future Trustee or Trustees, be or become responsible or liable in any way for the consequence of any  
1461 breach on the part of the Pipe Line Company of any of the covenants herein mentioned, or for any destruction, deterioration, loss, injury or damage which may be done or occur to the property hereby mortgaged or agreed or intended so to be, either by the Pipe Line Company or by its agents or servants. Neither the said Trustee nor any future Trustee or Trustees shall be answerable, except for its, his or their own willful default or misconduct, or be held liable for any misconduct, neglect, omission or wrongdoing of any persons, agents, or attorneys employed by it or them, unless chargeable with culpable negligence in selecting the same or continuing their employment. The said Trustee and its successor or successors may resign from the trust by notice in writing to the Pipe Line Company at least sixty (60) days before such resignation shall take effect, or such other time as may be accepted as sufficient notice, and upon the execution and delivery, if such shall be required, of a deed of conveyance or transfer to its or their successor or successors in the trust. The Trustee shall not be bound to attend to the recording of this mortgage or to take any action for effecting or perpetuating or keeping good the lien of these presents upon any portion of the hereby mortgaged property, or for securing the lien of this mort-



gage as a first lien upon any property hereafter acquired by the Pipe Line Company in any manner subject to the terms hereof; but the Pipe Line Company, its successors and assigns, shall, from time to time, do all things needful in that behalf. The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trust hereby created, and to reimbursement of all expenses properly incurred hereunder, including the expense of the proper prosecution or defense of any suit or proceeding instituted by or against it. Neither said Trustee nor any future Trustee or Trustees shall be under any obligation or duty to perform any act hereunder unless and until indemnified to its satisfaction, nor shall the Trustee be bound to recognize any person as a bondholder until his bonds and coupons are submitted to the Trustee for inspection, if required, and his title satisfactorily established.

The recitals in this instrument contained are made on the part of the Pipe Line Company, and the Trustee assumes no responsibility for the correctness thereof nor for the priority of lien of this mortgage.

#### Article XVIII.

Until said bonds intended to be hereby secured can be engraved or lithographed, the Pipe Line Company may execute and deliver printed bonds, for all or any part of the total authorized issue, substantially of the tenor of the bonds hereinbefore recited, except that no coupons shall be attached to said bonds and the same shall be for the payment of one thousand dollars (\$1,000), or any multiple thereof, as the Pipe Line Company may determine. All such printed bonds shall bear upon their face the words "Interim Bond," and shall be duly certified by the Trustee under this mortgage, in the same manner as the bonds hereinbefore described, and such certificate shall be conclusive evidence that the bond so certified has been duly issued hereunder, and that the holder is entitled to the benefit of the trust hereby created. Such printed bonds duly issued and certified hereunder, shall be exchanged for engraved or lithographed bonds to be issued hereunder, and upon any such exchange said printed bonds shall be forthwith cancelled by the Trustee. Until so exchanged, said printed bonds shall in all respects be entitled to the lien and security of these presents as bonds issued and certified hereunder, and interest when and as payable shall be paid and endorsed thereon.

#### Article XIX.

Eighteen (18) duplicates of this instrument are and have been signed, executed and delivered, and each and every one of them is and shall be taken, accepted and received by the parties named and recited herein, and by all public officers for recording deeds and mortgages, and by all other persons whatsoever in any business or proceedings whatever, legal or otherwise, based hereon or transacted in connection herewith, as an original.



In Witness Whereof, The Pipe Line Company has caused these presents to be signed by its President, and attested by its Secretary, and its corporate seal to be hereto set; and the Trustee has caused these presents to be signed by its Vice-President, and attested by its Secretary, and its corporate seal to be hereto set.

THE KANSAS CITY PIPE LINE  
COMPANY,

By S. T. BODINE, *President.*

Attest:

[SEAL.] W. F. DOUTHIRT, *Secretary.*

Signed, sealed and delivered in presence of

J. W. DANA.

E. L. BOOTH.

1463

FIDELITY TRUST COMPANY,

*Trustee,*

By WM. P. GEST,  
*Vice-President.*

Attest:

[SEAL.] JOS. McMORRIS, *Secretary.*

Signed, sealed and delivered in presence of

J. W. DANA.

CHAS. F. TOOMEY.

STATE OF PENNSYLVANIA,

*County of Philadelphia, ss:*

Be It Remembered That on this 20th day of January, 1908, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came S. T. Bodine, President of The Kansas City Pipe Line Company, a corporation, duly organized, incorporated and existing under the laws of the state of New Jersey, who is personally known to me to be such officer and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself the President thereof.

In Witness Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

[SEAL.]

F. H. MACMORRIS,  
*Notary Public.*

My commission expires February 12th, 1909.

STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

Be It Remembered, That on this 20th day of January, 1908, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came William P. Gest, Vice President of Fidelity Trust Company, a corporation, duly organized, incorporated and existing under the laws of the State of Pennsylvania, who is personally known to me to be such officer and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself the Vice President thereof.

1464 In Witness Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

I am not a stockholder, director or clerk of said Trust Co.

[SEAL.]

HOWARD McMORRIS,

*Notary Public.*

Commission expires January 16, 1909.

"B-1."

*Supplemental Mortgage.*

The Kansas City Pipe Line Company

to

Fidelity Trust Company.

Dated April 1, 1909.

Supplementing Mortgage Dated August 1, 1907.

Supplementing Indenture, or Mortgage, made this first day of April, 1909, between The Kansas City Pipe Line Company, a corporation of the State of New Jersey, hereinafter called the Pipe Line Company, party of the first part, and Fidelity Trust Company, a corporation of the Commonwealth of Pennsylvania hereinafter called the Trustee, party of the second part.

Under date of August 1, 1907, the Pipe Line Company executed and delivered to the Trustee a certain indenture, or mortgage, hereinafter called the mortgage of August 1, 1907, to secure a total authorized issue of \$5,000,000 first mortgage six per cent. gold bonds of the Pipe Line Company as therein described.

The mortgage of August 1, 1907, was duly filed and recorded, both as a mortgage on real estate and as a chattel mortgage, in the several counties in the State of Kansas where the properties of the Pipe Line Company are situate, as follows:

## Recorded as Real Estate Mortgage.

1465

County.	Date recorded.	Book.	Page.
Montgomery	January 28, 1908,	4 P. M. 74 of Mortgages	1
Wilson	January 29, 1908,	3 P. M. 67 of Mortgages	104
Neosho	January 30, 1908,	10 A. M. 69 of Mortgages	121
Allen	January 28, 1908,	3.30 P. M. 22 of Miscellaneous	1
Anderson	January 28, 1908,	9 A. M. E of Miscellaneous	323
Franklin	January 27, 1908,	5 P. M. 37 of Mortgages	1
Douglas	January 29, 1908,	5.40 P. M. 44	
Johnson	January 28, 1908,	3 P. M. 4 of Miscellaneous	1
Wyandotte	January 27, 1908,	11.44 A. M. 387 of Records	1

## Recorded as Chattel Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	January 28, 1908,	4 P. M. 1 of Chattel Mortgages	148
Wilson	January 29, 1908,	3 P. M. Z of Chattel Mortgages	139
Neosho	January 30, 1908,	10 A. M. Y of Chattel Mortgages	118
Allen	January 28, 1908,	3.30 P. M. 29 of Chattel Mortgages	136
Anderson	January 28, 1908,	9 A. M. 18 of Chattel Mortgages	138
Franklin	January 27, 1908,	5 P. M. R of Chattel Mortgages	166
Douglas	January 29, 1908,	5.40 P. M. R of Chattel Mortgages	148
Johnson	January 28, 1908,	3 P. M. 1 of Chattel Mortgages	263
Wyandotte	January 27, 1908,	11.42 A. M. 18 of Chattel Mortgages	154

The description of the Pipe Line Company's properties in the mortgage of August 1, 1907, contains the following:

#### XIV.

##### Altoona-Grabham 16-inch Line.

All that certain gas pipe line, constructed during the year 1907, starting at the southern terminus of the Kansas City 16-inch Line, which terminus is located at a point in Section 15, Township 29, Range 16, Wilson County, Kansas, and running thence in a generally southerly direction.

#### XV.

##### Rights of Way, Altoona-Grabham 16-inch Line.

To be scheduled and described in a Supplemental Mortgage to be hereafter executed.

Now therefore this supplemental indenture or mortgage witnesseth, that in order to more fully describe the Altoona-Grabham 16-Inch Line, and to schedule and describe the Rights of Way, Altoona-Grabham 16-Inch Line, the Pipe Line Company, in consideration of the premises, and of the acceptance and purchase thereof by all present and future holders of bonds issued and to be issued under the mortgage of August 1, 1907, and of the sum of one dollar, lawful money of the United States, to it paid by the Trustee, the receipt whereof is hereby acknowledged, has executed and delivered 1466 this supplemental indenture or mortgage, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, set over and mortgaged, and hereby does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, set over and mortgage unto the Trustee, its successors or assigns in the trust created by the mortgage of August 1, 1907.

\* \* \* \* \*

(Here follows a description of the property referred to in the foregoing paragraph, which is omitted pursuant to the stipulation of the parties.)

To have and to hold the same with the appurtenances unto the Trustee, its successors and assigns, to its and their only proper use, benefit and behoof forever; in trust, however, for the security of the holders of the bonds issued and to be issued under, and upon the terms of and under the conditions and agreements contained in the mortgage of August 1, 1907.

In the description of the Pipe Line Company's properties in the mortgage of August 1, 1907, the date and place of record of certain deeds and conveyances from various grantors to the Pipe Line Company were left blank for the reason that at the time of the execution

and delivery of the mortgage of August 1<sup>st</sup>, 1907, such deeds and conveyances had not yet been recorded. For the purpose of completing the records the Pipe Line Company now represents and states that such deeds and conveyances have been duly filed and recorded as follows:

\* \* \* \* \*

(Here follow descriptions of certain properties together — are omitted pursuant to the stipulation of the parties.)

The recitals and statements of facts in this indenture are made on the part of the Pipe Line Company and the Trustee assumes no responsibility for the correctness thereof.

Eighteen duplicates of this instrument are and have been signed, executed and delivered, and each and every one of them is and shall be taken, accepted and received by the parties named and recited herein, and by all public officers for recording deeds and mortgages, and by all other persons whatsoever in any business or proceedings whatever, legal or otherwise, based hereon or transacted in connection herewith, as an original.

1467 In Witness Whereof, the Pipe Line Company has caused these presents to be signed by its President, and attested by its Secretary, and its corporate seal to be hereto set; and the Trustee has caused these presents to be signed by its Vice-President, and attested by its Secretary, and its corporate seal to be hereto set.

[SEAL.]

THE KANSAS CITY PIPE  
LINE COMPANY,

By S. T. BODINE, *President*.

Attest:

[SEAL.] W. F. DOUTHIRT, *Secretary*.

Signed, sealed and delivered in presence of:

G. R. HEMMINGER.

W. G. GASTON.

FIDELITY TRUST COM-  
PANY, *Trustee*,

By WM. P. GEST, *Vice-President*.

Attest:

JOS. McMORRIS, *Secretary*.

Signed, sealed and delivered in presence of:

CHAS. F. TOOMEY.

WILLIAM E. STOKES.

E OF PENNSYLVANIA,

*County of Philadelphia, ss:*

It is Remembered, that on this 20th day of April, 1909, before the undersigned, a Notary Public, within and for the county and aforesaid, personally came S. T. Bodine, President of The Kan-  
city Pipe Line Company, a corporation, duly organized, incor-  
porated and existing under the laws of the State of New Jersey, who  
personally known to me to be such officer, and who is personally  
known to me to be the same person who executed, as such officer, the  
instrument of writing, and such person duly acknowledged  
execution of the same to be the act and deed of said corporation,  
of himself, the President thereof.

Witness Whereof, I have hereunto subscribed my name, and  
affixed my official seal, on the day and year last above written.

[SEAL.]

F. H. MACMORRIS,

*Notary Public.*

23/13.

My Commission Expires 3/23/13.

STATE OF PENNSYLVANIA,

*County of Philadelphia, ss:*

It is Remembered, That on this 20th day of April, 1909, before  
the undersigned, a Notary Public within and for the county and  
aforesaid, personally came William P. Gest, Vice-President of  
Trust Company, a corporation, duly organized, incorporated  
existing under the laws of the State of Pennsylvania, who is per-  
sonally known to me to be such officer and who is personally known  
to me to be the same person who executed, as such officer, the within  
instrument of writing, and such person duly acknowledged the ex-  
ecution of the same to be the act and deed of said corporation, and  
of himself the Vice-President thereof.

Witness Whereof, I have hereunto subscribed my name, and  
affixed my official seal, on the day and year last above written.

I am not a stockholder, director or clerk of said Trust Co.

[SEAL.]

WILLIAM E. STOKES,

*Notary Public.*

My commission expires 27 February 1913.

"B-2."

*Second Supplemental Mortgage.*

The Kansas City Pipe Line Company  
to  
Fidelity Trust Company.

Dated May 1, 1909.

Supplementing:

Mortgage Dated August 1, 1907.

Supplemental Mortgage Dated April 1, 1909.

Second Supplemental Indenture, or Mortgage, made this first day of May, 1909, between The Kansas City Pipe Line Company, a corporation of the State of New Jersey, hereinafter called the 1469 Pipe Line Company, party of the first part, and Fidelity Trust Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called the Trustee, party of the second part.

Under date of August 1, 1907, the Pipe Line Company executed and delivered to the Trustee a certain indenture, or mortgage, hereinafter called the mortgage of August 1, 1907, to secure a total authorized issue of \$5,000,000 first mortgage six per cent. gold bonds of the Pipe Line Company as therein described.

The mortgage of August 1, 1907, was duly filed and recorded, both as a mortgage on real estate and as a chattel mortgage, in the several counties in the State of Kansas where the properties of the Pipe Line Company are situate, as follows:



*Mortgage of August 1, 1907.*

## Recorded as Real Estate Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	January 28, 1908,	74 of Mortgages	1
Wilson	January 29, 1908,	67 of Mortgages	104
Neosho	January 30, 1908,	69 of Mortgages	121
Allen	January 28, 1908,	22 of Miscellaneous	1
Anderson	January 28, 1908,	E of Miscellaneous	323
Franklin	January 27, 1908,	37 of Mortgages	1
Douglas	January 29, 1908,	44	
Johnson	January 28, 1908,	4 of Miscellaneous	1
Wyandotte	January 27, 1908,	387 of Records	1

## Recorded as Chattel Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	January 28, 1908,	I of Chattel Mortgages	148
Wilson	January 29, 1908,	Z of Chattel Mortgages	139
Neosho	January 30, 1908,	Y of Chattel Mortgages	118
Allen	January 28, 1908,	29 of Chattel Mortgages	136
Anderson	January 28, 1908,	18 of Chattel Mortgages	138
Franklin	January 27, 1908,	R of Chattel Mortgages	166
Douglas	January 29, 1908,	5.40 P. M.	148
Johnson	January 28, 1908,	3 P. M.	263
Wyandotte	January 27, 1908,	18 of Chattel Mortgages	154

Under date of April 1, 1909, the Pipe Line Company executed and delivered to the Trustee a supplemental indenture, or mortgage, hereinafter called the supplemental mortgage of April 1, 1909.

The supplemental mortgage of April 1, 1909, was duly filed and recorded, both as a mortgage on real estate and as a chattel mortgage, in the several counties in the State of Kansas where the properties of the Pipe Line Company are situate, as follows:

1470

*Supplemental Mortgage of April 1, 1909.*

Recorded as Real Estate Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	April 29, 1909,	75 of Mortgages	65
Wilson	April 28, 1909,	68 of Mortgages	33
Neosho	April 28, 1909,	69 of Mortgages	544
Allen	April 28, 1909,	22 of Mortgages	101
Anderson	April 27, 1909,	E of Mortgages miscellaneous	392
			"A"
Franklin	April 27, 1909,	7 of N of Miscellaneous	14
Douglas	April 27, 1909,	47 of Mortgages	234
Johnson	April 26, 1909,	4 of Miscellaneous Record	233
Wyandotte	April 26, 1909,	418 of Mortgages	155

## Recorded as Chattel Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery .....	April 29, 1909,	2 P. M. I of Chattel Mortgages	150
Wilson .....	April 28, 1909,	11 P. M. 1 of Chattel Mortgages	141
Neesho .....	April 28, 1909,	9 A. M. Y of Chattel Mortgages	276
Allen .....	April 28, 1909,	3 P. M. 30 of Chattel Mortgages	139
Anderson .....	April 27, 1909,	1 P. M. 18 of Chattel Mortgages	139
Franklin .....	April 27, 1909,	11 A. M. "S" of Chattel Mortgages	140
Douglas .....	April 27, 1909,	8, 10 A. M. "R" of Chattel Mortgages	217
Johnson .....	April 26, 1909,	3 P. M. 1 of Chattel Mortgages	147
Wyandotte .....	April 26, 1909,	9 A. M. 19 of Chattel Mortgages	148

The mortgage of April 1, 1907, conveyed to the Trustee the properties therein described, and "also all other property, real, personal or mixed, now owned or which may be hereafter acquired or belong to the Pipe Line Company. Also all rents, tolls, earnings, profits, revenues, or income arising or to arise from the property now owned or hereafter acquired by the Pipe Line Company, or any part thereof. Also all licenses, patents and patent rights and processes now owned or used or which may hereafter be owned or used by the Pipe Line Company. Also all corporate, municipal, and other franchises, rights, easements, or immunities now owned or which may hereafter be owned, held, or enjoyed by or in any manner conferred upon the Pipe Line Company. It being the intention of the Pipe Line Company to include in this mortgage all of the franchises, rights, and privileges, and all of the property, real, personal, and mixed, which it now owns and which may be hereafter acquired by it."

The mortgage of April 1, 1907, also provided as follows:

### "Article III.

"The Pipe Line Company, its successors and assigns, shall and will, upon demand in writing of the Trustee, at any time, make, execute, acknowledge and deliver all such further acts, deeds, and  
1471 assurances in the law as may be reasonably advised or required of them, or either of them, for effectuating the intention of these presents, and for the better assuring and confirming unto the Trustee, its successors and assigns, upon the trusts and for the purposes herein expressed, all and singular the property, appurtenances, rights, and franchises hereby mortgaged, whether now owned or possessed or hereafter acquired by the Pipe Line Company, its successors or assigns."

Since the execution and delivery of the mortgage of August 1, 1907, and the supplemental mortgage of April 1, 1909, the Pipe Line Company has acquired certain additional properties, known as

### XVII.

Altoona-Grabham 16-inch Extension.

### XVIII.

Rights of Way, Altoona-Grabham 16-inch Extension.

Now therefore this second supplemental indenture or mortgage witnesseth, that for the purpose of effectuating the intention of the mortgage of August 1, 1907, and for the better assuring and confirming unto the Trustee, its successors and assigns, upon the trusts and for the purposes therein expressed, all and singular the property, appurtenances, rights, and franchises thereby mortgaged, or intended so to be, the Pipe Line Company, in consideration of the premises, and of the acceptance and purchase thereof by all present and future holders of bonds issued and to be issued under the mortgage of August 1, 1907, and of the sum of one dollar, lawful money of the United States, to it paid by the Trustee, the receipt whereof is hereby acknowledged, has executed and delivered this second supplemental

indenture or mortgage, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, set over and mortgaged, and hereby does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer set over and mortgage unto the Trustee its successors or assigns in the trust created by the mortgage of August 1, 1907,

\* \* \* \* \*

(Here follows a description of the properties under this second supplemental mortgage, which is omitted pursuant to the stipulation of the parties.)

To have and to hold the same with the appurtenances unto the Trustee, its successors and assigns, to its and their only proper use, benefit and behoof forever; in trust, however for the security of the holders of the bonds issued and to be issued under, and upon the terms of and under the conditions and agreements contained in the mortgage of August 1, 1907.

The recitals and statements of facts in this indenture are made on the part of the Pipe Line Company and the Trustee assumes no responsibility for the correctness thereof.

Eighteen duplicates of this instrument are and have been signed, executed and delivered, and each and every one of them is and shall be taken, accepted and received by the parties named and recited herein, and by all public officers for recording deeds and mortgages, and by all other persons whatsoever in any business or proceedings whatever, legal or otherwise, based hereon or transacted in connection herewith, as an original.

In Witness Whereof, the Pipe Line Company has caused these presents to be signed by its President, and attested by its Secretary, and its corporate seal to be hereto set; and the Trustee has caused these presents to be signed by its Vice-President, and attested by its Secretary, and its corporate seal to be hereto set.

**THE KANSAS CITY PIPE LINE  
COMPANY,**

By S. T. BODINE, *President*.

Attest:

[SEAL.] W. F. DOUTHIRT, *Secretary*.

Signed, seal and delivered in presence of

W. G. GASTON.

G. R. HEMMINGER.

FIDELITY TRUST COMPANY,

*Trustee,*

By WM. P. GEST, *Vice-President*.

Attest:

[SEAL.] JOS. McMORRIS, *Secretary*.

Signed, sealed and delivered in presence of

WASHN. HERSH.

S. W. COUSLEY.

STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

Be it Remembered, that on this 12th day of May, 1909, before me, the undersigned, a Notary Public, within and for the county and state aforesaid, personally came S. T. Bodine, President of The Kansas City Pipe Line Company, a corporation, duly organized, incorporated and existing under the laws of the State of New Jersey, 1473 who is personally known to me to be such officer and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself the President thereof.

In Witness Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written,

[SEAL.]

F. H. MacMORRIS,  
*Notary Public.*

My commission expires 3/23/13.

STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

Be it Remembered, That on this 12th day of May, 1909, before me, the undersigned, a Notary Public within and for the county and state aforesaid, personally came William P. Gest, Vice-President of Fidelity Trust Company, a corporation, duly organized, incorporated and existing under the laws of the State of Pennsylvania, who is personally known to me to be such officer and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself the Vice-President thereof.

In Witness Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

I am not a stockholder, director or officer of said Trust Co.

[SEAL.]

WASHINGTON HERSH,  
*Notary Public.*

My commission expires Jan. 5/13.

"B-3."

*Third Supplemental Mortgage.*

The Kansas City Pipe Line Company  
to  
Fidelity Trust Company.

Dated June 1, 1910.

Supplementing:

Mortgage Dated August 1, 1907.

Supplemental Mortgage Dated April 1, 1909.

Second Supplemental Mortgage Dated May 1, 1909.

1474 Third Supplemental Indenture, or Mortgage, made this first day of June, 1910, between The Kansas City Pipe Line Company, a corporation of the State of New Jersey, hereinafter called the Pipe Line Company, party of the first part, and Fidelity Trust Company, a corporation of the Commonwealth of Pennsylvania, hereinafter called the Trustee, party of the second part.

Under date of August 1, 1907, the Pipe Line Company executed and delivered to the Trustee a certain indenture, or mortgage, hereinafter called the mortgage of August 1, 1907, to secure a total authorized issue of \$5,000,000 first mortgage six per cent. gold bonds of the Pipe Line Company as therein described.

The mortgage of August 1, 1907, was duly filed and recorded, both as a mortgage on real estate and as a chattel mortgage, in the several counties in the State of Kansas where the properties of the Pipe Line Company are situate, as follows:



*Mortgage of August 1, 1907.*

## Recorded as Real Estate Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	January 28, 1908,	74 of Mortgages	1
Wilson	January 29, 1908,	67 of Mortgages	104
Neebo	January 30, 1908,	69 of Mortgages	121
Allen	January 28, 1908,	22 of Miscellaneous	1
Anderson	January 28, 1908,	E. of Miscellaneous	323
Franklin	January 27, 1908,	37 of Mortgages	1
Douglas	January 29, 1908,	44	
Johnson	January 28, 1908,	4 of Miscellaneous	1
Wyandotte	January 27, 1908,	387 of Records	1

## Recorded as Chattel Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	January 28, 1908,	1 of Chattel Mortgages	148
Wilson	January 29, 1908,	Z of Chattel Mortgages	139
Neebo	January 30, 1908,	Y of Chattel Mortgages	118
Allen	January 28, 1908,	29 of Chattel Mortgages	136
Anderson	January 28, 1908,	18 of Chattel Mortgages	138
Franklin	January 27, 1908,	R of Chattel Mortgages	166
Douglas	January 29, 1908,	R of Chattel Mortgages	148
Johnson	January 28, 1908,	1 of Chattel Mortgages	263
Wyandotte	January 27, 1908,	18 of Chattel Mortgages	154

*Renewal of Chattel Mortgage.*

The foregoing Chattel Mortgages was renewed by filing of affidavits of renewal in the manner provided by law in the several counties where said Chattel Mortgage is of record. Such affidavits were filed in the several counties on the dates and entered in the records indicated below:

1475

County.	Date of filing affidavit.	Book.	Page.
Montgomery	January 10, 1910,	I of Chattel Mortgages	148
Wilson	January 10, 1910,	Z of Chattel Mortgages	139
Neosho	January 10, 1910,	Y of Chattel Mortgages	118
Allen	January 10, 1910,	31 of Chattel Mortgages	137
Anderson	January 10, 1910,	18 of Chattel Mortgages	139
Franklin	January 10, 1910,	R of Chattel Mortgages	166
Douglas	January 10, 1910,	R of Chattel Mortgages	148
Johnson	January 10, 1910,	2 of Chattel Mortgages	135
Wyandotte	January 13, 1910,	20 of Chattel Mortgages	151

Under date of April 1, 1909, the Pipe Line Company executed and delivered to the Trustee a supplemental indenture, or mortgage, hereinafter called the supplemental mortgage of April 1, 1909.

The supplemental mortgage of April 1, 1909, was duly filed and recorded, both as a mortgage on real estate and as a chattel mortgage, in the several counties in the State of Kansas where the properties of the Pipe Line Company, are situate, as follows:

*Supplemental Mortgage of April 1, 1909.*

Recorded as Real Estate Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	April 29, 1909,	2 P. M.	75 of Mortgages
Wilson	April 28, 1909,	11 P. M.	68 of Mortgages
Neosho	April 28, 1909,	9 A. M.	69 of Mortgages
Allen	April 28, 1909,	3 P. M.	22 of Mortgages
Anderson	April 27, 1909,	1 P. M.	E of Mortgages miscellaneous
Franklin	April 27, 1909,	11 A. M.	7 of N of Miscellaneous
Douglas	April 27, 1909,	8.10 A. M.	47 of Mortgages
Johnson	April 26, 1909,	3 P. M.	4 of Miscellaneous Record
Wyandotte	April 26, 1909,	9 A. M.	418 of Mortgages
			{ 392 } "A"
			14
			235
			233
			155

## Recorded as Chattel Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery .....	April 29, 1909,	2 P. M.	150
Wilson .....	April 28, 1909,	11 P. M.	141
Neosho .....	April 28, 1909,	9 A. M.	276
Allen .....	April 28, 1909,	3 P. M.	139
Anderson .....	April 27, 1909,	1 P. M.	139
Franklin .....	April 27, 1909,	11 A. M.	140
Douglas .....	April 27, 1909,	8, 10 A. M.	217
Johnson .....	April 26, 1909,	3 P. M.	147
Wyandotte .....	April 26, 1909,	9 A. M.	148
		I of Chattel Mortgages	
		1 of Chattel Mortgages	
		Y of Chattel Mortgages	
		30 of Chattel Mortgages	
		18 of Chattel Mortgages	
		"S" of Chattel Mortgages	
		"R" of Chattel Mortgages	
		1 of Chattel Mortgages	
		19 of Chattel Mortgages	

*Renewal of Chattel Mortgage.*

The foregoing Chattel Mortgage was renewed by the filing of affidavits of renewal in the manner provided by law in the several counties where said Chattel Mortgage is of record. Such affidavits were filed in the several counties on the dates and entered in the records indicated below:

1476

County.	Date of filing affidavit.	Book.	Page.
Montgomery .....	January 15, 1910,	I of Chattel Mortgages	150
Wilson .....	January 15, 1910,	1 of Chattel Mortgages	141
Neosho .....	January 15, 1910,	Y of Chattel Mortgages	276
Allen .....	January 15, 1910,	31 of Chattel Mortgages	137
Anderson .....	January 15, 1910,	18 of Chattel Mortgages	140
Franklin .....	January 15, 1910,	S of Chattel Mortgages	140
Douglas .....	January 15, 1910,	R of Chattel Mortgages	217
Johnson .....	January 15, 1910,	2 of Chattel Mortgages	135
Wyandotte .....	January 13, 1910,	20 of Chattel Mortgages	151

The mortgage of April 1, 1907, conveyed to the Trustee the properties therein described, and "also all other property, real, personal or mixed, now owned or which may be hereafter acquired or belong to the Pipe Line Company. Also all rents, tolls, earnings, profits, revenues, or income arising or to arise from the property now owned or hereafter acquired by the Pipe Line Company, or any part thereof. Also all licenses, patents and patent rights and processes now owned or used or which may hereafter be owned or used by the Pipe Line Company. Also all corporate, municipal, and other franchises, rights, easements, or immunities now owned or which may hereafter be owned, held, or enjoyed by or in any manner conferred upon the Pipe Line Company. It being the intention of the Pipe Line Company to include in this mortgage all of the franchises, rights, and privileges, and all of the property, real, personal, and mixed, which it now owns and which may be hereafter acquired by it."

The mortgage of April 1, 1907, also provided as follows:

#### "Article III.

"The Pipe Line Company, its successors and assigns, shall and will, upon demand in writing of the Trustee, at any time, make, execute, acknowledge, and deliver all such further acts, deeds, and assurances in the law as may be reasonably advised or required of them, or either of them, for effectuating the intention of these presents, and for the better assuring and confirming unto the Trustee, its successors and assigns, upon the trusts and for the purposes herein expressed, all and singular the property, appurtenances, rights, and franchises hereby mortgaged, whether now owned or possessed or hereafter acquired by the Pipe Line Company, its successors or assigns."

1477 Subsequent to the execution and delivery of the mortgage of August 1, 1907, and the supplemental mortgage of April 1, 1909, the Pipe Line Company acquired certain additional properties, known as

#### XVII.

Altoona-Grabham 16-Inch Extension.

#### XVIII.

Rights of Way, Altoona-Grabham 16-Inch Extension

and, under date of May 1st, 1909, executed and delivered to the Trustee a second supplemental indenture, or mortgage, hereinafter called the second supplemental mortgage of May 1, 1909, duly conveying the same to the Trustee.

The second supplemental mortgage of May 1, 1909, was duly filed and recorded, both as a mortgage on real estate and as a chattel mortgage, in the several counties in the State of Kansas where the properties of the Pipe Line Company are situate, as follows:

*Second Supplemental Mortgage of May 1, 1909.*

## Recorded as Real Estate Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	June 1, 1909, 11.00 A. M.	75 of Mortgages	73
Wilson	June 1, 1909, 4.15 P. M.	68 of Mortgages	41
Neosho	June 3, 1909, 3.00 P. M.	69 of Mortgages	582
Allen	June 3, 1909, 9.00 A. M.	22 of Miscellaneous	105
Anderson	June 2, 1909, 3.30 P. M.	E of Miscellaneous	402
Franklin	May 28, 1909, 11.20 A. M.	7 of Miscellaneous	32
Douglas	May 28, 1909, 3.00 P. M.	45 of Mortgages	263
Johnson	May 27, 1909, 3.40 P. M.	4 of Miscellaneous Rec.	257
Wyandotte	May 27, 1909, 9.10 A. M.	418 of Records (Mort.)	160

## Recorded as Chattel Mortgage.

County.	Date recorded.	Book.	Page.
Montgomery	June 1, 1909, 11.00 A. M.	I of Chattel Mortgages	150
Wilson	June 1, 1909, 4.15 P. M.	1 of Chattel Mortgages	142
Neosho	June 3, 1909, 3.00 P. M.	Y of Chattel Mortgages	286
Allen	June 3, 1909, 9.00 A. M.	30 of Chattel Mortgages	139
Anderson	June 2, 1909, 3.30 P. M.	18 of Chattel Mortgages	139
Franklin	May 28, 1909, 11.20 A. M.	S of Chattel Mortgages	210
Douglas	May 28, 1909, 3.00 P. M.	R of Chattel Mortgages	222
Johnson	May 27, 1909, 3.40 P. M.	1 of Chattel Mortgages	195
Wyandotte	May 27, 1909, 9.10 A. M.	19 of Chattel Mortgages	148



*Renewal of Chattel Mortgage.*

The foregoing Chattel Mortgage was renewed by the filing of affidavits of renewal in the manner provided by law in the several counties where said Chattel Mortgage is of record. Such affidavits were filed in the several counties on the dates and entered in the records indicated below:

County.	Date of filing affidavit.	Book.	Page.
1478			
Montgomery .....	January 15, 1910,	I of Chattel Mortgages	150
Wilson .....	January 15, 1910,	1 of Chattel Mortgages	142
Neosho .....	January 15, 1910,	Y of Chattel Mortgages	286
Allen .....	January 15, 1910,	31 of Chattel Mortgages	137
Anderson .....	January 15, 1910,	18 of Chattel Mortgages	140
Franklin .....	January 15, 1910,	S of Chattel Mortgages	210
L Douglas .....	January 15, 1910,	R of Chattel Mortgages	222
Johnson .....	January 15, 1910,	2 of Chattel Mortgages	135
Wyandotte .....	January 13, 1910,	20 of Chattel Mortgages	151

Since the execution and delivery of the second supplemental mortgage of May 1, 1909, the Pipe Line Company has acquired certain additional properties, known as

XIX.

North Petrolia 16-Inch Line.

XX.

Rights of Way, North Petrolia 16-Inch Line. .

XXI.

Grabham-Vilas 16-Inch Line.

XXII.

Rights of Way, Grabham-Vilas 16-Inch Line.

XXIII.

South Grabham 16-Inch Line.

XXIV.

Rights of Way, South Grabham 16-Inch Line.

XXV.

Grabham Compressor Station Extension.

XXVI.

Vilas Compressor Station.

Now therefore this third supplemental indenture or mortgage witnesseth, that for the purpose of effectuating the intention  
1479 of the mortgage of August 1, 1907, and for the better assuring and confirming unto the Trustee, its successors and assigns, upon the trusts and for the purposes therein expressed, all and singular the property, appurtenances, rights, and franchises thereby mortgaged, or intended so to be, the Pipe Line Company, in consideration of the premises, and of the acceptance and purchase thereof by all present and future holders of bonds issued, and to be issued under the mortgage of August 1, 1907, and of the sum of one dollar, lawful money of the United States, to it paid by the Trustee, the receipt whereof is hereby acknowledged, has executed and delivered this third supplemental indenture or mortgage, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, set over and mortgaged and hereby does grant,

bargain, sell, alien, remise, release, convey, confirm, assign, transfer, set over and mortgage unto the Trustee, its successors or assigns in the trust created by the mortgage of August 1, 1907,

\* \* \* \* \*

(Here follows a description of the properties under this third supplemental mortgage, which is omitted pursuant to the stipulation of parties.)

To have and to hold the same with the appurtenances unto the Trustee, its successors and assigns, to its and their only proper use, benefit and behoof forever; in trust, however, for the security of the holders of the bonds issued and to be issued under, and upon the terms of and under the conditions and agreements contained in the mortgage of August 1, 1907.

The recitals and statements of facts in this indenture are made on the part of the Pipe Line Company and the Trustee assumes no responsibility for the correctness thereof.

Eighteen duplicates of this instrument are and have been signed, executed and delivered, and each and every one of them is and shall be taken, accepted and received by the parties named and recited herein, and by all public officers for recording deeds and mortgages, and by all other persons whatsoever in any business or proceedings whatever, legal or otherwise, based hereon or transacted in connection herewith, as an original.

In Witness Whereof, the Pipe Line Company has caused these presents to be signed by its President, and attested by the Secretary, and its corporate seal to be hereto set; and the Trustee has caused these presents to be signed by its Vice-President, and attested  
1480 by its Secretary, and its corporate seal to be hereto set.

THE KANSAS CITY PIPE LINE  
COMPANY,

By S. T. BODINE, *President*.

Attest:

[SEAL.] W. F. DOUTHIRT, *Secretary*.

Signed, sealed and delivered in presence of  
W. G. GASTON.  
G. R. HEMMINGER.

FIDELITY TRUST COMPANY,

*Trustee,*

By WM. P. GEST, *Vice-President*.

Attest:

[SEAL.] JOS. McMORRIS, *Secretary*.

Signed, sealed and delivered in presence of  
CHAS. F. TOOMEY.  
S. W. COUSLEY.

STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

Be it Remembered, that on this 29th day of June, 1910, before me, the undersigned, a Notary Public, within and for the county and state aforesaid, personally came S. T. Bodine, President of The Kansas City Pipe Line Company, a corporation, duly organized, incorporated and existing under the laws of the State of New Jersey, who is personally known to me to be such officer and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself the President thereof.

In Witness Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

[SEAL.]

EDWIN J. MOLE,  
*Notary Public.*

My commission expires January 28, 1911.

1481 STATE OF PENNSYLVANIA,  
*County of Philadelphia, ss:*

Be it Remembered, that on this 29th day of June, 1910, before me, the undersigned, a Notary Public, within and for the county and state aforesaid, personally came William P. Gest, Vice-President of Fidelity Trust Company, a corporation, duly organized, incorporated and existing under the laws of the State of Pennsylvania, who is personally known to me to be such officer and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation, and of himself the Vice-President thereof.

In Witness Whereof, I have hereunto subscribed my name, and affixed my official seal, on the day and year last above written.

I am not a stockholder, director or officer of said Trust Co.

[SEAL.]

DANIEL J. GREEN,  
*Notary Public.*

My commission expires at the end of the next Session of the Senate.

Exhibit "C" is identical with Exhibit 1013 referred to in the Statement of the Evidence.

Endorsed: Intervening Petition of Kansas City Pipe Line Co., filed in the District Court on March 24, 1913. Morton Albaugh, Clerk.

1482 The opinion of the United States District Court (Judge Marshall) dated 6/5/13 on Petition of Attorney General of Kansas for an Order directing Federal Court Receivers to surrender possession of property to State Court Receivers, in cases of John L. McKinney et al. v. Kansas Natural, No. 1351, Equity, and Fidelity Title & Trust Company v. Kansas Natural et al. No. 1-N, Equity, is omitted for the reason it is referred to and not to be printed. (206 Fed., 772.)

1483 *Answer of John L. McKinney and the Fidelity Title & Trust Company to the Intervening Petition of the Kansas City Pipe Line Company.*

And now come said plaintiffs, John L. McKinney and The Fidelity Title & Trust Company, by their solicitor, Charles Blood Smith and in answer to the intervening petition filed by the Kansas City Pipe Line, admits that Exhibit "B," attached to said petition, is a copy of the mortgage executed by the Kansas City Pipe Line Company to the Fidelity Trust Company, and that Exhibit "C" is a copy of the lease entered into between the Kansas City Pipe Line Company and the defendant, The Kansas Natural Gas Company, and that Exhibit "A," attached to said petition, substantially shows the ownership of various properties entered into and embraced in the Pipe Line system of the defendant, The Kansas Natural Gas Company, with exception of such extensions and betterments and improvements that have been made by the Receivers in this case since their appointment; and said plaintiffs further answering say that the relationship existing between the Kansas City Pipe Line and the defendant, The Kansas Natural Gas Company is fully set forth and disclosed in the intervening petition filed by the Fidelity Title & Trust Company in this cause, and especially in the 6th, 12th, 13th, 18th, 19th, 20th and 21st paragraphs of said intervening petition, to which paragraphs these plaintiffs refer and make the same a part of this, their answer, as if the same was fully and completely set forth

1484 herein; and these plaintiffs further answering say that after the construction of said Kansas City Pipe Line, as described in said intervening petition, the same was leased to the defendant, The Kansas Natural Gas Company, and said line has ever since its construction, been operated by the Kansas Natural Gas Company as a part of its system under the terms of said lease, until the appointment of the Receivers in this case. The Kansas Natural Gas Company at all times and now is the owner of one-half or fifty per cent of the capital stock of said Kansas City Pipe Line Company.

## II.

And said plaintiff further answering said intervening petition say that said petition does not state facts sufficient to constitute a cause of action in favor of said intervenor, or entitle it to any legal or equitable relief whatsoever, and therefore said petition should be stricken from the files of this cause.

## III.

And these plaintiffs further answering said intervening petition say that by reason of the special appearance of said intervening petitioner, the Kansas City Pipe Line Company, who appears solely and only for the purpose of moving the court to make allowances and payment under the terms of said lease, said petition should be denied and dismissed for the reason, that by the third subdivision of said lease it is provided that any payments of rentals made by the Kansas Natural Gas Company shall be made directly to the Fidelity Trust Company, the Trustee, under the mortgage executed by said Kansas City Pipe Line Company.

## IV.

And said plaintiffs further answering said intervening petition say that the funds in possession of the Court, out of which said intervenor demands payment of said rentals, are fund- sequestered by this Court for the marshaling of assets under the creditors' bill filed by the plaintiffs in this cause; that upon the appointment of Receivers in this cause said Receivers did not by virtue of their appointment become liable upon any covenants or agreements made by the Kansas Natural Gas Company, and that said Receivers upon such appointment are and were entitled to a reasonable time to elect, whether they would adopt the provisions of said lease and thereby make it their own, or whether owing to the insolvency of said Kansas

Natural Gas Company and its inability to pay the rentals 1485 fixed under the terms of said lease, they would refuse to confirm said lease and surrender said property to said Kansas City Pipe Line upon its demand; and these plaintiffs allege on information and belief, that said Receivers have as yet made no election, whether they would adopt the provisions of said lease or not, and that under the peculiar circumstances of this litigation they have not as yet had a reasonable time to determine what action they would take with reference thereto.

Wherefore, these plaintiffs submit that it would be unjust and inequitable to grant the prayer of said intervening petition, and that said petition should be dismissed with costs.

JOHN L. MCKINNEY AND  
THE FIDELITY TITLE &  
TRUST COMPANY,

By CHAS. BLOOD SMITH,  
*Their Solicitor.*

Endorsed: Filed in the District Court on June 17, 1913. Morton Albaugh, Clerk.

1486

Equity.

No. 1351.

JOHN L. MCKINNEY and THE FIDELITY TITLE & TRUST COMPANY,  
Complainants,

VS.

KANSAS NATURAL GAS COMPANY, Respondents; KANSAS CITY PIPE  
LINE COMPANY, Intervenor.

Equity.

No. 1-N.

FIDELITY TITLE &amp; TRUST COMPANY, Complainant,

VS.

KANSAS NATURAL GAS COMPANY and THE DELAWARE TRUST COM-  
PANY, Respondents; Kansas City Pipe Line Company, Inter-  
venor.

*Order.*

(Order Directing Receivers to Turn Over to State Court Receivers  
Property of Kansas Natural Gas Co. and Certain Moneys, etc.,  
Jany. 24, 1914.)

Now comes the Fidelity Title & Trust Company by its solicitor,  
Charles Blood Smith, and asks leave to file a petition asking that the  
net income of the receivership be applied to the payment of the first  
mortgage bonds of the Kansas Natural Gas Company. Leave is  
granted and said petition is filed in each and both of the said cases  
above entitled.

Now come the Kansas City Pipe Line Company and the Fidelity  
Trust Company by their solicitor, J. W. Dana, and pursuant to an  
order made on the 23rd day of January, A. D. 1914, files their  
amended and supplemental petition, answer and cross-bill in each of  
the above entitled cases. The court directs that the same be filed,  
and the same are now and here filed.

This cause came on for further hearing on the motion of John S.  
Dawson, attorney general of the state of Kansas, and John M.  
Landon and R. S. Litchfield, as receivers of Kansas Natural Gas

Company, appointed by the district court of Montgomery  
1487 county, Kansas, in an action pending therein, wherein the  
State of Kansas is plaintiff and the Independence Gas Com-  
pany, et al., are defendants, said motion being filed on the 23rd day  
of January, 1914, and the court being fully advised in the premises,  
finds that the property of Kansas Natural Gas Company, located in  
Kansas, Missouri and Oklahoma, constitutes one system and should



be operated as a unit; the court further finds that the receivers appointed by the district court of Montgomery county, Kansas aforesaid, are now in possession of all the physical property of said company located in the state of Kansas, under the order of this court made on the 30th day of December, 1913, and that in order to operate the property of said Kansas Natural Gas Company it is also necessary that said receivers should be in possession of the property of said company located in Missouri and Oklahoma.

It is therefore ordered that the receivers of this court be and they are hereby directed to transfer and deliver to John M. Landon and R. S. Litchfield as said receivers all property of Kansas Natural Gas Company now in their possession and under their control in the states of Missouri and Oklahoma, to be retained, operated and controlled by said John M. Landon and R. S. Litchfield as receivers, or their successors, as long as they shall retain and operate the property of said Kansas Natural Gas Company located in the state of Kansas; unless this court shall earlier resume possession; and when they shall cease to operate the property of said company in Kansas, then all the property of Kansas Natural Gas Company then in their possession and undisposed of in Kansas, Oklahoma and Missouri shall be delivered to the receivers of this court; provided, that said receivers of the district court of Montgomery county, Kansas, shall pay all the operating expenses in Oklahoma and Missouri, including the payment of rentals under The Marnet Mining Company lease, executed to Kansas Natural Gas Company, and all valid taxes and assessments; all oil and gas lease rentals and for drilling all wells called for by said leases or required by law, all of said lease rental payments to be made at least ten (10) days before due under the terms of the lease and the receivers of this court notified of said payments when made, and all other payments, to be made when due; said receivers to be notified at the time of said payments; none of said oil and gas leases or property to be canceled, surrendered, abandoned or disposed of except by order of this court; and the delivery of the possession of the property of Kansas Natural Gas Company in Missouri and Oklahoma to the receivers of the district court of Montgomery county, Kansas, shall be upon the further condition that said receivers of the district court of Montgomery county, Kansas, shall accept said property and give a written receipt for the same, which shall be filed with the clerk of this court within five (5) days from this date, together with a certified copy of an order of the district court of Montgomery County, Kansas, or a judge thereof, authorizing the acceptance of said property under the terms of this order, and directing the receivers of that court to give a written receipt therefor as above provided.

It is further ordered to complete and effectuate the purposes of the decree of June 5, 1913, and the mandate of the court of appeals spread upon the records in this cause on the 30th day of December, 1913, that the receivers of this court are hereby directed to deliver and pay forthwith unto John M. Landon and D. S. Litchfield, as receivers aforesaid, all the money and funds now in their possession, or that may come into their possession by virtue of their receiver-

ship, except the sum of seventy-five thousand (\$75,000.00) dollars, which is to be retained by the receivers of this court subject to the further orders of this court.

It is further ordered that said money and funds now or hereafter in the possession of the receivers of this court, shall be delivered and transferred to the receivers of the district court of Montgomery county, Kansas, subject to the right of any and all claimants to said fund, or any part thereof, or any lien upon said money and funds to assert their claims or priorities, if any, upon any or all of said funds in the district court of Montgomery county, Kansas, or upon the claim that said money and funds constitute the net earnings and income of said receivership in this court, as well as the ancillary receiverships in the Eastern district of Oklahoma and the Western district of Missouri, and said claimant or claimants shall be entitled to reserve all of their rights, claims and demands to all of said funds or the net income and earnings of said receivership under and by virtue of the proceedings in both of the causes pending in this court against Kansas Natural Gas Company against all parties to the record in said proceedings, their successors and assigns, and said claimant or claimants shall not waive or relinquish their claims or rights, if any, to the net earnings and income of said receivership that now have or may hereafter come into the possession of the receivers of this court by reason of any of the proceedings had or done in this court against any of the parties to either of said causes, or their successors and assigns.

It is further ordered that all books, papers, cancelled checks, vouchers and documents of the Kansas Natural Gas Company, and of the receivers of this court, be delivered to the receivers of the district court of Montgomery county, Kansas, to be by them 1489 kept and preserved, and to at all reasonable time be subject to the examination and inspection of the receivers of this court.

Thereupon in open court comes J. W. Dana as solicitor for the Kansas City Pipe Line Company and the Fidelity Trust Company and serves notice of his appeal to the United States circuit court of appeals for this the eighth circuit, which said appeal in open court is allowed, and the appeal bond is hereby fixed at the sum of two hundred (\$200.00) dollars. But the said appeal and the allowance of said bond and the approval thereof will not serve nor be construed to be a supersedeas of this decree or any part thereof. This order denying a supersedeas shall be regarded and will be as binding until vacated, modified or otherwise controlled by the said United States circuit court of appeals for this the eighth circuit in open session and not by any one judge thereof. And provided further that said order denying the supersedeas shall not be modified, vacated or otherwise controlled except by written motion filed with the clerk of the said United States circuit court of appeals within ten (10) days from this date and brought on for hearing at once or as soon as said circuit court of appeals will give hearing thereon, on three (3) days' notice in writing by United States mail stating that the said motion is on file and stating the day when the same will be heard, which

notices will be addressed to Charles Blood Smith at Topeka, Kansas, solicitor for complainant; Chester I. Long of Wichita, Kansas, John H. Atwood of Kansas City, Missouri, O. P. Ergenbright and T. S. Salathiel of Independence, Kansas, solicitors for the said receivers of the district court of Montgomery county, Kansas; John S. Dawson, attorney general of Kansas, at Topeka, Kansas; J. B. Tomlinson of Independence, Kansas, solicitor for the Delaware Trust Company; John J. Jones, Chanute, Kansas, and Judge John F. Philips, Kansas City, Missouri, solicitors for the receivers of this court. When the said motion seeking to modify, vacate or otherwise control so much of the foregoing as relates to the supersedeas shall have been filed, either the said J. W. Dana or any other solicitor in this decree named is given the right to move the said circuit court of appeals for a time and place of hearing, and in which event the said party thus moving will give the same notice to the same parties by the same methods as hereinbefore recited, namely, by United States mail. In the meantime, checks for said moneys as hereinbefore provided for payable to the said state court receivers will not be delivered by the receivers of this court, but otherwise the receivers of this court will, without delay, execute the foregoing orders.

The court makes the following allowances, namely,

1490 George F. Sharitt, has heretofore been paid by orders of this court \$5,000.00 and he is allowed the further sum of \$10,500.00; C. F. Holmes has heretofore been paid the sum of \$5,000.00 on account as receiver and is now allowed the additional sum of \$10,500.00.

Eugene Mackey, a receiver, has heretofore been allowed the sum of \$5,000.00, and is hereby allowed the additional sum of \$5,000.00.

John F. Philips has heretofore been allowed the sum of \$1,000.00 and he is now allowed the additional sum of \$5,000.00, as his compensation as solicitor for the receivers.

John J. Jones, as solicitor for receivers, has heretofore been allowed the sum of \$6,500.00, and he is hereby allowed the additional sum of \$9,000.00.

F. J. Fritch is allowed the sum of \$1,000.00 for legal services rendered to the receivers.

A. B. Macbeth is allowed on account salary \$400.00.

Charles Blood Smith, solicitor for complainants, has heretofore been allowed the sum of \$4,500.00, and he is now allowed the additional sum of \$5,000.00.

Each and every of the foregoing allowances is made in open court, all parties in interest herein, including the state court receivers and their solicitors, being present, and all acquiescing in the said allowance in said amounts. And all of said allowances are made in full of all claims up to and including this day. The court finds that the management of the receivers of this court has been such as to enable them to pay all said sums aforesaid out of the reduction of salaries and the discharging of unnecessary employees and interest on moneys in their possession at current rates of two per cent per annum.

The receivers of this court will this day by check pay to said state court receivers, Landon and Litchfield, the sum of fifty thousand

(\$50,000.00) dollars on account, the same being necessary for operating expenses, which in open court is done.

The court reserves the right to make any and all other further and different orders herein as it may deem equitable and just in the premises. For all of which and all other proper purposes this cause is continued.

Done in open court at Kansas City, Kansas, this January 24th, 1914.

SMITH McPHERSON, *Judge*.

Endorsed: Filed in the District Court on Jany. 24, 1914. Morton Albaugh, Clerk.

1491 In the District Court of the United States for the District of Kansas.

In Equity.

No. 1-N.

FIDELITY TITLE & TRUST COMPANY, Plaintiff,

v.

KANSAS NATURAL GAS COMPANY and DELAWARE TRUST COMPANY, Defendants; Kansas City Pipe Line Company and Fidelity Trust Company, John M. Landon and R. S. Litchfield, Interveners.

1491½ *Order Directing the Mandate of Circuit Court of Appeals be Spread and Modifying the Order of January 24, 1914.*

Now on this 22nd day of September, 1914, this cause came on to be further heard at this term at the Court Room of the above entitled court at Kansas City, Kansas, on the motion of John M. Landon and R. S. Litchfield, receivers appointed by the District Court of Montgomery County, Kansas, for an order that the mandate of the Circuit Court of Appeals be spread of record; the plaintiffs appearing by counsel Charles Blood Smith; the defendant Kansas Natural Gas Company appearing by counsel John J. Jones; the defendant Delaware Trust Company appearing by counsel J. B. Tomlinson; the Kansas City Pipe Line Company and Fidelity Trust Company, interveners, appearing by counsel J. W. Dana and W. C. Scarritt; and John M. Landon and R. S. Litchfield, receivers appointed by the District Court of Montgomery County, Kansas, interveners, appearing by counsel John H. Atwood, O. P. Ergenbright, T. S. Saiathiel, Chester I. Long and John S. Dawson, Attorney General of Kansas; and it appearing from said mandate, order and decree that the order and decree of this court entered on the 24th day of January, 1914, from which an appeal was prosecuted by The Kansas City Pipe Line Company and Fidelity Trust Company, was by said Circuit Court of Appeals, modified by directing this court to make it additionally specific that the State Court receivers, John

M. Landon and R. S. Litchfield, with the express authority of the District Court of Montgomery County, Kansas, accept the property and money ordered delivered to said State Court receivers by 1492 said order of this court of January 24, 1914, subject to all lawful liens and claims arising under or by virtue of the receivership in this, the District Court of the United States for the District of Kansas, or otherwise; and that the properties in Missouri and Oklahoma and the money then and now in the hands of the receivers of this court, less the amount of taxed costs and allowances, should be delivered to the receivers of the District Court of Montgomery County, Kansas, upon their receipt authorized by order of the District Court of Montgomery County, Kansas, and according to the order and decree of this court dated January 24, 1914, as modified pursuant to the order and mandate of the Circuit Court of Appeals; and as thus modified, that the order and decree of this court dated January 24, 1914, was by said Circuit Court of Appeals affirmed;

And it further appearing from said mandate, order and decree of the Circuit Court of Appeals that the orders of this court in this cause dated February 6, March 12, and March 23, 1914, from which appeals were prosecuted by said John M. Landon and R. S. Litchfield, State Court receivers, interveners herein, and by the Kansas City Pipe Line Company and Fidelity Trust Company, interveners herein, were by said Court of Appeals reversed, except in so far as they directed the payment of money to said State Court receivers;

And it further appearing from said mandate that said cause was by said Court of Appeals remanded to this Court for further proceedings in conformity with the views expressed in the opinion of said court;

Now therefore, upon argument of counsel and consideration by the court;

It is ordered, adjudged and decreed, by the court that said mandate of the Circuit Court of Appeals of the United States for 1493 the Eighth Circuit be and the same is hereby ordered spread upon the records of this Court; that said order and decree of this Court dated January 24, 1914, ordering and directing the receiver of this Court to deliver over to John M. Landon and R. S. Litchfield, receivers appointed by the District Court of Montgomery County, Kansas, all the moneys and property of the Kansas Natural Gas Company in his hands situate in the States of Kansas, Missouri and Oklahoma, be and the same is hereby modified by making it additionally specific that the said John M. Landon and R. S. Litchfield, receivers appointed by the District Court of Montgomery County, Kansas, with the authority and upon the order of said District Court of Montgomery County, Kansas, accept said property and money so delivered and all other moneys which have come into the hands of the receiver of this Court since said date which will pass by this order, pursuant to and in accordance with said order of January 24, 1914, and this modification thereof and subject to all lawful liens and claims arising under or by virtue of the receiverships in this Court in the above entitled case or otherwise;

It is Further Ordered, Adjudged and Decreed, That the possession of all the estate, property, moneys, funds, assets and earnings of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with the Kansas City Pipe Line Company and Marnet Mining Company situate in the States of Kansas, Missouri and Oklahoma, now, heretofore or hereafter coming into the hands of the receivers or receiver of this Court, and the earnings of said receivers, less the sum of \$50,000 reserved for such costs and allowances as may be taxed herein, shall be by the said George F. 1494 Sharitt, receiver appointed by this Court, forthwith delivered over to the said John M. Landon and R. S. Litchfield, upon their receipt authorized by order of the District Court of Montgomery County, Kansas, accepting the same in accordance with the order and decree of this Court dated January 24, 1914, as herein modified; said receipt, together with a duly authenticated copy of the order of said Court authorizing the same, shall be filed in the office of the Clerk of this Court and approved by a judge of this Court before such delivery;

It is Further Ordered, Adjudged and Decreed, That this Court through its said receiver, George F. Sharitt, shall retain the potential possession of the estates, properties and assets of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and Marnet Mining Company, situate in the States of Kansas, Missouri and Oklahoma or elsewhere in this the Eighth Judicial Circuit; but the said John M. Landon and R. S. Litchfield and their successors shall have the right as receivers to retain the actual possession, control and management of the estate, property, money, funds, assets and earnings of the said Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and The Marnet Mining Company situated in the states of Kansas, Missouri and Oklahoma or elsewhere, under the terms and conditions expressed in the order of this Court made Jan. 24, 1914, as modified herein; the intent hereof, being, that if and when said State court shall surrender, lose or abandon possession, jurisdiction or control over said properties or any part thereof (otherwise than a loss of control resulting from a sale or other disposition by 1495 order of said State Court), the same shall thereupon revert to the possession of the receiver of this court; to the end that no other person, officer or court shall be enabled or permitted to seize, levy upon, possess, control or exercise jurisdiction over any of the estates, properties or assets of said Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and The Marnet Mining Company within this the Eighth Judicial Circuit except the District Court of Montgomery County, Kansas, and its Ancillary Receivers and the said John M. Landon and R. S. Litchfield, receivers appointed by said Court, and that, by virtue of the prior right of possession and jurisdiction of said court to said properties situated in the State of Kansas, and pursuant to and upon the terms and conditions provided for in said order of January 24, 1914, as herein modified; and



said order of this court dated January 24, 1914, together with this modification thereof and a certified copy of the order of the District Court of Montgomery County, Kansas, and of the receipt of said receivers pursuant to this order shall be filed in the District Court of the United States for the Eastern District of Oklahoma and the District Court of the United States for the Western District of Missouri, in the manner provided by Sec. 56 of the Judicial Code; and all persons, and officers and receivers appointed by other courts will take notice hereof and they are hereby restrained and enjoined from attempting to levy upon, seize, possess or control any of the properties of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with The Kansas City Pipe Line Company and The Marnet Mining Company or any part thereof, situate in the States of Kansas, Missouri, or Oklahoma or elsewhere

1496 in this the Eighth Judicial Circuit, and from molesting, disturbing or interfering with the actual possession and control of said properties by the said John M. Landon and R. S. Litchfield, receivers appointed by the District Court of Montgomery County, Kansas;

It is Further Ordered and Decreed, That the orders of this Court dated February 6, March 12 and March 23, 1914, in so far as they direct the Kansas City Gas Company, the Joplin Gas Company and the St. Joseph Gas Company, or any other Gas Company, to pay current and future gas bills to the receivers of this Court, be and the same are hereby vacated and set aside, and said companies are hereby authorized, directed and required to pay all past due, current and future bills for gas, to the said John M. Landon and R. S. Litchfield, receivers appointed by the District Court of Montgomery County, Kansas, pursuant to and in accordance with the terms and provisions of the order and decree of this Court dated January 24, 1914, as herein modified. \* And the said George F. Sharitt, receiver, is further ordered and directed to execute and deliver an assignment to the said John M. Landon and R. S. Litchfield, receivers as aforesaid, of all claims, accounts and demands of every kind and character in favor of the Kansas Natural Gas Company and its receivers against any and all persons, firms and corporations whomsoever.

It is Further Ordered, Adjudged and Decreed, That this Court retain jurisdiction of the above entitled cause, including the cross bill of the Delaware Trust Company and the bill of intervention of The Kansas City Pipe Line Company and Fidelity Trust Company filed herein, with power to make such orders and decrees as

1497 future exigencies may require. This order is made and entered by me on request of Honorable Smith McPherson, Judge in charge of this litigation and by his direction as per telegram filed herewith.

(Signed)

JOHN C. POLLOCK, *Judge.*



Approved as to form :  
(Signed)

CHAS. BLOOD SMITH,  
*Attorney for Plaintiffs.*

“ JOHN J. JONES,  
*Attorney for Kansas Natural Gas Co.*

“ J. B. TOMLINSON,

Per J. W. D.,  
*Attorney for Delaware Trust Co.*

“ J. W. DANA,  
*Attorney for Kansas City Pipe Line  
Company and Fidelity Trust Company.*

“ JOHN S. DAWSON,  
*Attorney General,*

“ JOHN H. ATWOOD,

“ O. P. ERGENBRIGHT,

“ T. S. SALATHIEL AND

“ CHESTER I. LONG,  
*Attorneys for John M. Landon  
and R. S. Litchfield.*

1498 (*Receipt of State Court Receivers to Federal Court Receivers  
for Property of Kansas Natural Gas Co. Located in Kansas.*)

Kansas Natural Gas Company.

Conway F. Holmes, George F. Sharitt, Eugene Mackey, Receivers.

A. B. Macbeth, General Manager.

Reply to letter of

Referring to

Independence, Kansas, Jan. 1, 1914.

Received of Conway F. Holmes, Geo. F. Sharitt and Eugene Mackey all the personal property (not including money) of the Kansas Natural Gas Company shown by the records of said Company and of said Receivers to be on hand this day, wherever located in the State of Kansas, and turned over to us by said Receivers under an order of the District Court of the United States for the District of Kansas.

R. S. LITCHFIELD,  
J. M. LANDON,  
*Receivers.*

1499 (*Receipt of State Court Receivers to Federal Court Receivers for Property of Kansas Natural Gas Co. Located in Missouri and Oklahoma.*)

In the District Court of Montgomery County, Kansas.

No. 13476.

THE STATE OF KANSAS, Plaintiff,

vs.

THE INDEPENDENCE GAS COMPANY, a Corporation, et al., Defendants.

Received of George F. Sharitt, Conway F. Holmes, and Eugene Mackey, Receivers of Kansas Natural Gas Company, appointed by the District Court of the United States for the District of Kansas, First Division, all the property of said Kansas Natural Gas Company, situate and located in the states of Missouri and Oklahoma; the said property being delivered to us pursuant to an order of said United States District Court for the District of Kansas, entered on the 24th day of January A. D. 1914, intending hereby to receipt for all the physical property of said Kansas Natural Gas Company, this day delivered to us.

Dated this 24th day of January, A. D. 1914.

R. S. LITCHFIELD,

JOHN M. LANDON,

*As Receivers for Kansas Natural Gas Company  
in the Above-entitled Cause.*

1500

In Equity.

No. 1351.

JOHN L. MCKINNEY and THE FIDELITY TITLE AND TRUST COMPANY,  
Complainants,

vs.

KANSAS NATURAL GAS COMPANY, Defendant.

(*Motion of Attorney General of Kansas et al. for an Order Directing Federal Court Receivers to Pay to State Court Receivers all Moneys in Their Possession.*)

Come now John S. Dawson, Attorney General of the State of Kansas, and John M. Landon and R. S. Litchfield as receivers of Kansas Natural Gas Company, in an action now pending in the District Court of Montgomery County, Kansas, wherein the State of Kansas is plaintiff and The Independence Gas Company et al. are

defendants, and appearing specially and for the purposes of this motion only move the court for an order herein and say:

1. That they filed the petition in this case on the 18th day of February, 1913, upon which after hearing was had, the decree of June 5th, 1913, was rendered; that said decree was affirmed by the Circuit Court of Appeals, as shown by the mandate spread 1501 upon the records of this court on the 30th day of December, 1913.

2. That under said decree, the mandate of the Court of Appeals and the order of this court made on the 30th day of December, 1913, possession of all the physical property of Kansas Natural Gas Company has been delivered to John M. Landon and R. S. Litchfield, Receivers of the District Court of Montgomery County, Kansas, together with \$75,000.00 of the money then in the hands of the receivers of this court.

3. That under said decree of June 5th, 1913, and the mandate of the Court of Appeals above referred to, it is the duty of this court to order its receivers to forthwith deliver to John M. Landon and R. S. Litchfield, Receivers of the District Court of Montgomery County, Kansas, the balance of the funds and money now on hand and in the possession of the Receivers of this Court that have come into their possession by virtue of their receivership.

4. That complainants have, in open court, requested the court to deliver possession of all of said funds to the receivers of the District Court of Montgomery County, Kansas, after the payment of the fees of the receivers and attorneys.

5. That John F. Overfield, Receiver of the Kansas City Pipe Line Company, appointed by the District Court of Montgomery County, Kansas, in the action above referred to, has signified his consent to the making of such order, as shown by a letter signed by him, directed to John M. Landon and R. S. Litchfield, Receivers of the District Court of Montgomery County, Kansas, said original letter being hereto attached, marked Exhibit "A," and made a part of this motion.

To complete and effectuate the purposes of said decree, mandate and order, we now move this Court to make an order, directing its said receivers heretofore appointed in this cause, to deliver, pay, or cause to be delivered and paid forthwith unto said John M. Landon and R. S. Litchfield as receivers as aforesaid, all of the money now in their possession, or that may come into their possession by virtue of their receivership.

JOHN S. DAWSON,  
*Attorney General of the State of Kansas.*

JOHN M. LANDON AND  
R. S. LITCHFIELD,

By JOHN H. ATWOOD,  
O. P. ERGENBRIGHT,  
T. S. SALATHIEL AND  
CHESTER I. LONG,

*Their Solicitors.*

1008 K. C. GAS CO. ET AL. VS. KANSAS NAT. GAS CO. ET AL.

1502 The Kansas Natural Gas Company concurs in the above Motion and consents to the granting thereof and asks that the prayer of the petitioners be granted.

KANSAS NATURAL GAS  
COMPANY,

By EUGENE MACKEY,  
*Pres. & General Counsel.*

EXHIBIT "A."

To John M. Landon and R. S. Litchfield, Receivers of Kansas Natural Gas Company:

On the 21st day of June, 1913, by the District Court of Montgomery County, Kansas, in a suit therein pending wherein the State of Kansas is plaintiff and The Independence Gas Company et al. are defendants, I was appointed Receiver of the Kansas City Pipe Line Company, and have qualified and am now acting as such receiver. This is to notify you that as receiver of said Company, I hereby consent that all the money now in the hands of the receivers appointed by the United States District Court of Kansas, First Division, may be delivered to you, as receivers aforesaid, subject to any liens or claims in favor of the Kansas City Pipe Line Company, or myself as its receiver.

JOHN F. OVERFIELD,  
*Receiver of The Kansas City Pipeline Company.*

Endorsed: Filed in the District Court on Jan'y. 23, 1914. Morton Albaugh, Clerk.

1503 In the District Court of Montgomery County, Kansas.

No. 13476.

THE STATE OF KANSAS, Plaintiff,

VS.

THE INDEPENDENCE GAS COMPANY, THE CONSOLIDATED GAS, OIL & MANUFACTURING COMPANY, Kansas Natural Gas Company, et al.,  
Defendants.

*Stipulation or So-called "Creditors' Agreement."*

Signed December 17, 1914. Filed December 29, 1914.

1503½ In the District Court of Montgomery County, Kansas.

No. 13476.

THE STATE OF KANSAS, Plaintiff,

VS.

THE INDEPENDENCE GAS COMPANY, THE CONSOLIDATED GAS, OIL & MANUFACTURING COMPANY, KANSAS NATURAL GAS COMPANY, et al.,  
Defendants.

*Stipulation.*

It is Stipulated and Agreed, By and between the parties hereto, as follows, to-wit:

First. That the jurisdiction of this court to have possession, control and management through its receivers of the property and assets of the Kansas Natural Gas Company rests upon section 1728 of the General Statutes of Kansas of 1909 and other laws of the state of Kansas, the pleadings filed herein and the orders and decrees of the United States District Court for the District of Kansas and of the Circuit Court of Appeals of the Eighth Circuit; that the receivers of said Kansas Natural Gas Company appointed herein and ancillary hereto may continue in the possession, control and operation of said Kansas Natural property and assets as hereinafter provided and said case conducted and finally concluded as contemplated by said section 1728 and other laws in the interest, first, of the public service, second, of the creditors, and third, of 1504 the stockholders and the company.

Second. That all amended and supplemental petitions in the above entitled case in so far as they charge or attempt to charge the defendants The United Gas Improvement Company, Wyandotte County Gas Company, The Kansas City Pipe Line Company, The Kansas City Gas Company and The Marnet Mining Company with acts subjecting them to penalties, are hereby withdrawn, in so far as they demand the assessment and collection of penalties from said defendants or either of them; all proceedings against the other defendants may continue.

It is agreed that the said receivers for The Wyandotte County Gas Company shall continue until April 1, 1915, unless the Court shall sooner terminate the same; that the receivers for The Marnet Mining Company and The Kansas City Pipe Line Company shall continue until such a time as it may appear to the Court advisable and to the best interest of the estate that such receivership be discontinued.

It is further agreed that the maintenance of the said receivership of Wyandotte County Gas Company from and after January 1, 1915, is continued for the benefit and in the interest of the general estate of Kansas Natural Gas Company, and that the costs of said receivership, including the salary of Willard J. Briedenthal, the ac-

tive receiver in charge of said property, shall be paid out of the business of The Wyandotte County Gas Company, but the salary of John F. Overfield, co-receiver with said Willard J. Briedenthal, and all counsel fees of said receivers hereafter allowed and paid, shall be paid out of the general estate of Kansas Natural Gas Company.

It is further agreed that the continuation of the receivers of The Kansas City Pipe Line Company and The Marnet Mining Company from and after January 1, 1915, is in the interest of and for the benefit of the general estate of Kansas Natural Gas Company, and all expenses of each of said receiverships, including the salary of receivers and counsel fees, shall be paid out of the general estate of Kansas Natural Gas Company.

Three. All parties hereto and intervenors herein, including the lienholders, creditors and stockholders, the state of Kansas and the receivers, agree that the business in which the properties involved in this suit and the custody of this court are used, to-wit: The production, transportation and sale of natural gas, is a public utility business of an extra hazardous and temporary character; that the return of the capital investment in said business and properties, with interest, must be provided during the life expectancy of the business; that the life expectancy, in the opinion of experts of said business, as it now exists, is not exceeding six years; that the creditors and lienholders against the property devoted to public use in said business, consent to the deferring of their right to foreclose and assert their several claims against said property, legal and equitable, and to have execution therefor, only upon the condition that their said investments and claims be returned with interest within said six year period, or so much thereof as will properly secure the return of the balance; that the creditors and lienholders consent that said property may be operated by the receivers appointed by this court not as pending the foreclosure and sale of said property in their behalf, but as enabling said property to serve the public with natural gas for the period named, in the interest of the public and in the interest of the Company in which the legal title to said property is now lodged; that upon such condition and consideration, all parties hereto consent and agree that the receivers of this court, for and on behalf of and in the name of the legal and equitable owners of said property, may, as expeditiously as possible and whenever deemed advisable by the court, make such application and showing to the Public Utilities Commission of the state of Kansas, and other public authorities, as may to the court and its receivers be deemed proper, and all parties hereto hereby tender to the court and the receivers all the aid, assistance and information in their possession and under their control, for the purposes of said application and hearing.

Four. Upon due notice and opportunity to be heard, the court shall determine the rights of The Independence Manufacturing and Power Company.

Five. That the creditors and lienholders of the Kansas Natural Gas Company and The Kansas City Pipe Line Company consent that \$500,000.00 may be reserved during the year 1915, out of cur-

rent earnings for said year and \$200,000.00 annually thereafter during the receivership for extensions, betterments and additional gas supply; the same to be expended only by order of court after notice to the creditors or their committee and opportunity to be heard, and upon condition that the properties are being operated upon a compensatory rate; and said creditors may appoint a committee consisting of three members, one for the Kansas Natural first mortgage bondholders, one for the Kansas Natural second mortgage bondholders and one for The Kansas City Pipe Line bondholders, who shall aid and assist the court and receivers with all proper facts and proofs concerning said extensions and betterments.

Six. That the court upon notice and opportunity to be heard, may allow and pay reasonable sums out of Kansas Natural trust funds on hand, in full payment and satisfaction of all court costs in said court, receivers' and counsel fees, charges and expenses of all receivers of all companies and of all counsel in the case, either for plaintiff or the receivers, to January 1, 1915. All orders as to allowances and payments referred to in this paragraph shall, as by agreement, be final and conclusive.

Seven. That the balance of cash in the hands of the receivers on January 1, 1915 (less \$100,000.00 retained as working capital) may be distributed as follows:

(a) To the payment in full of past due and accrued interest to January 1, 1915, and \$79,000.00 on the principal of the bonds of The Marnet Mining Company now outstanding, the payment of the remaining \$468,000.00 Marnet bonds to be extended and paid one-sixth annually as provided in section (a) paragraph 8, the intent hereof being to reduce the annual sinking fund requirements of the receivers after January 1, 1915, for said bonds from about \$200,000.00 to \$78,000.00; Provided, that none of said payments either under this section or under section (a) of paragraph 8, shall be allowed or applied upon the bonds of said company owned by the Kansas Natural Gas Company and held as collateral security by the Fidelity Title & Trust Company;

(b) To the payment of \$256,000.00 in full of interest due and accrued to January 1, 1915, on Kansas Natural first mortgage bonds, and \$334,483.83 in full of interest due and accrued to January 1, 1915, on Kansas City Pipe Line first mortgage bonds, not including twenty-five bonds held by R. M. Snyder, Jr., or his assigns, as follows:

Bonds numbered.	Series.	Due.	Amount.
2201—2203	F	February 1, 1913.....	\$3,000.00
2751—2753	G	February 1, 1914.....	3,000.00
3301—3302	H	February 1, 1915.....	2,000.00
3851—3858	I	February 1, 1916.....	8,000.00
4251—4258	J	February 1, 1917.....	8,000.00
4651	K	February 1, 1918.....	1,000.00



1508 interest on which is also to be paid on the best terms obtainable.

(c) The balance on hand January 1, 1915, shall be distributed fifty per cent. to the Kansas Natural first mortgage bondholders and fifty per cent. to the Kansas City Pipe Line bondholders (not including the twenty-five Kansas City Pipe Line first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified) and applied to the retirement of said bonds at a rate corresponding with the terms of adjustment of their respective claims on that date as herein set forth; that is to say, the outstanding first mortgage bonds of the Kansas Natural Gas Company being \$1,600,000.00 par as of said date, after payment of said interest; on the \$1,600,000.00 bonds now outstanding there is now in the hands of the trustee the sum of \$166,666.66, with interest, which on payment of the sum to be distributed under this stipulation, is to be added to such sum and the \$1,600,000.00 reduced by the aggregate of the two sums, and said first mortgage bondholders, when such payment on principal is made, shall surrender for cancellation, first mortgage bonds in said proportions corresponding to the amount of said payment; and it is further understood and agreed that the first mortgage bonds represent the full face value thereof, paid into the treasury of the Kansas Natural Gas Company, and that the balance January 1, 1915, due thereon is the sum of \$1,856,000.00, of which sum \$256,000.00 is the interest and \$1,600,000.00, less the above mentioned sum with interest now in the hands of the Kansas Natural first mortgage trustee is the unpaid principal, and that in all computations and agreements herein, and in all actions that may hereafter be taken, such computation and balance shall

be final between all the parties, their privies, successors and assigns; and the outstanding bonds of The Kansas City Pipe Line Company, being \$2,520,000.00 par (not including the twenty-five Kansas City Pipe Line Company first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified) and the balance of indebtedness owing upon said \$2,520,000.00 par of bonds, as of said date, after payment of said interest, being, for the purpose of this stipulation, \$1,677,875.43, the holders of said \$2,520,000.00 bonds when such payment is made, shall surrender for cancellation, first mortgage bonds of The Kansas City Pipe Line Company in said proportion corresponding to the amount of such payment. Payment of the said twenty-five bonds held by R. M. Snyder, Jr., or his assigns, shall be made by the receivers upon the best terms obtainable.

Eight. That all the net earnings and other available funds of the receivers, in each year, after January 1, 1915, over and above all taxes and necessary operating expenses and the allowances for betterments and gas purchases provided for in paragraph 6 hereof, shall be applied and distributed in the following order, to-wit:

(a) To the payment of interest when due and \$78,000.00 annually on the principal of the bonds of The Marnet Mining Company outstanding after the payments provided for in section (a), paragraph 7 hereof.

(b) To the payment of interest when due on all the outstanding first mortgage bonds of the Kansas Natural Gas Company and the payment, semi-annually (February 1 and August 1) of the interest on the indebtedness due to The Kansas City Pipe Line Company bondholders, as calculated and ascertained for the purposes of this stipulation (not including the twenty-five Kansas City Pipe Line first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified).

(c) To the payment of the Kansas Natural Gas Company first mortgage bondholders, and on the indebtedness due the Kansas City Pipe Line bondholders (not including the twenty-five Kansas City Pipe Line first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinabove specified) pro rata according to the amounts of Kansas Natural Gas Company first mortgage bonds at the time outstanding; and of the remaining indebtedness, as calculated and ascertained for the purposes of this stipulation, on the first mortgage bonds of The Kansas City Pipe Line Company, not including the said twenty-five bonds above mentioned; Provided, that an amount equal to one-sixth of the sum of said Kansas Natural Gas Company outstanding first mortgage bonds and the said The Kansas City Pipe Line Company indebtedness, after the distribution of January 1, 1915, shall be paid annually.

(d) To the payment of interest coupons of Kansas Natural Gas Company second mortgage bonds as the same shall mature after January 1, 1915, at the rate of seventy-five per cent. of the face value thereof.

(e) The balance of said net earnings, and other available funds, to be applied to payment of Kansas Natural Gas Company first mortgage bonds and the indebtedness due the Kansas City Pipe Line bondholders, as ascertained for the purposes of this stipulation (not including the twenty-five Kansas City Pipe Line Company first mortgage bonds held by R. M. Snyder, Jr., or his assigns, of the numbers and series hereinbefore specified), in the same proportion and to the same end as provided in section (c) of this paragraph.

1511 (f) After payment in full shall have been made to the Kansas Natural and the Kansas City Pipe Line first mortgage bondholders, of all said bonds and indebtedness, then all said net earnings shall be applied to the payment of outstanding interest coupons of the said second mortgage bonds of the Kansas Natural Gas Company due on and before January 1, 1915, and to any such interest coupons as may mature and remain unpaid after that date, the interest coupons due on and before January 1, 1915, to bear interest from said date at the rate of six per cent. per annum;

(g) After the fulfillment of the requirements of the foregoing sections of this paragraph, then the said net earnings are to be applied to the payment and retirement of the second mortgage bonds of the Kansas Natural Gas Company at the rate of seventy-five per cent. of their par value, until said bonds are paid and retired at said rate, it being understood that the par value of said outstanding second mortgage bonds as of January 1, 1915, is \$2,267,000.00.

(h) It is understood and agreed that upon fulfillment of the requirements of section- (a), (b) and (c) of paragraph 7, and section- (a), (b) and (c) of paragraph 8, then and thereupon:

(i) All The Marnet Mining Company bonds and all other collateral now held by the trustee of the first mortgage bonds are to be delivered to trustee of second mortgage bonds of Kansas Natural Gas Company.

(ii) All the shares of capital stock of The Marnet Mining Company held by the owners of the said \$2,520,000.00, The Kansas City Pipe Line Company bonds, to-wit: 2,145 shares, are to be assigned, transferred and delivered to the Kansas Natural Gas Company.

1512 (iii) All the first mortgage bonds of the Kansas Natural Gas Company are to be surrendered and canceled.

(iv) All the shares of the capital stock of The Kansas City Pipe Line Company held by the owners of the bonds of said Company, to-wit: 22,250 shares, are to be assigned, transferred and delivered to the Kansas Natural Gas Company; and all the pipe lines, compressors, leases, properties and assets of every kind and description owned or standing in the name of The Kansas City Pipe Line Company shall be duly assigned, sold, transferred and conveyed to the Kansas Natural Gas Company, thus vesting in it title to all the property of The Kansas City Pipe Line Company which shall thereupon pass under and become subject to the lien of the Kansas Natural second mortgage bonds.

(i) It is understood and agreed that upon fulfillment of the requirements of section (g) of paragraph 8, 15,000 shares of Kansas Natural Gas stock now held by the owners of the hereinbefore mentioned \$2,520,000.00 Kansas City Pipe Line bonds are to be surrendered to the treasurer of said Kansas Natural Gas Company, and canceled.

(j) It is further stipulated that pending the performance of this agreement, the holders of said \$2,520,000.00 first mortgage bonds of The Kansas City Pipe Line Company shall deposit with The Kansas Trust Company, of Kansas City, Kansas, as Trustee, the said 2,145 shares of stock of The Marnet Mining Company, the said 22,250 shares of stock of The Kansas City Pipe Line Company, and said 15,000 shares of stock of the Kansas Natural Gas Company, to be held by the said trustee under the terms of this agreement, and to be delivered to the Kansas Natural Gas Company, or its lawful

1513 representative, upon performance of the terms hereof; that is, said 2,145 shares of Marnet Mining stock are to be delivered upon performance of sections (a) of paragraphs 7 and 8, and said 22,250 shares of Kansas City Pipe Line stock are to be delivered upon performance of sections (b) and (c) of paragraphs 7 and 8; and said 15,000 shares of Kansas Natural stock are to be delivered upon performance of section (i) of paragraph 8.

(k) In as much as some holders of second mortgage bonds of the Kansas Natural Gas Company are unknown and cannot be located and other holders may be unwilling to reduce the face of their bonds to \$750.00, and provision for the present payment of certain interest

on the said bonds was inserted herein to induce holders thereof to reduce the face of their bonds, it is now stipulated and agreed that no interest shall be paid upon any bond and no holder thereof shall be entitled to such interest unless and until he shall sign a written receipt therefor in a form which shall refer to this stipulation and obligate the signer to the terms hereof and particularly to the reduction of the face of his bonds to \$750.00 each. Upon his signing such a receipt, he shall be entitled to all rights of a second mortgage bondholder hereunder and to be paid interest thereon according to the terms hereof. All payments hereunder, of interest on second mortgage bonds shall be made only at the office of Kansas Natural Gas Company, at Independence, Kansas, and upon the surrender of the corresponding interest coupons and not otherwise.

Nine. It is further stipulated and agreed that the Court may order the calling of a meeting of the stockholders of the Kansas Natural Gas Company and a vote to be taken upon the proposition of reducing the issued and outstanding capital stock of said Company

from \$12,000,000.00 par value to \$6,000,000.00 par value for  
1514 the purpose of reducing the capitalization of said Company to the physical value of the property and assets, as found by the Public Utilities Commission of Kansas; said \$6,000,000.00 par value of capital stock being the value of said properties so found by the Commission in excess of the lien indebtedness upon said property and the property of The Kansas City Pipe Line Company, which latter shall be, when and as provided under this stipulation, merged in and become a part of the Kansas Natural properties; that the above reduction shall be made by an amendment to the Company's charter, reducing the par value of the shares of stock of the Company from \$100.00, the present par value, to \$50.00 per share; that the stockholders hereto subscribing agree to vote at said stockholders' meeting for the aforesaid reduction of capital stock, and to do, perform and take such other acts and proceedings as may be necessary under the laws of the domicile of said corporation to effect the reduction of the outstanding stock of said company as aforesaid.

Ten. The property and business of Kansas Natural Gas Company, The Marnet Mining Company and The Kansas City Pipe Line Company remain under the control of this Court through its receivership until the indebtedness of the first mortgage bondholders of the Kansas Natural Gas Company and bondholders of The Marnet Mining Company and The Kansas City Pipe Line Company, as hereinbefore determined and provided, shall be paid, and then all property of Kansas Natural Gas Company and The Kansas City Pipe Line Company shall be delivered over to directors chosen by stockholders of Kansas Natural Gas Company at an election to be ordered by the Court; and the property of The Marnet Mining Company shall be delivered over to the directors of said The Marnet Mining  
1515 Company; provided further that the court may discharge said receivership and conclude said cause at an earlier date.

Eleven. In determining the total amounts payable to The Kansas City Pipe Line Company bondholders and the Kansas Natural first and second mortgage bondholders, said amounts being as herein-

before stated, the basis of computation was to ascertain how far such bonds represent money or value actually received and expended in or upon the properties of said Companies deducting therefrom all payments and credits heretofore made upon said bonds and allowing interest on the balance at six per cent. per annum; and all bondholders, creditors and claimants upon the trust estate or funds of the Kansas Natural Gas Company or The Kansas City Pipe Line Company consented to said basis of computation in the settlement and payment of their respective bonds, claims and demands against said Companies or their estates under this stipulation.

Twelve. It is agreed that the rights of all creditors and parties to this and other pending suits shall during the administration of the estate of the Kansas Natural Gas Company pursuant to this stipulation, remain in statu quo (except as herein fixed as to the fact that the first mortgage bonds have been paid for at one hundred cents on the dollar, and the balance due thereon is correctly ascertained and determined), and the payment of interest due upon the first mortgage bonds of the Kansas Natural Gas Company, or the payment of principal upon said bonds, shall not be deemed or construed to be a waiver of the default heretofore declared upon said bonds under the terms of the mortgage securing the same; and in the event of the inability of said properties to earn the requirements to carry out the provisions or to make the payments provided for herein, and  
1516 after a default in said payments for one year then the rights of all creditors may after said default be resumed and prosecuted with the same force and effect as of the date of this stipulation, leave of Court thereto having been duly obtained; provided, that any and all claims and demands of personal liability against the receivers of the Federal Court in the case of John L. McKinney v. The Kansas Natural Gas Company et al., and the case of The Fidelity Title and Trust Company et al. v. The Kansas Natural Gas Company et al., or against their bondsmen or the plaintiffs in said suits for a personal judgment are hereby waived and shall be withdrawn in said suits; but any and all claims against the Kansas Natural Gas Company or against the estate or funds of the Kansas Natural Gas Company and the Federal Receivers in their official capacity as receivers shall continue and remain in full force and effect until the payments provided for within six years of the date hereof are fully made; and provided further, that any and all payments made to any such claimants pursuant to the provisions of this stipulation, shall, in the event of default, under paragraphs 7 and 8 hereof, be credited upon said claims respectively and no refunding of said payments shall be required of any of said claimants receiving payments under and pursuant to this stipulation: the creditors reserve the right at any time hereafter for good cause and upon proper showing that said properties are being operated at a loss or that the security is being materially repaired or wasted or that the statute of limitations is about to run against any of their said rights, claims or evidences of indebtedness, to intervene and interplead herein and preserve said rights or to submit a plan to this Court for approval for the liquidation of the indebtedness of said Kansas Natural Gas Company and the

1517 final winding up of its affairs and concerns in conformity with section 1728, General Statutes of 1909 and the law in such case made and provided.

Signed and dated this 17th day of December, 1914.

THE STATE OF KANSAS,

By JOHN S. DAWSON, *Attorney General*.

75% OF THE KANSAS NATURAL FIRST  
MORTGAGE BONDHOLDERS,

Represented by

HARRISON NESBIT.

T. N. BARNSDALL,

*Owning More Than 50% of Kansas Natural  
Second Mortgage Bonds,*

By His Attorney in Fact,

SAMUEL S. MEHARD.

\$401,000.00, BEING OVER 17%, KANSAS  
NATURAL SECOND MORTGAGE BONDS,

Represented by

SAMUEL S. MEHARD.

\$2,520,000.00, BEING 99%, KANSAS CITY  
PIPE LINE BONDS,

Represented by

RANDAL MORGAN.

THE KANSAS CITY PIPE LINE COMPANY,

By W. F. DOUTHIRT, *Its Secretary*.

KANSAS NATURAL GAS COMPANY,

By EUGENE MACKEY, *Its President*.

RECEIVERS KANSAS NATURAL GAS COM-  
PANY,

JOHN M. LANDON,

R. S. LITCHFIELD.

1518

THE MARNET MINING COMPANY,

By V. A. HAYS, *Its Acting Secretary*.

JOHN H. LUCAS,

CHAS. BLOOD SMITH,

*Counsel for 75% of the Kansas Natural First  
Mortgage Bondholders,*

Represented by

HARRISON NESBIT.

J. W. DANA,

*Counsel for \$2,520,000.00, Being Over 99% of  
Kansas City Pipe Line Bonds, and The  
Kansas City Pipe Line Company.*

F. J. FRITCH,

T. S. SALATHIEL,

O. P. ERGENBRIGHT,

JOHN H. ATWOOD,

CHESTER I. LONG,

Counsel for Receivers,

JOHN M. LANDON AND

R. S. LITCHFIELD.



Filed December 29, 1914. W. R. Hobbs, Clerk of the District Court, Montgomery County, Kansas.

STATE OF KANSAS,

*Montgomery County, ss:*

I, W. R. Hobbs, Clerk of the District Court in and for said county and state, do hereby certify that the above and foregoing nineteen pages is a true and correct copy of the Stipulation filed, in the above entitled cause, on December 29, 1914. Witness my hand and seal of said court, this . . . . day of . . . . . 191 . . .

.....  
Clerk of District Court,

By ..... , Deputy.

1519 In the District Court of the United States for the District of Kansas, First Division.

Equity.

No. 1351.

JOHN L. MCKINNEY and THE FIDELITY TITLE & TRUST COMPANY,  
Complainants,

v.

KANSAS NATURAL GAS COMPANY, Defendant; KANSAS CITY PIPE  
LINE COMPANY and FIDELITY TRUST COMPANY, Intervenor.

*Order.*

Now on this 9th day of January, A. D. 1915, this cause came on for further hearing upon the petition in intervention of John M. Landon and R. S. Litchfield, and upon the written consent of the complainants, defendant and intervenors, and Marnet Mining Company, and waiving all notice of the application for the appointment of ancillary receivers, complainants appearing by Charles Blood Smith, their solicitor, and Kansas Natural Gas Company, by V. A. Hays, its President, Kansas City Pipe Line Company, and Fidelity Trust Company, by J. W. Dana and George R. Allen, their solicitors, and Marnet Mining Company by T. S. Salathiel, its solicitor, and it appearing to the court that by virtue of orders heretofore entered in this cause said intervenors, John M. Landon and R. S. Litchfield have taken possession of and are now controlling and operating the property of the said Kansas Natural Gas Company, Marnet Mining Company and Kansas City Pipe Line Company within the States of Kansas, Oklahoma and Missouri, and it further appearing to the court that all pipe lines owned and leased by the said Kansas Natural Gas Company, Marnet Mining Company and Kansas City Pipe Line Company extending from the State of Oklahoma through the State of Kansas and to certain cities in the State of Missouri constituting a



continuous pipe line for the transportation and distribution of natural gas are of a fixed character and that the properties  
1520 above mentioned constitute one complete system or unit which cannot be operated except as one connected unit or system, and it is necessary for the operation of said plant and for the preservation of the property that the same be managed throughout by the same administrative officers, and it further appearing that in order to protect and preserve the reversionary estate and potential possession of the receiver of this court and to carry out the provisions of a certain stipulation of all parties in interest, dated December 17, 1914, and of record in this cause, the said intervenors should be appointed ancillary receivers for the properties above mentioned situated in the eastern district of Oklahoma and the Western District of Missouri.

It is therefore ordered, adjudged and decreed that the prayer of said intervening petition of John M. Landon and R. S. Litchfield be granted, and that the said John M. Landon and R. S. Litchfield, be, and they are now hereby appointed ancillary receivers of all the property of the Kansas Natural Gas Company, Kansas City Pipe Line Company, and the Marnet Mining Company, above described, situate in the Eastern District of Oklahoma and the Western District of Missouri.

That each of the said receivers shall before entering upon his duties hereunder give and file with the court a bond in the penal sum of twenty thousand dollars, with surety or sureties, approved by the court or the clerk thereof, and conditioned that he will faithfully perform his duty as ancillary receiver herein and well and truly account for any and all moneys or property coming into his hands as such ancillary receiver and abide and perform all things which he is herein or may hereafter be directed to perform in this cause.

It is further ordered, adjudged and decreed that the said John M. Landon and R. S. Litchfield, and their successors, shall have the right as receivers ancillary to their appointment as receivers  
1521 of the District Court of Montgomery county, Kansas, to retain the actual possession, control and management, of the estate, property, money, funds, assets and earnings of the said Marnet Mining Company, Kansas City Pipe Line Company and Kansas Natural Gas Company, including the leasehold estates, contracts, of and with the Kansas City Pipe Line Company and the Marnet Mining Company situated in the Eastern District of Oklahoma and the Western District of Missouri under the terms and conditions expressed in the order of this court made January 24, 1914, as modified; the intent hereof being that when the District Court of Montgomery County, Kansas, has surrendered, lost or abandoned possession, jurisdiction or control over said properties or any part thereof (otherwise than loss of control resulting from the sale or other disposition by order of said court) the same shall thereupon revert to the possession of the receiver of this court; to the end that no other person, officer or court shall be enabled or permitted to seize, levy upon, possess, control, or exercise jurisdiction over any of the properties, estates, or assets of said Kansas Natural Gas Com-

pany, including the leasehold estates and contracts of and with the Kansas City Pipe Line Company and the Marnet Mining Company and any other property, assets or earnings of the Marnet Mining Company and the Kansas City Pipe Line Company within this, the Eighth Judicial Circuit, except the District Court of Montgomery County, Kansas, and the said John M. Landon and R. S. Litchfield, receivers appointed by said court, and that, by virtue of the prior right and possession and jurisdiction of said court to said properties situate in the State of Kansas pursuant to and upon the terms and conditions provided for in said order of January 24, 1914, as modified; and all persons, and officers, and receivers appointed by other courts will take notice hereof and they are hereby restrained and enjoined from attempting to levy upon, seize, possess or control any of the properties of the Kansas Natural Gas Company, including the leasehold estate and contracts of and with the Kansas City Pipe Line Company and the Marnet Mining Company and any other property, assets or earnings of the Marnet Mining Company and the Kansas City Pipe Line Company, or any part thereof situate in the states of Missouri, or Oklahoma, and from molesting, disturbing, or interfering with the actual possession and control of said properties by the said John M. Landon and R. S. Litchfield as ancillary receivers of this court.

It is further ordered, adjudged and decreed that the receiver of this court, George F. Sharitt, shall retain the reversionary estate and potential possession of the estates, properties, and assets of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with the Kansas City Pipe Line Company and Marnet Mining Company situate in the States of Kansas, Missouri and Oklahoma, or elsewhere in this the Eighth Judicial Circuit.

RALPH E. CAMPBELL, *Judge*.

Filed Jany. 9, 1915. Morton Albaugh, Clerk.

1523 In the District Court of Montgomery County, Kansas.

No. 13476.

THE STATE OF KANSAS ex Rel., Plaintiff,

vs.

THE INDEPENDENCE GAS COMPANY et al., Defendants.

Now on this 25th day of March, 1916, this cause came on for hearing upon the application of John M. Landon, Receiver for such proceedings as may be proper in the premises by reason of the death of R. S. Litchfield and it being called to the attention of the Court that R. S. Litchfield, one of the Receivers for Kansas Natural Gas Company, appointed in the above entitled action by this Court on February 15, 1913, departed this life on or about the 20th day of March, A. D. 1916; that the estate entrusted to the said John M. Landon and R. S. Litchfield as Receivers, is not fully administered

or settled, and that it is necessary that the Receivership be continued; and it further appearing that the business, estate and affairs of said Receivership is in such condition and being so directed that the surviving Receiver is fully acquainted and conversant therewith, and qualified, able and willing to continue the administration thereof under the direction of this Court, and that a successor to the said R. S. Litchfield is not necessary or advisable at this time.

It is therefore by the Court ordered that John M. Landon, the surviving Receiver under the former orders of this Court be, and he hereby is continued as Receiver and appointed and constituted sole Receiver of and for all of the property and assets of Kansas Natural Gas Company heretofore in the possession and control of John M. Landon and R. S. Litchfield, and all other assets and property of Kansas Natural Gas Company. It is further ordered that the said John M. Landon as sole Receiver, be and he hereby is given and granted all the powers and authority heretofore conferred upon the Receivers of this Court aforesaid, by the former orders of this Court or by law, and that said John M. Landon, execute bond in the sum of \$50,000 conditioned for the faithful performance of his duties as such Receiver and that all acts, matters and things done and performed ad interim from the death of R. S. Litchfield to the date hereof be and they are hereby ratified and confirmed.

(Signed)

THOS. J. FLANNELLY.

Filed March 28, 1916.

1524 The schedule and application of Kansas City Gas Company to Public Service Commission of Missouri, filed August 10, 1916, is omitted for the reason it is attached to the Supplemental Bill of Complaint.

The order of Public Service Commission of Missouri approving schedule of Kansas City Gas Company, filed August 10, 1916, is omitted for the reason it is attached to the Supplemental Bill of Complaint.

The correspondence, demands and refusals, between Kansas City Gas Company, and The Wyandotte County Gas Company, and Kansas Natural Gas Company and John M. Landon, Receiver, is omitted for the reason that same is attached to the Amended Answer of Kansas City Gas Company and Answer to Supplemental Bill of Complaint.

The report and application of John M. Landon, Receiver for instructions with reference to supply-contracts, together with exhibits thereto attached, filed October 18, 1916, is omitted for the reason same is called for in the præcipe, paragraph 25.

1525

Filed Dec. 12, 1916.

In the District Court of Montgomery County, Kansas.

No. 13476.

STATE OF KANSAS, Plaintiff,

v.

THE INDEPENDENCE GAS COMPANY et al., Defendant.

*Journal Entry of Order Modifying Decree.*

Now on this 12th day of December, A. D. 1916, this cause come on to be heard upon the report of John M. Landon, Receiver, this day filed in this cause with relation to segregation of the Consolidated Gas, Oil and Manufacturing Company's property, and it appearing to the Court that the receiver has been and is performing the duties owing by the Consolidated Gas, Oil and Manufacturing Company to the public namely to supplying natural gas to the citizens of Independence, Kansas, and vicinity, and has been rendering efficient and sufficient service to the public to the full extent that the Consolidated Gas, Oil and Manufacturing Company might and could render such service, and it further appearing that the uses of the combined properties of Kansas Natural Gas Company and of the Consolidated Gas, Oil & Manufacturing Company is necessary to enable the receiver or said Kansas Natural Gas Company to perform an efficient and sufficient service to the public and that a segregation and separation of said properties will operate detrimental to the public service and interfere with the receiver and Kansas Natural Gas Company or either of them from performing efficient service and it further appearing that the separation and segregation of said properties is not necessary to protect the interest of the public or any individual consumer of gas and that no good purpose will be accomplished by such segregation and separation, but that evil and injury to the public service will result from such segregation, and it further appearing that all persons complaining or having a right to complaint of the purchase and acquisition by Kansas Natural Gas Company of the Consolidated Gas, Oil & Manufacturing Company's property have withdrawn their objection and consented to the making of an order of court modifying the decree of February 15, 1913, directing the receiver to investigate and work out a plan

for the segregation of the property of the said two corporations to the end that said segregation shall not be required or ordered by the court, and it further appearing that such segregation of the properties of the said two corporations shall not be effectuated or carried out, but that said decree should be modified to the end that Kansas Natural Gas Company and its receiver should hold and retain the property obtained by Kansas Natural Gas Company from the Consolidated Gas, Oil and Manufacturing Company,

free and discharged from any claim of the Consolidated Gas, Oil & Manufacturing Company or any consumer of gas or of the public. And it further appearing that J. H. Van Brunt the successor in interest and assignee of the Independence Manufacturing and Power Company intervener herein has in open court in consideration of the modification of this decree as herein made waived all right to have gas supplied under the written contract between the Adamson Manufacturing Company and the Independence Gas Company as set out in the intervening application of said Independence Manufacturing and Power Company filed herein and has waived his right to damages for any breach of said contract heretofore occurring and agrees to discharge and hold Kansas Natural Gas Company and its receiver and their bondsmen harmless for any breach of said contract.

It is Therefore by the Court Ordered That its decree of February 15th, 1913, in so far as it requires segregation and return of the property of the Consolidated Gas, Oil and Manufacturing Company or any part thereof from Kansas Natural Gas Company or its receiver to the Consolidated Gas, Oil & Manufacturing Company, be and the same is hereby modified in this, that the receiver of Kansas Natural Gas Company, and Kansas Natural Gas Company have and hold all property real or personal including the Nickerson franchise conveyed by the said Consolidated Gas, Oil & Manufacturing Company or the Independence Gas Company to the Kansas Natural Gas Company, free and discharge- from the claims of the Independence Manufacturing and Power Company or the state of Kansas, to have the same transferred or re-conveyed to the Consolidated Gas, Oil & Manufacturing Company.

THOS. J. FLANNELLY, *Judge.*

Filed Dec. 12-1916. W. R. Hobbs, Clerk.

1527

Filed June 2, 1917.

In the District Court of Montgomery County, Kansas.

No. 13476.

THE STATE OF KANSAS, Plaintiff,

vs.

THE INDEPENDENCE GAS COMPANY et al., Defendants.

*Order.*

Now, on this 2nd day of June, 1917, this cause comes on for hearing upon the report of the Receiver of this Court in said cause, and upon the suggestions heretofore made by this Court of a desire to discontinue said receivership, and upon the motion of Kansas Natural Gas Company filed in this cause, praying this court to enter an order discharging the Receiver of its property, and directing the

Receiver to deliver the property to the Receivers of the United States District Court for the District of Kansas, the Receiver appearing by T. S. Salathiel, O. P. Ergenbright, F. J. Fritch, and —, his attorneys herein; Kansas Natural Gas Company appearing by V. A. Hays, its President; the State of Kansas appearing by S. M. Brewster, as Attorney General.

And the Court having heard the statements of counsel, and having considered the report of the Receiver heretofore filed herein, and the allegations of the motion of Kansas Natural Gas Company, and being fully advised in the premises, finds:

That this suit was brought by the State of Kansas to correct certain corporate abuses and misuses of corporate privileges by Kansas Natural Gas Company, and the other defendants in said cause, and that on the hearing of said cause the defendant Kansas Natural Gas Company, and certain other defendants, were adjudged to be guilty of violating the anti-trust and anti-monopoly laws of the 1528 State of Kansas, and of abusing and misusing their corporate powers and privileges, and the Receivers were appointed in this cause for the purpose of enforcing said judgment, and of correcting the corporate abuses and misuse of corporate privileges of which the defendants were found guilty.

That on the 1st day of January, 1914, the Receivers of this court so appointed, to-wit, John M. Landon and R. S. Litchfield, took possession of said property from the Receivers of the United States District Court for the District of Kansas, on the conditions expressed in the order of said court directing the delivery of said property to them, and continued to manage and direct the same under the orders of this court and the orders of the District Court of the United States for the District of Kansas. That R. S. Litchfield, one of the Receivers of this court, departed this life on March 21, 1916, and on March 25, 1916, John M. Landon was by this court appointed sole receiver, and since said time has been the sole Receiver of this court for the property of Kansas Natural Gas Company within the jurisdiction of this court.

That on March 1, 1916, said John M. Landon was by the District Court of the United States for the District of Kansas made the active Receiver of said court for all of the property and assets of Kansas Natural Gas Company located in the States of Missouri and Oklahoma. That said Receiver has been operating the property of Kansas Natural Gas Company located in the States of Kansas, Oklahoma, and Missouri, under the orders of the two courts, working in harmony, the administrative orders being made by this court.

That at the time of the appointment of the Receivers of this court, the property of Kansas Natural Gas Company was in the custody and control of Receivers appointed by the District Court of the

United States for the District of Kansas. That the Receivers 1529 of this court, by direction of this court, made application to said United States Court for the delivery of all of the property in its hands to the Receivers of this court, to enable this court to carry out its decree, and on December 30, 1913, said United States



Court entered an order directing its receivers to deliver to the Receivers of this court:

"The property heretofore described and referred to in the decree of this court, heretofore entered of record, viz: All of the property of the defendant, Kansas Natural Gas Company, that is within the State of Kansas, except such property as has been disposed of by sale, and except such moneys as have been and will hereafter be expended under the order of this court, and that the Receivers of this court surrender and deliver to the Receivers of the District Court of Montgomery County, Kansas, all of the property belonging to the Kansas Natural Gas Company located in the State of Kansas."

And directed the payment of \$75,000.00 in money to apply on account; further sums to be hereafter ordered and determined, and to be confirmed by a later order of this court. That on January 24, 1914, the said United States Court made further order, relating to the delivery of property, wherein it directed its Receivers.

"To transfer and deliver to John M. Landon and R. S. Litchfield as said Receivers all property of Kansas Natural Gas Company now in their possession and under their control in the States of Missouri and Oklahoma, to be retained, operated and controlled by John M. Landon and R. S. Litchfield, as Receivers, or their successors, as long as they shall retain and operate the property of said Kansas Natural Gas Company located in the State of Kansas; unless this court shall earlier resume possession; and when they shall cease to operate the property of said company in Kansas, then all the property of Kansas Natural Gas Company then in their possession and undisposed of in Kansas, Oklahoma, and Missouri shall be delivered to the Receivers of this court;"

And prescribed among other conditions that the Receivers of this court should pay all of the operating expenses, taxes, and lease rentals accruing and accrued, and conditioned further, as follows:

"And the delivering of the possession of the property of Kansas Natural Gas Company in Missouri and Oklahoma to the receivers of the District court of Montgomery County, Kansas, shall be upon the further condition that said receivers of the district court of Montgomery County, Kansas, shall accept said property and give a written receipt for the same, which shall be filed with the clerk  
1530 of this court within five (5) days from this date, together with a certified copy of an order of the district court of Montgomery County, Kansas, or a judge thereof, authorizing the acceptance of said property under the terms of this order, and directing the receivers of that court to give a written receipt therefor as above provided."

It is further in said order provided:

"That said money and funds now or hereafter in the possession of the Receivers of this Court shall be delivered and transferred to the Receivers, of the District Court of Montgomery County, Kansas, subject to the right of any and all claimants to said fund, or any part thereof, or any lien upon said money or funds, to assert their claims or priorities, if any, upon any or all of said funds in the Dis-



trict Court of Montgomery County, Kansas, or upon the claim that said money and funds constitute the net earnings and income of said receivership in this court, as well as the ancillary receivership of the eastern district of Oklahoma and the western district of Missouri."

That by virtue of said orders this court received said property from the District Court of the United States for the District of Kansas upon the express condition and agreement that it should, through its receivers, return said property to the custody of the Receivers of said United States District Court upon the termination of the receivership in this cause.

The Court further finds that since taking over the said property from said United States District Court, the Receivers have operated said property and conducted the business of Kansas Natural Gas Company under the direction of this court, and under the protection of this court and said United States District Court.

That on December 13, 1916, this court, having under consideration a motion filed by the State of Kansas, plaintiff, and other motions heard concurrently with it, made and entered an order, wherein, among other things, it made findings of fact as follows:

"That the corporate abuses for which Kansas Natural Gas Company and the Consolidated Gas, Oil & Manufacturing Company were adjudged to be guilty by the decree of this court of February 15, 1913, entered in this cause, have been fully corrected, and the detriment and injury to the public and to individuals resulting from such corporate abuses have been fully satisfied and corrected."

1531 The court further finds that the said finding of this court so made was at said time true, and is now true, and that said corporate abuses have been fully corrected.

The court further finds that the Receiver of this court has kept and caused to be kept accurate accounts of all of his transactions; that full and complete vouchers of all accounts, expenditures, and disbursements have been kept, together with records thereof, in the office of the Auditor for the Receiver, and are prepared and ready to be delivered by the Receiver of this court into the hands of the Receivers of the United States District Court for the District of Kansas. That the report of the Receiver filed herein shows that all of the expenses, bills, and obligations created by the Receiver have been fully discharged, and that the Receiver and his employees have received their compensation in full for their services, as ordered and directed by the Receiver for current expenses, and except the fees for services of counsel employed by the Receiver under the direction of this court, rendered in carrying on litigation in the United States District Court for the District of Kansas in suit No. 136-N Equity, and in related and dependent cases and proceedings in other courts and before commissions, arising out of and involving the protection of the property of the Receiver from confiscation, and involving the controversy as to the rates that should be charged by said Receiver; and for services rendered for the Receiver of said United States District Court in protecting the property in the custody of the two courts, and before the Indian agency and Department of the Interior. That the attorneys

so employed in said litigation were John H. Atwood of Kansas City, Missouri; Chester I. Long, of Wichita, Kansas; Robert Stone of Topeka, Kansas; T. S. Salathiel of Independence, Kansas; and O. P.

1532 Ergenbright of Independence, Kansas. That J. W. Zevely of Muskogee, Oklahoma, has claim for legal services rendered before the Interior Department and Indian Agencies that should be preserved. That payments have been made on account for such services, as shown by the report and records of the Receiver, but compensation in full has not been fixed or paid therefor by this court; that the present judge of this court has just been called into the hearing of this cause, and is not advised, nor has he personal knowledge of the extent and character of the services rendered other than as reported by the Receiver of this court, nor of the value of said services, nor can he have knowledge of such facts equal with that of the United States District Court for the District of Kansas, wherein said litigation has been conducted, and wherein said matters have been under consideration, and wherein said services were largely rendered. The services so rendered by said counsel were rendered for the Receiver of this Court, and were rendered also for him as Receiver of the United States District Court for the District of Kansas, under his appointment made by said court, for the property in Kansas, Oklahoma, and Missouri, and for the protection of the property in the custody of said United States Court, as well as of this court.

The court further finds that under the terms of the stipulation commonly called the "Creditors' Agreement," contained in the order of this court of September 29, 1914, there remained unpaid of the bonded indebtedness of Kansas Natural Gas Company, as fixed by said "Creditors' Agreement," the following sums:

Kansas Natural First Mortgage Bonds .....	\$428,800.00
Kansas City Pipe Line Company First Mortgage Bonds .....	585,000.00
Marnet Mining Company Bonds .....	291,000.00
Kansas Natural Second Mortgage Bonds .....	1,700,250.00
Accrued Interest on Kansas Natural Second Mortgage Bonds .....	340,050.00

together with the accruing interest thereon since the last interest-paying period.

1533 That the Receiver has throughout the administration of said estate complied with and observed all of the terms of said "Creditors' Agreement," and the bonds and indebtedness above mentioned, together with the interest thereon, constitute and remain liens upon all the property of Kansas Natural Gas Company, as fixed by the terms of said "Creditors' Agreement." That certain suits are pending, seeking to assert claims against and in favor of the Receiver, in which the rights of all parties should be preserved.

It Is Therefore Ordered and Decreed by the Court, That the reports heretofore filed by the said Receiver be and the same are hereby approved.

It Is Further Ordered and Decreed that the Receiver of this court shall report to the United States District Court for the District of Kansas that this court has directed him to return to that court, as provided in the original order of delivery by the receivers of that court to the Receivers of this court, the property heretofore delivered to him by the said United States District Court, together with a certified copy of this order, said delivery to be complete as soon as said United States District Court shall make and enter an order directing its receivers to take over and resume possession and management of said property of Kansas Natural Gas Company, and shall direct its receivers to accept from the Receiver of this court the property of Kansas Natural Gas Company, subject to the claims and liens hereinbefore mentioned, and execute to him a full and complete receipt and discharge for all the property in his hands, the Receiver of this court shall deliver said property to said receivers of said United States District Court, and take their receipt and receipts therefor; that said property of Kansas Natural Gas Company shall be transferred to the receivers of the United States District Court, and to said court, subject to all lawful liens and claims against said property, arising under and by virtue of the receivership of

1534 this court in the above entitled cause and otherwise, including the liens and claims for attorneys' fees in the litigation in said cause No. 136-N in said court and related suits and proceedings in other courts and before Commissions arising out of and involving controversies as to rates which should be charged by the Receiver, and the protection of the property in the custody of the two courts, and also including the claims, liens and rights of the respective parties under the terms and provisions of a certain judgment of this court entered by consent of all parties on December 29, 1914, known as "The Creditors' Agreement," a copy of which was heretofore made a part of an order of this court; and subject to all claims that may be established in said pending suits.

It Is Further Ordered and Decreed, That John M. Landon, as Receiver of this court, upon his filing, with the Clerk of this court, a full and complete report of his transactions up to and including the date of the delivery of the said property of Kansas Natural Gas Company to the receivers of said United States District Court, including the receipt or receipts of said receivers for said property, be and he and his bondsmen are hereby exonerated and discharged from further duty, liability and authority in the premises.

J. W. HOLDREN, *Judge*.

Endorsements: No. 13476. In the District Court of Montgomery County, State of Kansas. State of Kansas, Plaintiff, vs. The Independence Gas Company et al., defendants. Order of Court; Dismissing Receivership and Approving Report. Filed June 2nd, 1917. Wm. Mibeck, Clerk.

1535 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 1351.

JOHN L. MCKINNEY et al., Plaintiffs,

v.

THE KANSAS NATURAL GAS CO., Defendant.

*Order.*

On this 5th day of June, 1917, comes John M. Landon, Receiver of the properties of the Kansas Natural Gas Company, heretofore appointed as such Receiver by the State Court of Montgomery County, Kansas, accompanied by his counsel John H. Atwood, Esq., and T. S. Salathiel, Esq., and presents to this Court an order entered by the State Court of Montgomery County, Kansas, on the 2nd day of June, 1917, approving his report as such receiver, and his accounts, and discharging him as such Receiver, and directing him to turn over all the properties of the Kansas Natural Gas Company now in his possession, or under his control, to this Court; and it appearing that said Landon has heretofore been acting as Receiver of said properties under appointment heretofore made by this Court, and it appearing further that George F. Sharritt is also Receiver of said properties under an order of this Court heretofore made:

Now, therefore, it is hereby ordered, that said Landon and said Sharritt be and they are hereby confirmed and continued as Receivers of said properties under this Court, each with the same powers as heretofore conferred upon them or either of them.

Ordered further, that as such Receivers of this Court, they forthwith accept from said State Court of Montgomery County, Kansas, possession of the properties belonging to said Kansas Natural Gas

Company, wherever situated, in accordance with the order  
1536 above mentioned made by said State Court of Montgomery  
County, Kansas, and also in accordance with orders heretofore made by this Court; and that they execute such receipt or other papers upon taking possession as may be deemed advisable by said State Court of Montgomery County, Kansas:

Ordered Further, that said John M. Landon as such Receiver continue in the active charge of the management and operation of said properties until the further order of this Court:

Ordered Further, that said John M. Landon as such Receiver, take any and all steps necessary or advisable to maintain any actions or suits now pending to which he is a party, until the further order of this Court.

Ordered further, that all administrative orders heretofore made

by the District Court of Montgomery County, Kansas, relative to the management and operation of the properties of the Kansas National Gas Company by said Receivers, and now in force, are hereby adopted and continued in full force and effect until the further order of this Court.

Dated June 5, 1917.

WILBUR F. BOOTH, *Judge*.

Filed June 5, 1917. Morton Albaugh, Clerk.

1537

Filed 6/21/17.

Before the Public Service Commission of the State of Missouri.

Case No. 1267.

*Petition of the Kansas City Gas Company Supporting New Schedule and for Authority to Acquire Properties, Construct Works and Issue Stock.*

J. W. Dana, Counsel for the Company, 910 Grand Ave., Kansas City, Mo.

1537½ Before the Public Service Commission of the State of Missouri.

Case No. —.

*Petition of the Kansas City Gas Company Supporting New Schedule and for Authority to Acquire Properties, Construct Works and Issue Stock.*

Comes now your Petitioner, the Kansas City Gas Company, and states and shows to the Commission the following facts, to-wit:

1. That it is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, having its principal office and place of business at 910 Grand Avenue in Kansas City, Missouri; that it has a duly authorized capital stock of \$2,500,000, consisting of 25,000 shares of the par value of \$100 each, of which \$1,625,000 has been duly issued and is now outstanding; and that it is engaged in the business of furnishing and distributing gas in the City of Kansas City, Missouri, and is charging the rates therefor mentioned in Ordinance No. 33887 of said city, approved September 27, 1906; a true and correct copy of said Ordinance is filed herewith, marked Exhibit A, and made a part hereof;

2. That the Kansas City Missouri Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, with offices at 910 Grand Avenue, Kansas City, Missouri, having a duly authorized, issued and outstanding  
1538 capital stock of \$5,000,000, consisting of 50,000 shares of the par value of \$100 each, and a duly authorized and issued

bonded indebtedness of \$4,978,000 secured by First Mortgage and Supplemental Mortgage upon all its properties, plant, franchises, assets and income;

3. That on November 16, 1906, said Kansas City Missouri Gas Company and Hugh J. McGowan, Charles E. Small and Randal Morgan entered into a certain instrument in writing; that said McGowan, Small and Morgan thereafter assigned all their rights thereunder to your Petitioner, by which it acquired the use of certain properties of said Kansas City Missouri Gas Company necessary for the construction, completion, extension and improvement of the plant and distributing system of your Petitioner; a true and correct copy of said instrument in writing is filed herewith, marked Exhibit B, and made a part hereof;

4. That the Kansas Natural Gas Company is a corporation duly organized and existing under the laws of the State of Delaware and engaged in the business of purchasing, producing, transporting, delivering, furnishing and selling natural gas to your Petitioner at Kansas City, Missouri, and other distributing companies in Kansas and Missouri by means of a natural-gas-pipe-line-system extending from the gas fields in Oklahoma to some 36 towns and communities in eastern Kansas and western Missouri; that said Company is licensed to do business in the State of Missouri and controls and operates the properties and pipe-lines of the Kaw Gas Company and The Kansas City Pipe Line Company; that one John M. Landon is Receiver of said Kansas Natural Gas Company, appointed by the United States District Court for the District of Kansas, and said Receiver is in active possession, control and management of said Kansas Natural Gas Company's plant, property and business in the States of Missouri, Kansas and Oklahoma;

1539 5. That Section 20 of Ordinance No. 33887 provides that "the Grantees covenant that their contract for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (corporations) \* \* \* and covenant for themselves, their successors and assigns, that none of the terms of that contract agreement shall be changed without the consent of Kansas City, expressed by ordinance \* \* \* the Grantees further agree to procure from said two corporations and file with the City Clerk within ninety days after this ordinance becomes a law, a written agreement, in form to be approved by the City Counselor, agreeing that they (said two corporations) will, if Kansas City shall acquire said plant as aforesaid, upon demand, furnish and continue to furnish during the remaining period of this franchise gas to Kansas City on the same terms as they have agreed to furnish it to the Grantees, their successors and assigns. If said proposed within agreement to be made by said two corporations is not filed with the City Clerk within the time specified this Ordinance shall be null and void." That the form of said gas-supply-contract was approved by the City Counselor, and said agreement filed with the City Clerk within the time and in the manner provided in said Ordinance;

6. That on November 17 and December 3, 1906, The Kansas City Pipe Line Company as first party and Hugh J. McGowan, Charles E. Small and Randal Morgan, Grantees, as second parties duly exe-



cuted said contracts referred to in said Ordinance for a gas supply to said Grantees; that thereafter all rights and interests under said contracts were duly assigned by the first party to the Kansas Natural Gas Company, and all the duties and obligations thereof were assumed by said Company; and thereafter all rights and interests under said contracts were duly assigned by said Grantees to the Kansas City Gas Company, and the right to obtain a natural gas supply was acquired by said Company, and it is now and long has been receiving and obtaining all and its only supply of natural gas for distribution and sale in Kansas City, Missouri, under said contracts; true and correct copies thereof being filed herewith, marked Exhibits C and D respectively, and made parts hereof;

7. That said contracts are similar in form and substance, having said Ordinance No. 33887 attached thereto, and recite that first party was the owner of gas-lands and leases and pipe-lines for the conveying of natural gas to Kansas City, Missouri, and desired a market therefor; and provide that during the period of said Ordinance, until September 27, 1936, first party shall supply and deliver natural gas to second parties, their successors and assigns at Kansas City "in such amount as will at all times fully supply the demand for all purposes of consumption," subject to accidents, interruptions and failures under certain conditions, for a certain consideration, the same now being  $62\frac{1}{2}$  per centum of 30 cents or  $18\frac{3}{4}$  cents per thousand cubic feet for gas delivered at the consumer's meters and paid for;

8. That relying upon said supply contracts and the representations of the Kansas Natural Gas Company your Petitioner and its predecessors expended large sums of money for high pressure belt lines, distributing mains, reducing stations, appliances and equipment for distributing and handling natural gas;

9. That the whole project, plan and scheme of the natural gas business contemplated the supply and sale of natural gas for three uses, (1) for lighting and cooking, (2) for domestic heating, and (3) for boiler, power and manufacturing purposes; that the transportation lines of the Kansas Natural Gas Company and the distributing system of your Petitioner were designed and constructed to that end; that the aforesaid Ordinance contemplated the sale of natural gas for all said uses, and named a schedule of rates for lighting and cooking, and domestic heating, and contemplated the sale of gas for boiler, power and manufacturing uses at special contract rates; that said supply-contracts contemplated the furnishing

1541 of said gas for said three uses; that said Contract and Ordinance referred to therein, when read and construed together, obligate the Kansas Natural Gas Company, its successors and assigns, to furnish and deliver to your Petitioner natural gas for lighting and cooking, for domestic heating, and for boiler, power and manufacturing purposes, delivered at Kansas City in sufficient amounts to meet all demands for the above three uses subject to the limitations therein set forth;

10. That at a very early period in the history of the natural gas business, the Kansas Natural Gas Company failed and defaulted in



its undertaking to furnish your Petitioner an adequate and sufficient supply of natural gas to meet the demands for boiler, power and manufacturing uses as aforesaid; that soon thereafter said Company commenced to default in furnishing an adequate supply of gas to fully meet the demands for domestic heating; that such defaults continued and increased in amount and duration from winter to winter up to the present time; that in the year 1910 your Petitioner was supplied with, and therefor- enabled to sell, 970 million cubic feet of gas for boiler, power and manufacturing purposes at special contract rates, and that the supply decreased until 1913, since which time your Petitioner has not been furnished any gas for boiler, power or manufacturing uses whatever; that in the winter of 1910-11 your Petitioner was furnished and enabled to sell on maximum-demand-days approximately 49 million cubic feet of natural gas for lighting and cooking and for domestic heating purposes; that the diminution in supply continued until in the winter of 1916-17 your Petitioner was furnished and enabled to distribute and sell only approximately 8 million cubic feet on maximum-demand-days; and that the supply furnished by the Kansas Natural Gas Company is constantly waning;

1542 11. That the following table No. 1 shows in column (a) the amount of natural gas furnished to your Petitioner by the Kansas Natural Gas Company and its Receiver from year to year for boiler, power and manufacturing uses and sold at special contract rates; in column (b) the gross receipts therefor, and in column (c) the amount remaining to your Petitioner after paying the Kansas Natural Gas Company 62½% of such gross receipts for the gas and before paying operating expenses and taxes of your Petitioner:

Table No. I.

• Kansas City Missouri.

*Annual Boiler, Power and Manufacturing Gas Sales.*

	(a)	(b)	(c)
Year.	Cubic feet.	Gross receipts.	Amount after paying Kan. Nat. Gas. Co. and before paying op. exp. and taxes.
1908.....	700,374,000	\$99,072.41	\$38,628.96
1909.....	923,834,000	122,366.34	45,894.95
1910.....	970,389,000	123,042.02	46,140.76
1911.....	673,915,000	87,986.20	32,994.83
1912.....	382,981,000	44,177.89	16,566.71
1913.....	110,984,000	13,872.96	5,202.36
1914.....	None	.....	.....
1915.....	None	.....	.....
1916.....	None	.....	.....
1917.....	None	.....	.....

1543 12. The following table No. II shows the annual income per meter in service from lighting and cooking and domestic heating gas sales and the decline of approximately 40 per cent therein due to the waning supply:

Table No. II.

Kansas City, Missouri.

*Annual Lighting and Cooking and Domestic Heating Gas Sales per Meter in Service.*

Year.	Gas, cu. ft.	Cash.	Per cent decrease from previous year.	Per cent decrease from maximum year.
1908.....	144,142	\$36.58	.....	.....
1909.....	144,963	36.80	.....	.....
1910.....	151,752	38.95	.....	.....
1911.....	152,544	38.97	.....	.....
1912.....	134,313	36.98	5.10	5.10
1913.....	108,453	29.99	18.90	23.04
1914.....	96,909	26.87	10.40	31.04
1915.....	108,229	28.16	4.80*	27.73
1916.....	84,245	23.44	16.76	39.85

1544 13. The following table No. III shows the annual income per meter in service from lighting and cooking and domestic heating and from boiler, power and manufacturing gas sales, showing a decline of over 43 per cent. due to the waning supply:

Table No. III.

Kansas City, Missouri.

*Annual Income from Lighting and Cooking and Domestic Heating and from Boiler, Power, and Manufacturing Gas Sales per Meter in Service.*

Year.	Cash.	Per cent decrease from previous year.	Per cent decrease from maximum year.
1908.....	\$38.85	.....	.....
1909.....	39.38	.....	.....
1910.....	41.40	.....	.....
1911.....	41.36	.10	.10
1912.....	37.77	8.68	8.78
1913.....	30.23	20.00	27.00
1914.....	26.87	11.11	35.10
1915.....	28.16	4.80*	32.03
1916.....	23.44	16.76	43.38

\*Increase.

1545 14. That there is a constant increase in the demand for natural gas; that the consumers demand an average of approximately 1,000 cubic feet per meter per day on peak-load-demand-days and an average of approximately 900 cubic feet per meter per day in winter months; that the following table No. IV shows in column (a) the annual average number of meters in service; in column (b) the annual increase in meters; in column (c) the total supply of gas for the month of January each year; in column (d) the total January supply per meter; in column (e) the average daily January supply per meter; in column (f) the estimated average daily January demand per meter, and in column (g) the estimated average daily January shortage per meter, from the beginning of the natural gas business down to the end of 1916:



1546 15. That by reason of the premises your Petitioner has lost all its boiler, power and manufacturing gas-business, the major portion of its domestic heating gas-business and a very considerable portion of its lighting and cooking gas-business; and Kansas City and its inhabitants are being denied safe, sufficient and adequate service;

16. That your Petitioner entered into said supply-contract originally undertook and has continued up to the present time to distribute and sell natural gas, relying upon said contract and the promises, representations and statements of the Kansas Natural Gas Company, its officers, agents and representatives from time to time, that they were or soon would be able to furnish ample natural gas to enable your Petitioner at all times to meet all demands for all lighting and cooking and domestic heating uses, and large quantities for boiler, power and manufacturing uses in the summer times; that by reason of said failures and defaults of said Kansas Natural Gas Company, your Petitioner has heretofore and is now sustaining great loss and damage, which it can no longer afford to do; and the City and its inhabitants are suffering great inconvenience and inadequate and insufficient service, which they should no longer be required to do;

17. Your Petitioner further states that the Kansas Natural Gas Company has abandoned its former business policy of acquiring, developing and holding its own supply of gas-lands and production necessary to meet the demands of your Petitioner and others dependent upon it; that said Company now produces only  $7\frac{1}{2}$  per cent. and purchases  $92\frac{1}{2}$  per cent. of all the gas it transports and furnishes to your Petitioner and others dependent upon it for a supply; that it is dependent upon such chance-purchases; that it is purchasing its gas from parties, companies and public service corporations in southern Kansas and Oklahoma who are under prior public obligations to furnish gas to consumers and other communities for

1547 domestic and industrial uses and are subject to the orders and jurisdiction of Commissions in said States having power to compel a supply of gas to said consumers; that by reason thereof said Kansas Natural Gas Company furnishes to your Petitioner only the surplus gas available after the parties from whom it obtains its supply have fully met their own and all local prior demands which are heaviest at the same time your Petitioner's demands are heaviest; that there are some 36 cities, towns and communities supplied by the Kansas Natural Gas Company, most of which are in closer proximity to the source of supply than your Petitioner and are permitted to take and do take an excessive proportion of the gas on maximum-demand-days; that by reason thereof your Petitioner is discriminated against and is furnished a less supply of gas on the maximum-demand-days than at other times;

18. That the carrying capacity of the Kansas Natural Gas Company's pipelines and system is inadequate to transport and deliver to your Petitioner a sufficient supply of gas to meet its demands at present rates;

19. That on June 15, 1916, Henry L. Doherty & Company, the

present owners of the majority of the stock of the Kansas Natural Gas Company, issued a statement in which they proposed to furnish on the entire Kansas Natural Gas Company's system 140 million cubic feet of natural gas per day on peakload demand-days during the winter of 1916-17 on certain conditions, which if it had been furnished and equitably apportioned would have given your Petitioner approximately 62 millions per day or about 1,000 cubic feet per meter per day; that thereafter, on February 29, 1917, Henry L. Doherty of the firm of Henry L. Doherty & Co. stated that they would during the winter of 1917-18 furnish on the entire Kansas Natural system approximately 80 million cubic feet of gas per day, which if furnished and equitably apportioned would give your Petitioner approximately 35 millions per day or about 570 cubic feet per meter per day; that thereafter, on or about March 17, 1917, he declined and refused to sign any guarantee to increase the supply of gas on said system for the winter of 1917-18, and stated and has since notified the Mayor of Kansas City, Missouri, that the supply for the coming winter will not exceed 30 million cubic feet per day on the entire system, which if furnished and equitably apportioned will give your Petitioner only approximately 13 million cubic feet per day or 210 cubic feet per meter per day;

20. That said Henry L. Doherty & Co. and the Kansas Natural Gas Company are depending wholly upon oil-developments and wild-catting for oil for the production of natural gas, and have stated and testified that gas production is and will be merely incident to the oil business and that no substantial drilling would be done for gas alone; that by reason thereof the future supply of natural gas to Kansas City is wholly uncertain and unreliable;

21. That your Petitioner does not know and has no means of acquiring definite and reliable information as to whether or not said Kansas Natural Gas Company will furnish any increased supply of gas over that furnished in January, 1917, which was as low as 8 million cubic feet per day or only 133 cubic feet per meter per day; that your Petitioner is therefore unable to inform the consumers of gas in Kansas City, Missouri, to what extent they may depend upon the same, either for lighting and cooking or domestic heating during the coming winter and succeeding years;

22. Your Petitioner further states that Section 14 of said Ordinance No. 33887 provides that, "Should the supply of natural gas, obtainable by grantees reasonably accessible, be, at any time hereafter during the life of this ordinance, inadequate to warrant them in continuing to supply natural gas under the terms of this ordinance, or should the Common Council of Kansas City so find at any time (and in the event of a disagreement as to the facts in this respect either party or a gas consumer may have recourse to the courts to

establish the facts), they shall not be longer required to do so, but shall manufacture and furnish manufactured gas to said city and its inhabitants through said mains and pipes under the provisions of this ordinance as far as applicable and subject to all the terms and provisions contained in the ordinance num-

ber 6658, \* \* \* ordinance number 6125 \* \* \* and ordinance number 8033 \* \* \* except as to price, which shall be settled by arbitration, in the following manner: The grantees shall not discontinue furnishing natural gas without serving at least six (6) months' written notice upon the Mayor of Kansas City of their intention so to do." Then follow provisions for arbitration of the price if the parties cannot agree; that by reason of the foregoing and out of courtesy to said City, but not admitting the legal necessity thereof, your Petitioner has served upon the Honorable George H. Edwards, Mayor of said City, a certain notice; a true and correct copy thereof being hereto attached, marked Exhibit E and made a part hereof;

23. That the Public Service Commission Act confers jurisdiction upon this Commission to fix and regulate the rates and service of your Petitioner; but your Petitioner has up to the present time deferred the filing of this Petition for the following among other reasons:

(a) The continued and repeated statements and promises of the Kansas Natural Gas Company and its Receivers of an increased and adequate supply of natural gas;

(b) The commencement and prosecution in the United States District Court for the District of Kansas of the case entitled John L. McKinney et al. v. Kansas Natural Gas Company, and the case of Fidelity Title & Trust Company v. Kansas Natural Gas Company et al., in which Receivers were appointed and the creditors prayed the liquidation of the indebtedness of the Kansas Natural Gas Company, looking toward a re-organization and rehabilitation of said Company and its properties and business, which suits are still pending;

(c) The judgment, dated February 15, 1913, and proceedings in the District Court of Montgomery County, Kansas, in the 1550 case of State of Kansas v. Kansas Natural Gas Company et al., finding among other things that the Kansas Natural Gas Company was in control of and holding in reserve the natural gas production of the Mid-Continent gas field and enjoining said Company and your Petitioner, among others, from appearing in any other Court for the determination of any and all matters in connection with their contract with the Kansas Natural Gas Company for furnishing them with a supply of gas; a copy of said judgment being filed herewith marked Exhibit F and made a part hereof;

(d) The opinion and order of April 1, 1913, of the Public Utilities Commission of the State of Kansas in the case of the State of Kansas on the relation of John Marshall, Attorney for the Commission, v. The City of Independence et al., and the subsequent order of July 10, 1913, of said Commission in said case, finding, among other things, that it was within the power of the Kansas Natural Gas Company or its Receivers to secure a supply of gas and ordering said Company to make extensions into the Cushing Field, the Haskell Field and the Okmulgee Field for such purpose; true and correct copies of said orders are filed herewith marked Exhibits G and H respectively and made part hereof;

(e) The opinion and findings of the Public Utilities Commission



of Kansas dated July 16, 1915, providing for an increase in rates and an expenditure of \$500,000 for extensions and \$900,000 for gas supply for said year and other allowances for subsequent years, and holding that it is the imperative duty of the Kansas Natural Gas Company to furnish so far as able a sufficient supply of gas for all industrial purposes during the season when it will not interfere with or lessen domestic consumption, and to furnish the same without discrimination to all distributing companies desiring it; a true and correct copy of said opinion and findings being filed herewith marked Exhibit I and made a part hereof;

1551 (f) The opinion and order of the Public Utilities Commission of Kansas of December 10, 1915, in the case of John M. Landon, et al., v. the Cities of Lawrence, et al., finding the existence of certain recent important discoveries of gas in marketable and paying quantities in the Mid-Continent gas field, and that the Kansas Natural Gas Company had at all times means at its command sufficient to enable it to procure sources of abundant supply, and that the return allowed and provided by the Commission would enable said Company beyond all doubt to have abundant funds on hand to make all necessary extensions of its lines and to obtain a sufficient supply of gas for its patrons; and suggesting the discharge of the receivership, after which, in the opinion of said Commission, the Kansas Natural Gas Company would soon be able to fully supply its patrons with all the gas they required; a true and correct copy of said opinion and order is filed herewith, marked Exhibit J, and made a part hereof;

(g) The commencement and prosecution of the case of John M. Landon, Receiver, v. the Public Utilities Commission of Kansas, et al., in the United States District Court of Kansas, including your Petitioner and your Honorable Body, and the temporary injunction issued therein by three Judges on the 3rd day of June, 1916, ordering said Receiver to expend \$750,000 for additional gas supply and the subsequent expenditure of said sum by said Receiver for such purpose; a true and correct copy of the opinion and decree of said court, dated June 3, 1916, is filed herewith, marked Exhibit K and made part hereof;

(h) The statement of Henry L. Doherty & Company, the present owners of the Kansas Natural Gas Company issued June 15, 1916, proposing to acquire the Kansas Natural Gas Company, re-habilitate its carrying system and connect it with the field supply lines of the Quapaw Gas Company, the Wichita Natural Gas Company and the Wichita Pipe Line Company and such other lines as they might construct, and supply 140 million cubic feet of gas per day during the winter of 1916-17, which if furnished and equitably ap-  
1552 portioned would have given your Petitioner approximately 62 millions per day or about 1,000 cubic feet per meter; a copy of said statement is filed herewith, marked Exhibit L, and made a part hereof;

(i) The application of said Henry L. Doherty & Company in the name of the Empire Gas and Pipe Line Company to the Public Utilities Commission of Kansas for Certificates of Authority to pur-

chase the Kansas Natural Gas Company and its subsidiaries and connect and consolidate said system with the system and gathering lines of the Quapaw Gas Company, the Wichita Natural Gas Company and the Wichita Pipe Line Company for the purpose of increasing the supply of gas to the markets reached by the Kansas Natural Gas Company; and the granting of said Certificates by said Commission on the 4th day of November, 1916; copies of said application and certificates are filed herewith, marked Exhibits M and N, and made a part hereof;

(j) The desire on the part of your Petitioner to preserve for the public as long as possible the advantages of natural gas and the apparent corresponding desire of consumers up to the winter of 1916-17 to use natural gas with its shortages, interruptions and failures rather than to return to manufactured gas;

(k) The hope for an increased supply of natural gas until the 17th day of March, 1917, when said Henry L. Doherty refused to obligate Henry L. Doherty & Company or the Kansas Natural Gas Company to furnish any definite amount of gas for any period of time, and stated that 30 million cubic feet per day was the maximum probable total of available supply on the entire Kansas Natural system for the winter of 1917-18, and that the future supplies of natural gas would depend wholly upon drilling for oil.

24. Your Petitioner further states that in said case of John M. Landon v. the Public Utilities Commission of Kansas pending in the United States District Court for the District of Kansas, an opinion was rendered on the 21st day of April, 1917, in which 1553 the Court found that the production and supply of natural gas is limited and inadequate to meet the demands therefor; and your Petitioner states that from the best sources of information available it believes and therefore states that the supply of gas to your Petitioner for the winter 1917-18 will not exceed 13 million cubic feet per day, which would be only about 210 cubic feet per meter per day, which will be wholly inadequate to meet the demands therefor at present rates, and that no better condition in subsequent years can be reasonably foreseen, and that unsafe, inefficient and inadequate service will follow the further attempt to distribute and sell natural gas at said rates.

25. Your Petitioner further states that it has the right to use the public streets of Kansas City, Missouri, for the distribution of gas and is impressed with the public duty to furnish safe, sufficient and adequate service subject to regulation by your Honorable Body; that by reason thereof your Petitioner desires to hereafter file with the Commission a New Schedule of Service, Rates, Rules, Regulations, Contracts and Practices; a copy of said proposed New Schedule being hereto attached, marked Exhibit O, and made a part hereof.

26. Your Petitioner further states that the construction of additions to the gas-manufacturing-plant and trunk mains of the character and type your Petitioner is now advised are best adapted to local conditions and of sufficient size and capacity to enable your Petitioner to meet the estimated immediate demand for manufactured gas will cost approximately \$1,800,000; and that with favor-

able conditions your Petitioner would be unable to complete the same in less than eighteen months from the commencement thereof; plans and specifications therefor are filed herewith, marked Exhibit P, and made a part hereof;

27. That by reason of the uncertainty in the supply of natural gas your Petitioner is unable to finance the construction of said additional manufactured-gas-plant and trunk mains except upon the condition that your Petitioner will at all times in the future  
1554 be entitled and allowed to earn a fair and reasonable return upon the full cost of said additional manufactured-gas-plant and trunk mains, irrespective of the supply and duration of natural gas and of the volume of gas manufactured from time to time, as well as upon the fair and reasonable value of all other properties used or useful in the service of the public.

28. Your Petitioner further states and shows to the Commission that said instrument in writing of November 16, 1906, between the Kansas City Missouri Gas Company and Hugh J. McGowan, Charles E. Small and Randal Morgan enabled your Petitioner to acquire the use of certain properties of said Kansas City Missouri Gas Company for the construction, completion, extension and improvement of the plant and distributing system of your Petitioner for certain agreed consideration, as set out in Article IX of said instrument, to-wit:

(a) Certain sums applicable to dividends upon the capital stock of said Kansas City Missouri Gas Company;

(b) The expense of maintaining the corporate organization of said Company;

(c) Interest on the bonded indebtedness of said Company;

(d) Certain sums required to be paid into the Sinking Fund;

(e) Certain insurance and repairs;

(f) The taxes and public charges against said Company, its properties, capital stock and franchises;

That your Petitioner has failed to make certain of said payments and was on May 31, 1917, and now is indebted to said Kansas City, Missouri, Gas Company in the sum of \$1,023,563.30, of which \$937,500.00 was incurred under paragraph (a), Article IX, of  
1555 said instrument in writing and \$86,063.30 was incurred under paragraphs (b), (c), (d), (e) and (f), Article IX thereof; and that further and additional indebtedness will accrue thereunder pending the hearing and final decision of this case, at which time your Petitioner will show to the Commission by proper proofs the full amount then due or accrued under said instrument in writing.

29. That since the entering into of said instrument in writing, said McGowan, Small and Morgan and your Petitioner have expended large sums of money for the further construction, completion, extension and improvement of said plant and distributing system and for the improvement and maintenance of service, and in payment therefor your Petitioner has issued its capital stock in the sum of \$1,625,000 and incurred obligations in addition to those mentioned in the last preceding paragraph aggregating \$1,788,721.31 on May 31, 1917; and will be compelled to incur other and

additional obligations for like purposes, pending the hearing and final decision of this case, at which time your Petitioner will show to the Commission by proper proofs the full amount of such obligations incurred for such purposes.

30. That it is necessary for your Petitioner to presently expend approximately \$1,800,000 additional for the further construction, completion, extension and improvement of said plant and distributing system and for the improvement and maintenance of service by the construction of the aforesaid additions to said gas-manufacturing-plant and trunk mains as shown by said Plans and Specifications;

31. That the plant and the lands upon which it is located and the lands upon which said additional gas-manufacturing-plant is to be constructed and all the distributing system existing on November 16, 1906, now operated by your Petitioner, are owned by the Kansas City Missouri Gas Company; that said lands, plant and appurtenances are not in the possession or under the control of

1556 your Petitioner under the terms of said instrument in writing of November 16, 1906; that said lands and plant are centrally located on the most suitable site for a gas-manufacturing-plant in Kansas City, Missouri; that by reason thereof it is necessary for your Petitioner to purchase said lands and plant and acquire title thereto in fee-simple and to purchase and acquire the full title to all the distributing system, properties, rights, privileges, franchises, contracts and assets and to assume the liabilities and obligations of said Kansas City Missouri Gas Company for the improvement and maintenance of the service to be performed by your Petitioner;

32. That by reason of the premises the Kansas City Missouri Gas Company and your Petitioner have entered into a certain agreement providing for the sale, assignment, transfer and delivery by said Kansas City Missouri Gas Company and the purchase, acquisition and assumption by your Petitioner of all the properties, real, personal and mixed, and all the rights, privileges, franchises, contracts, assets, liabilities and choses-in-action of said Kansas City Missouri Gas Company, and the cancellation of said instrument in writing of November 16, 1906, subject to the orders and approval of this Commission, by the terms of which agreement it is necessary for your Petitioner, in order to acquire title to said properties, to increase its Capital stock and to issue and distribute to the stockholders of the Kansas City Missouri Gas Company its Common stock in exchange for this stock, and its 8% Preferred stock in payment of its obligations to said Company under paragraph (a) of Article IX of said instrument in writing; and for your Petitioner to issue and sell 8% preferred stock to procure funds to discharge all its other obligations and to construct said gas-manufacturing-plant and trunk mains, which said Preferred stock your Petitioner is informed and believes it will be able to sell to The United Gas Improvement Company, of Philadelphia, Pa., at par on the conditions herein

1557 named; said increase being as follows:

	Common stock.	Preferred stock.
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(A) To discharge and refund said obligations of your Petitioner to the Kansas City Missouri Gas Company incurred under said instrument in writing of November 16, 1906, necessary for acquiring the use of the properties of said Company necessary for the construction, completion and extension of the plant and distributing system and for the improvement and maintenance of service of your Petitioner, in the sum of.....

.....	\$1,023,563.30
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(B) To discharge and refund said obligations of your Petitioner necessarily incurred for the further construction, completion, extension and improvement of its plant and distributing system and for the improvement and maintenance of service, in the sum of.....

.....	1,788,721.31
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(C) To acquire the properties of the Kansas City Missouri Gas Company subject to all liabilities, in the sum of.....

.....	\$5,000,000.00
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(D) To pay the cost of the further construction, completion, extension and improvement of said

1558

plant and distributing system and improvement and maintenance of service provided for in said Plans and Specifications, in the sum of..

.....	1,800,000.00
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<u>\$5,000,000.00</u>	<u>\$4,612,284.61</u>
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(E) Together with such additional Preferred stock as may be necessary to discharge and refund such further obligations as may accrue under said instrument in writing of November 16, 1906, or be incurred by your Petitioner for like purposes pending the hearing and final decision of this case.

A true and correct copy of said contract is hereto attached, marked Exhibit Q and made a part hereof.

33. That your Petitioner is informed and believes that it will be unable to acquire said properties of the Kansas City Missouri Gas

Company or to sell said capital stock necessary for the construction of said additions to its gas-manufacturing-plant and distributing system, except upon condition that said offer to purchase said capital stock and said New Schedule of Service, Rates, Rules, Regulations, Contracts and Practices becomes effective at an early date and the relief sought herein is granted substantially as prayed;

Wherefore, your Petitioner prays your Honorable Body as follows:

(a) For an order finding that the supply of natural gas obtainable by the Kansas City Gas Company has become inadequate to warrant it in continuing to supply natural gas at the rates named in 1559 Ordinance No. 33887 of Kansas City, Missouri, and that it is no longer required so to do;

(b) For an order authorizing the Kansas City Gas Company to purchase, acquire, take over, assume, hold, own and operate, and the Kansas City Missouri Gas Company to assign, sell, convey, transfer, set over and deliver to said Kansas City Gas Company all the real estate, plant, distributing system, rights, privileges, franchises, contracts, obligations, assets, liabilities, choses-in-action and properties, real, personal and mixed of said Kansas City Missouri Gas Company;

(c) For an order authorizing the Kansas City Gas Company to construct and maintain additions to said gas-manufacturing-plant and trunk mains substantially as set forth in said Plans and Specifications on file; upon condition, however, that your Petitioner shall at all times hereafter be entitled and allowed to earn a fair and reasonable return upon the full cost of said additional gas-manufacturing-plant and trunk mains, irrespective of the supply and duration of natural gas and of the volume of gas manufactured from time to time; and upon the further condition that your Petitioner be authorized to issue the stock prayed for in the following paragraph:

1560 (d) For an order authorizing your Petitioner to issue additional stock and authorizing the takers and purchasers thereof to purchase, take and hold the same as follows:

Common stock.	Preferred stock.
---------------	------------------

1. To the stockholders of the Kansas City Missouri Gas Company in exchange for and upon surrender of their holdings in said Company and in payment and for the acquisition of the properties of said Company, subject to its liabilities, in the sum of.....

\$5,000,000.00

2. To the stockholders of the Kansas City, Missouri, Gas Company, upon surrender of their holdings as aforesaid, in satisfaction and payment of the obligations of your Petitioner to said Company referred to in paragraph 28 supra, incurred under para-



	Common stock.	Preferred stock.
graph (a), Article IX, of said instrument in writing of November 16, 1906, for acquiring the use of the properties of said Company for the construction and extension of the plant and distributing system and for the improvement and maintenance of service of your Petitioner, in the sum of.....	.....	937,500.00
3. To The United Gas Improvement Company, of Philadelphia, Pa., for cash at par to provide		
1561		
funds to discharge and refund the balance of said obligations of your Petitioner to said Kansas City, Missouri, Gas Company referred to in paragraph 28 supra, incurred under paragraphs (b), (c), (d), (e) and (f) of Article IX of said instrument in writing for like purposes, in the sum of.....	.....	86,063.30
4. To The United Gas Improvement Company, of Philadelphia, Pa., for cash at par to provide funds to discharge and refund said obligations of your Petitioner referred to in paragraph 29 supra, incurred for the further construction, completion, extension and improvement of said plant and distributing system and improvement and maintenance of service, in the sum of .....	.....	1,788,721.31
5. To the United Gas Improvement Company, of Philadelphia, Pa., for cash at par to provide funds to pay the cost of the construction, completion, extension and improvement of said Plant and Distributing System and improve-		
1562		
ment and maintenance of service referred to in paragraph 31 supra, and said Plans and Specifications, in the sum of .....	.....	1,800,000.00
	<u>\$5,000,000.00</u>	<u>\$4,612,284.61</u>



Common stock. Preferred stock.

6. To the respective parties entitled thereto, such additional Preferred stock as may be necessary to discharge and refund such further additional obligations of your Petitioner as may become due or accrue under said instrument in writing or be incurred for like purposes pending the hearing and final decision hereof, in the sum of .....

(c) For an order approving said proposed New Schedule of Service, Rates, Rules, Regulations, Contracts and Practices, and directing the filing thereof and the time and manner of publication thereof;

(f) And for such other and further findings, orders and relief in the premises as may be just, fair and equitable and enable your Petitioner to furnish and provide safe, sufficient and adequate service to the City of Kansas City, Missouri, and its inhabitants.

KANSAS CITY GAS COMPANY,  
By J. W. DANA, Counsel.

910 Grand Avenue, Kansas City, Mo.

1563 STATE OF MISSOURI,  
County of Jackson, ss:

E. L. Brundrett, being duly sworn, deposes and says that he is president of the Kansas City Gas Company, that he has read and knows the contents of the foregoing Petition, and that the allegations and statements of fact therein made and contained are true, except such as are made on information and belief, and as to such he believes them to be true.

E. L. BRUNDRETT.

Subscribed in my presence and sworn to before me this 19 day of June, 1917.

[SEAL.]

WILLIAM SHELDON MCCARTHY,  
Notary Public.

My commission expires Jan'y 16th, 1918.

1564

EXHIBIT E.

Notice

To the City of Kansas City, Missouri, the Hon. George H. Edwards, Mayor, and the Common Council:

Please take notice that the supply of natural gas obtainable by the Kansas City Gas Company has become inadequate to warrant it in continuing to supply natural gas and insufficient to enable it to furnish safe, sufficient and adequate service at the rates named in Ordinance No. 33887.

Wherefore, the Company has filed with the Public Service Commission of Missouri as required by law a Petition in Support of a New Schedule of Service, Rates, Rules, Regulations, Contracts and Practices to be filed, and Praying for Authority to Acquire Properties, Construct Gas-Manufacturing-Works and Issue Stocks; a true copy of said Petition with said proposed New Schedule attached thereto, is hereto attached and made a part hereof.

Dated —, 1917.

[SEAL.]

KANSAS CITY GAS COMPANY,  
By E. L. BRUNDRETT,  
*President.*

Attest:

J. M. SCOTT, *Secretary.*

Service acknowledged June —, 1917.

*Mayor of Kansas City, Mo.*

1565

EXHIBIT O.

*New Schedule of Service, Rates, Rules, Regulations, Contracts and Practices of the Kansas City Gas Company.*

Rates.

Sub-division No. I.

If the Kansas Natural Gas Company does not file one of the statements and agreements as provided for in Sub-Divisions Nos. II, III and IV hereof on or before August 1, 1917, this Company will from and after the regular September-1917-meter readings furnish at the rates set out in this Sub-Division No. I, Natural Gas Exclusively to the extent available until the gas-manufacturing-plant and trunk mains provided for herein are completed and thereafter until the pressures fall below 10 lbs. per square inch for one hour as recorded by both of the gas-pressure-measuring-gauges located on the natural gas mains on 25th Street and 39th Street at or near the Kansas-Missouri state line in Kansas City, Missouri; thereupon, after said plant and mains are completed, this Company will furnish at said rates Part Natural Gas and Part Manufactured Gas during the remainder of the day wherein such pressures so fall; but if the pressures as recorded by said gauges or either of them fall below 10 lbs. per square inch for one hour per day on each of any 5 consecutive or intermittent days during any period of 60 days or for one hour per day on each of any 10 consecutive or intermittent days during any period of one year, then and in that event, after said plant and mains are completed, this Company will discontinue all further or future efforts or attempts to furnish natural gas in whole or in part and will thereafter furnish at said rates Manufactured Gas Exclusively and continuously, notwithstanding any statements made or filed by the Kansas Natural Gas Company under Sub-Divisions Nos. II, III and IV hereof or otherwise relating to the supply of natural gas;

1566

Capacity required by  
the consumer per  
hour

0 cubic feet  
to  
200 cubic feet

For the first 7,800 cubic feet through any one meter in any one monthly meter reading period:

\$1.10 per thousand cu. ft., gross,

\$1.00 per thousand cu. ft., net;

For the next 6,800 cubic feet through any one meter in any one monthly meter reading period:

90c. per thousand cu. ft., gross,

80c. per thousand cu. ft., net;

For all in excess of 14,600 cubic feet through any one meter in any one monthly meter reading period:

70c. per thousand cu. ft., gross,

60c. per thousand cu. ft., net;

Minimum charge for any one meter in service in any one monthly meter reading period:

70c. gross,

50c. net.

Capacity required by  
the consumer per  
hour

201 cubic feet  
to  
800 cubic feet

For the first 11,000 cubic feet through any one meter in any one monthly meter reading period:

\$1.10 per thousand cu. ft., gross,

\$1.00 per thousand cu. ft., net;

For the next 6,800 cubic feet through any one meter in any one monthly meter reading period:

90c. per thousand cu. ft., gross,

80c. per thousand cu. ft., net;

For all in excess of 17,900 cubic feet through any one meter in any one monthly meter reading period:

70c. per thousand cu. ft., gross,

60c. per thousand cu. ft., net;

Minimum charge for any one meter in service for any one monthly meter reading period:

\$1.20 gross,

\$1.00 net.

1567

Capacity required by  
the consumer per  
hour

801 cubic feet  
to  
2,000 cubic feet

For the first 20,800 cubic feet through any one meter in any one monthly meter reading period:

\$1.10 per thousand cu. ft., gross,

\$1.00 per thousand cu. ft., net;

For the next 6,800 cubic feet through any one meter in any one monthly meter reading period:

90c. per thousand cu. ft., gross,

80c. per thousand cu. ft., net.

For all in excess of 27,600 cubic feet through any one meter in any one monthly reading period:

70c. per thousand cu. ft., gross,

60c. per thousand cu. ft., net;

Minimum charge for any one meter in service in any one monthly meter reading period:

\$2.70 gross,

\$2.50 net.

Capacity required by  
the consumer per  
hour

2,001 cubic feet  
to  
3,000 cubic feet

For the first 37,400 cubic feet through any one meter in any one monthly meter reading period:

\$1.10 per thousand cu. ft., gross,

\$1.00 per thousand cu. ft., net;

For the next 6,800 cubic feet through any one meter in any one monthly meter reading period:

90c. per thousand cu. ft., gross,

80c. per thousand cu. ft., net;

For all in excess of 44,200 cubic feet through any one meter in any one monthly meter reading period:

70c. per thousand cu. ft., gross,

60c. per thousand cu. ft., net;

Minimum charge for any one meter in service in any one monthly meter reading period:

\$5.20 gross,

\$5.00 net.

1568

Capacity required by  
the consumer per  
hour

Over  
3,000  
Cubic Feet

For consumers requiring a capacity in excess of 3,000 cubic feet per hour, the volume of gas to be charged for at the initial rate shall be 37,400 cubic feet, plus 1,000 cubic feet for each additional 100 cubic feet or fraction thereof of hourly capacity required.

Such volume used through any one meter in any one monthly meter reading period:

\$1.10 per thousand cu. ft., gross,  
\$1.00 per thousand cu. ft., net;

For the next 6,800 cubic feet through any one meter in any one monthly meter reading period:

90c. per thousand cu. ft., gross,  
80c. per thousand cu. ft., net;

For all in excess of the sum of such volumes through any one meter in any one monthly meter reading period:

70c. per thousand cu. ft., gross,  
60c. per thousand cu. ft., net;

Minimum charge for any one meter in service in any one monthly meter reading period:

\$5.20 gross,  
\$5.00 net.

1569

## Sub-Division No. II.

If the Kansas Natural Gas Company on or before any August 1st hereafter files with the Commission, the City Clerk of Kansas City, Mo., and this Company a statement duly verified by its President as true and correct setting forth the facts relating to the available natural gas supply and agreeing to furnish to this Company daily whenever needed during the year beginning on said date, quantities of natural gas at least equivalent to 333 cubic feet multiplied by the number of active meters in service on said date plus 10% for increase, this Company will after the following September meter-readings furnish Natural Gas Exclusively so furnished to it, and will charge for such natural gas used through one meter during one meter-reading period, the following rates:

First 2,000 cu. ft. ....	\$1.00 per thousand cu. ft. gross, .90 per thousand cu. ft. net;
Next 3,000 cu. ft. ....	.90 per thousand cu. ft. gross, .80 per thousand cu. ft. net;
All over 5,000 cu. ft. ....	.60 per thousand cu. ft. gross, .50 per thousand cu. ft. net;
Minimum Bill—	70c per month gross, 50c per month net;

Provided that if and when the pressures fall below 10 pounds per square inch for one hour as recorded by either or both of the gas-pressure-measuring-gauges located on the natural gas mains on 25th Street and 39th Street at or near the Kansas-Missouri state line in Kansas City, Missouri, on each of any 2 consecutive or intermittent days during any period of 30 days or on each of any 5 consecutive or intermittent days during any period of one year, then and in that event the service and rates specified in Sub-Division No. I shall be resumed, and notice thereof shall be published once in two daily papers in Kansas City, Missouri, and mailed to the Kansas Natural Gas Company;

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## Sub-Division No. III.

If the Kansas Natural Gas Company on or before any August 1st hereafter files with the Commission, the City Clerk of Kansas City, Mo., and this Company a statement duly verified by its President as true and correct setting forth the facts relating to the available natural gas supply and agreeing to furnish to this Company daily whenever needed during the year beginning on said date, quantities of natural gas at least equivalent to 533 cubic feet multiplied by the number of active meters in service on said date plus 10% for increase, this Company will after the following September meter-readings furnish Natural Gas Exclusively so furnished to it, and will charge for such natural gas used through one meter during one meter-reading period, the following rates:

First 2,000 cu. ft. ....	90c per thousand cu. ft. gross, 80c per thousand cu. ft. net;
Next 3,000 cu. ft. ....	65c per thousand cu. ft. gross, 55c per thousand cu. ft. net;
All over 5,000 cu. ft. ....	45c per thousand cu. ft. gross, 35c per thousand cu. ft. net;
Minimum Bill—	70c per month gross, 50c per month net;

Provided that if and when the pressures fall below 10 pounds per square inch for one hour as recorded by either or both of the gas-pressure-measuring-gauges located on the natural gas mains on 25th Street and 39th Street at or near the Kansas-Missouri state line in Kansas City, Missouri, on each of any 2 consecutive or intermittent days during any period of 30 days or on each of any 5 consecutive

or intermittent days during any period of one year, then and in that event the service and rates specified in Sub-Division No. II shall be resumed, and notice thereof shall be published once in two daily papers in Kansas City, Missouri, and mailed to the Kansas Natural Gas Company;

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## Sub-Division No. IV.

If the Kansas Natural Gas Company on or before any August 1st hereafter files with the Commission, the City Clerk of Kansas City, Mo., and this Company a statement duly verified by its President as true and correct setting forth the facts relating to the available natural gas supply and agreeing to furnish to this Company daily whenever needed during the year beginning on said date, quantities of natural gas at least equivalent to 800 cubic feet multiplied by the number of active meters in service on said date plus 10% for increase, this Company will after the following September meter-readings furnish Natural Gas Exclusively so furnished to it, and will charge for such natural gas used through one meter during one meter-reading-period, the following rates:

First 2,000 cu. ft. ....	85c per thousand cu. ft. gross, 75c per thousand cu. ft. net;
Next 3,000 cu. ft. ....	65c per thousand cu. ft. gross, 55c per thousand cu. ft. net;
All over 5,000 cu. ft. ....	40c per thousand cu. ft. gross, 30c per thousand cu. ft. net;
Minimum Bill—	70c per month gross, 50c per month net;

Provided that if and when the pressures fall below 10 pounds per square inch for one hour as recorded by either or both of the gas-pressure-measuring-gauges located on the natural gas mains on 25th Street and 39th Street at or near the Kansas-Missouri state line in Kansas City, Missouri, on each of any 2 consecutive or intermittent days during any period of 30 days or on each of any 5 consecutive or intermittent days during any period of one year, then and in that event the service and rates specified in Sub-Division No. III shall be resumed, and notice thereof shall be published once in two daily papers in Kansas City, Missouri, and mailed to the Kansas Natural Gas Company.

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## Contracts.

The Company will consent to change the natural gas supply contracts dated November 17 and December 3, 1906, existing between this Company and the Kansas Natural Gas Company, if an agreement can be had with said Company, increasing the price to be paid said Company for the natural gas furnished to this Company and sold at the rates specified in this New Schedule after the same becomes effective and so long as it continues in effect, from the price



named in said contracts to not exceeding 20 cents per thousand cubic feet for the natural gas delivered to and measured by the consumers' meters; provided that nothing contained in or done pursuant to this New Schedule shall be held or construed to waive, abandon, relinquish or work an estoppel of the rights of this Company under said supply-contracts or to enlarge in any manner the duty, liability or obligation of this Company under said contracts or otherwise as to furnishing natural gas to any person, firm or corporation.

#### Additional Gas-Manufacturing-Plant and Trunk Mains.

When this New Schedule becomes effective and the Commission has ordered the construction of the additional gas-manufacturing-plant and trunk mains substantially according to the Plans and Specifications on file with the Commission, and authorized the assignment of properties and issues of stock as prayed for in the petition to which this New Schedule is attached, the Company will promptly commence and complete the construction of such additional gas-manufacturing-plant and trunk mains and when completed will maintain and operate the same whenever necessary under Sub-division No. 1, upon condition that the Company will at all times be allowed to earn a fair, reasonable return upon the cost of said additional gas-manufacturing-plant and trunk mains, irrespective of the supply and duration of natural gas and the volume of gas manufactured from time to time; it being understood that with favorable conditions it will be impossible to complete said plant and mains in less than eighteen months from the time commenced, and that no manufactured gas will be furnished under this Schedule until the completion thereof.

#### Rules, Regulations and Practices.

The Kansas City Gas Company and Consumers of Gas and Applicants therefor and Users thereof and Owners, Tenants and Occupants of premises on which gas is used or service pipes or meters installed or appliances for the use of gas maintained, shall hereafter observe, follow and enforce the following Rules, Regulations and Practices relating to Gas-Service, to-wit:

Rule 1. When, for the capacity required, it is necessary to set two or more meters for one consumer at one location, the total volume of gas used through such meters shall be considered as having passed through one meter of a capacity equal to the total capacity of the two or more meters used.

Rule 2. Consumers shall provide without expense to the Company suitable and accessible places for meters, where they will not be exposed to moisture, fire, flame, heat, jar or dislocation by movable objects; which places shall not be used for store-rooms, tool-rooms, fuel-bins, bath-rooms, clothes-closets, or in any manner tending to damage, jar, dislocate or disconnect said meters; and con-

sumers shall be liable for all damage done to meters, fittings and connections.

Rule 3. Consumers shall furnish house risers up to within 18 inches of the meter location, and house pipes of suitable size from the Company's meters to the consumers' appliances.

Rule 4. In buildings and premises where there are basements, meters shall be installed in basements only, otherwise on the ground floor only. Check-meters, Sub-meters, Deducting-meters or other devices for apportioning the gas between different users shall not be installed by the Company.

Rule 5. In store-rooms having no basements, meters may be installed in bulkheads under show windows, provided same are  
1574 accessible to the Company and give ample space for the installation and maintenance of meters. Such bulkheads shall be arranged to open at the top and one side and be ventilated.

Rule 6. All meters supplied by one service pipe shall be grouped together at the point where the service pipe enters the building.

Rule 7. No meter shall be allowed in service which has an incorrect gear ratio or dial train or is mechanically defective or shows an error in measurement in excess of 2 per cent when passing gas at the rate of 6 cubic feet per hour per rated light capacity. When adjustment is necessary such adjustment shall be made to within at least 1 per cent of correct registration.

Rule 8. The Company shall maintain polished copper bell meter-provers of standard make for the purpose of testing meters. Said provers shall be checked from time to time with a cubic-foot bottle found correct within the limits prescribed by the United States Bureau of Standards. The Company shall employ experienced men to use said provers in testing meters, and shall provide and maintain such appropriate equipment and appliances as may be necessary to properly test the accuracy of meters installed by it.

Rule 9. Meters in service shall be removed and tested for accuracy at least once in 60 months and repaired if necessary.

Rule 10. The Company shall test any meter free of charge upon request of any consumer, provided said meter has not been tested within 12 months prior to such request. The consumer shall be notified of the time and place of such test and permitted to witness the same. A written report giving the result of such test shall be filed in the office of the Company and a copy thereof furnished to the consumer if requested.

1575 Rule 11. Upon request of a consumer to test a meter which has been tested within 12 months and the deposit of \$1.00, the Company shall test said meter; if found to be fast beyond the limit prescribed in Rule 7, said deposit shall be refunded to the consumer, otherwise said deposit shall be retained by the Company.

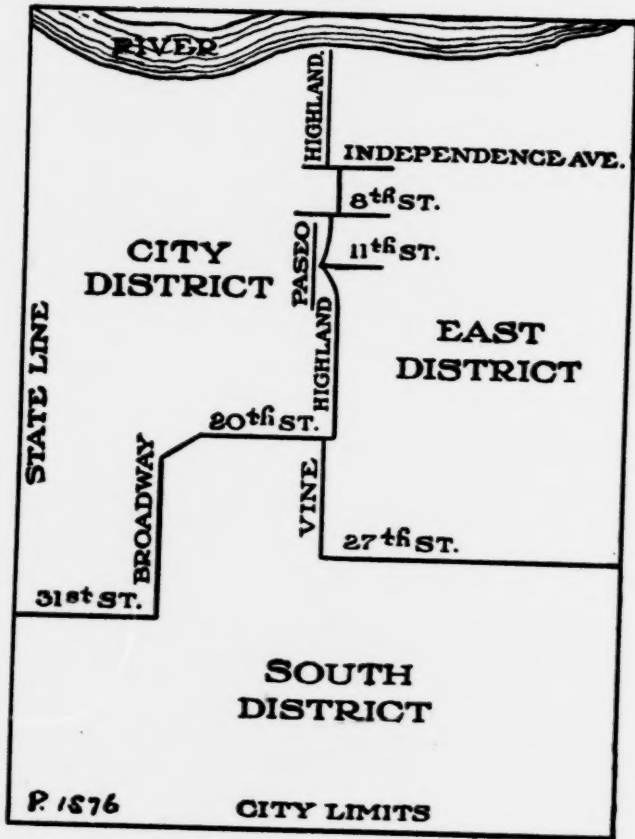
Rule 12. If a consumer requires a meter to be tested at a place other than the Company's meter testing shop, to be prescribed by the Commission, the Company shall require a deposit of \$2.00 for testing a meter not exceeding 10-light capacity and \$5.00 for a 20-light, 30-light or 30A-light meter and \$7.50 for a larger sized meter.

The consumer shall be permitted to witness the disconnecting, packing and shipping of said meter, should he so desire. If such meter is found to be fast beyond the limit prescribed in Rule 7, the Company shall pay the testing fee and cost of packing and shipment, otherwise all fees, costs and expenses shall be paid by the consumer.

Rule 13. The Company shall, for the convenience of consumers, continue its established division of the city into three districts, known as the "City District," "East District" and "South District," the boundaries of which are as follows:

(Here follows plat marked page 1576.)

North





Bills in the "City District" shall be due and payable at the office of the Company on the first day of each month; in the "East District" on the 11th day of each month, and in the "South District" on the 21st day of each month; and shall be delinquent 10 days after said due-dates respectively. Failure to receive bills shall not entitle consumers to discount after discount days.

1577 Rule 14. Discounts of 10 cents per thousand cubic feet and 20 cents on minimum bills shall be allowed if bills are paid at the office of the Company within the discount-period specified in Rule 13.

Rule 15. Applications for gas shall be made in writing at the office of the Company in the following form:

Application for Gas.

Kansas City, Missouri, — —, — —.

The undersigned hereby applies to the Kansas City Gas Company for gas to be supplied on the premises at Number — on — Street, occupied by me as —, under and pursuant to the Schedule of Service, Rates, Rules, Regulations, Contracts and Practices of said Company now or hereafter on file with the Public Service Commission of Missouri and open for public inspection in the office of the Company.

— —  
Applicant.

Rule 16. Consumers shall be liable for all gas consumed at locations named in their applications until written notice has been received by the Company and reasonable time allowed to inspect meters and shut off the gas.

Rule 17. The Company may require of applicants or consumers either cash deposits or personal guarantors satisfactory to the Company, which guarantors shall be consumers of gas, to secure the payment of the bills of said applicants or consumers and of bills for which they are guarantors. Deposits or guaranties shall be double the estimated average monthly bills of applicants or consumers. Interest at the rate of 6 per centum per annum, payable annually if requested, or upon the return of the deposit, shall be paid by the Company on cash deposits, provided such cash deposits remain with the Company for a period of at least six months.

1578 Rule 18. On request meter readers of the Company shall leave at the meters statements showing the total reading of the meter in cubic feet and the date such reading was taken.

Rule 19. A charge of one dollar shall be made for turning off and turning on gas for consumers who move or who required such turn-off and turn-on more than once in 12 months, or for turning on gas which has been turned off for non-payment of bills or attempted payment by worthless check or failure or refusal to furnish deposit or guaranty when required.

Rule 20. The Company's agent, having a badge of identity, shall at all reasonable times have access to the Company's meters, pipes and other property on the consumer's premises, and the right to remove said property.

Rule 21. The Company shall have the right to shut off gas and remove its property from the consumers' premises for any of the following reasons:

1. For repairs;
2. To ascertain the quantity of gas furnished and whether same is passing through the meter and being measured;
3. For failure of the consumer to pay any bill due the Company, provided that notice shall have been mailed to the consumer stating the time gas will be shut off and the reason therefor, 48 hours before said gas is shut off;
4. For failure to pay bills due the Company guaranteed by the consumer, provided that notice shall have been mailed to the consumer stating the time gas will be shut off and the reason therefor, 48 hours before gas is shut off;
5. For failure or refusal to furnish deposit or guaranty when required as provided in Rule 17, provided that notice shall have been mailed to the consumer stating the time gas will be shut off 1579 and the reason therefor, 48 hours before said gas is shut off;
6. For attempted payment of a bill or guaranteed bill by worthless check;
7. For tampering with or attaching any device to service pipe, meter or connections or permitting same to be done.

Rule 22. When a meter in service has been tested on complaint of a consumer and found to be fast beyond the limit prescribed in Rule 7, the Company shall refund to such consumer the percentage of his bills for the last preceding three months which said test shows said meter was fast beyond said limit.

Rule 23. In case a meter shall cease to register, the Company shall render a bill estimated upon the quantity of gas ascertained as nearly as practicable by the quantity registered by another meter installed in lieu thereof, and by the quantity consumed during the corresponding period of the previous year.

Rule 24. No reduction in consumers' bills shall be allowed by the Company because of loss or leakage in house-piping, equipment or appliances of the consumer.

Rule 25. The Company shall not turn on gas in any case where it has actual notice of defective or dangerous house-piping, appliances or equipment or that the consumer is violating the ordinances of Kansas City, Missouri, or the statute of the state of Missouri relating to the use of gas; but the Company shall not be required to inspect or take notice of the condition of the house-piping, appliances or equipment of consumers or the violation of City ordinances or statutes.

Rule 26. The Company shall not turn on gas into vacant premises.



1580 Rule 27. Immediate notice in writing shall be given to the Company at its office of any deficiency in the supply of gas or any escape of gas in or about the consumer's premises. No light or flame shall be taken near escaping gas and the gas shall be shut off immediately by the consumer at the stop-cock whenever a leak is discovered.

Rule 28. If, during periods when natural gas is being supplied, there shall be shortages causing the pressure to fall below 1 inch water pressure, the Company shall not be required to turn on gas for any consumer.

Rule 29. (A) Natural gas furnished the consumers shall be of the quality received from the Kansas Natural Gas Company or its successors.

(B) The monthly average total heating value of manufactured gas shall not be less than 570 British Thermal Units per cubic foot at any point within one mile of the manufacturing plant, and at no time shall the total heating value of the gas at such point be less than 520 British Thermal Units per cubic foot. To arrive at the monthly average total heating value, the results of all tests made on any one day shall be averaged and the average of all such daily averages shall be taken as the monthly average.

Rule 30. (A) The Company shall make observations of the heating value of the natural gas supplied at least three times a year.

(B) The Company shall provide and maintain a calorimeter and all necessary accessories therefor, and shall determine the heating value of the manufactured gas supplied on at least three days of each week. A record of all heating-value tests shall be maintained available for inspection by the Commission and preserved for a period of at least two years.

Rule 31. Manufactured gas shall not contain more than a trace of hydrogen sulphide. The gas shall be considered to contain not

1581 more than a trace of hydrogen sulphide if a strip of white filter paper moistened with a solution containing 5 per cent by weight of lead acetate is not distinctly darker than a second paper freshly moistened with the same solution after the first paper has been exposed to the gas for one minute in an apparatus previously purged through which gas is flowing at the rate of 5 cubic feet per hour and not impinging directly from a jet upon the test paper. Tests shall be made daily on gas leaving the holders for the presence of hydrogen sulphide in the manner above specified and a record of the results of these tests shall be filed available for inspection by the Commission and preserved for a period of at least two years.

Rule 32. Manufactured gas shall contain not more than 30 grains of total sulphur nor more than 5 grains of ammonia in each 100 cubic feet.

Rule 33. The Company shall provide and maintain such apparatus and facilities as are necessary for the determination of total sulphur and ammonia in manufactured gas, and shall regularly determine the amount of total sulphur and ammonia in the manufactured gas

furnished by it at sufficiently frequent intervals to insure compliance with requirements of Rule 32.

Rule 34. (A) The Kansas Natural Gas Company shall deliver natural gas and maintain pressures at the intakes of the Kansas City Gas Company's system at 25th Street and State Line and 39th Street and State Line at not less than 10 pounds per square inch. When the Kansas Natural Gas Company maintains such pressures, the Kansas City Gas Company shall distribute natural gas at pressures not less than the equivalent of 2 inches or more than the equivalent of 8 inches water column.

(B) Manufactured gas shall not be furnished at pressure less than the equivalent of 2 inches or more than the equivalent of 8 inches water column, as measured at the outlet of consumers' service pipes or house governors. The maximum pressure on any day at any consumer's service pipe outlet or house governor shall not exceed twice the minimum pressure on that day.

Rule 35. The Company shall provide and maintain Pressure Recording Gauges of standard make at the inlet and outlet of each of its street main governor stations and at eight or more other locations on its street main system throughout the city. Charts shall be collected daily or weekly, identified, dated and kept on file available for inspection for at least two years.

Rule 36. The Company shall extend mains without cost to the consumer, a distance of 66-2/3 feet for each new consumer and such new consumer shall be deemed and held to have contracted for gas for one year upon signing the "Application for Gas," set out in Rule 15.

Rule 37. For property owners or promoters the Company shall extend mains, under written contract, upon the following terms:

1. Extensions so made shall be constructed by and remain the property of the Company.

2. The owners or promoters shall pay to the Company before the extension is made the total cost thereof, estimated and determined by the Company; any excess shall be refunded immediately upon the completion of the extension.

3. The amount paid shall be refunded without interest on the basis of the cost of laying 66-2/3 feet of main for each consumer as buildings become occupied and gas is used by consumers, and such consumers shall be deemed and held to have contracted for gas for one year upon signing the "Application For Gas," set out in Rule 15. Such refunds shall continue until the total amount paid is refunded; provided, that no refund shall be made after five years from the date of payment.

1583 Rule 38. Service pipes, meters, fittings and connections necessary to supply gas from the Company's mains to the consumers' risers shall be and remain the property of the Company, and under its exclusive care, maintenance and control. Consumers shall not interfere with or make any changes therein.

Rule 40. Service pipes shall be run, free of charge, from the street-mains to the curbs and from alley-mains to the lot-lines. Any additional service pipes necessary to be run will be laid by the Com-

pany at the expense of consumers, paid in advance, at the following prices per lineal foot:

1- $\frac{1}{4}$ in. pipe and under.....	25 cents
1- $\frac{1}{2}$ in. pipe.....	30 cents
2 in. pipe.....	40 cents

For larger pipe at estimated cost.

Rule 40. For service pipes installed between December 1st and March 31st, an additional charge of \$10.00 per service, payable in advance, shall be made to cover the increased cost.

Rule 41. Service pipes shall not be laid in ditches dug for water, sewer or other pipes or conduits, or in newly filled ground.

Rule 42. Service pipes shall be run only at right angles to mains.

Rule 43. In the case of buildings having front basements, service pipes shall be run only to and through the front walls.

Rule 44. In the case of buildings having rear basements only, service pipes shall be run on the outside near the buildings and extended through the foundation at —.

1584 Rule 45. In the case of buildings having no basements, the service pipes shall be run through the front wall and rise through the floor.

Rule 46. Service pipes shall not be run through areaways, rooms, coal-bins, or under porches or in any location necessitating the exposure of the pipes.

Rule 47. Service pipes shall not be installed under buildings, walks, paths, drives, trees or in inaccessible places.

Rule 48. Service pipes shall not be extended across private property, other than the premises served.

Rule 49. The cost of changes in the location of service pipes or connection necessitated by alterations in buildings or premises, or requested by the owners or consumers, shall be paid for in advance by the owners or consumers.

Rule 50. If more than one service pipe is requested or required by the owners or occupants of one building or premises, the additional service pipes shall be paid for in advance by the owners or consumers.

Rule 51. When there are two or more buildings on a lot, and it is impracticable to run service pipes on the outside of the front building, all meters shall be installed in the front building.

Rule 52. Changes in the location of service pipes for street lamps, requested by property owners or consumers, shall be made at the expense of said owners or consumers, paid in advance. Street lamp service pipes shall be run only in accordance with Rule 43, and shall not be extended parallel to curbs.

1585 Rule 53. The Company may, in its discretion, extend mains otherwise than as provided for in these Rules in cases where, in its judgment, the expected business thereon will afford a reasonable return upon the cost of such extensions and the proportional amount of its plant investment applicable to such business; and also in cases where property owners or promoters may, by con-

tributing part of the cost of the extension, or in some other manner, so reduce the cost to the Company of such extensions, that the expected business thereon will afford a reasonable return upon the remainder and upon the proportional amount of plant investment applicable to such business.

#### Effective Date.

This New Schedule of Service, Rates, Rules, Regulations, Contracts and Practices shall take effect and be in force from and after the regular meter-readings commencing September 1, 1917, and thereupon all other Schedules of Service, Rates, Rules, Regulations, Contracts and Practices of the Company on file with the Commission shall be cancelled and withdrawn.

[SEAL.]

KANSAS CITY GAS COMPANY,  
By E. L. BRUNDRETT, *President*.

Attest:

J. M. SCOTT, *Secretary*.

1586

#### EXHIBIT Q.

#### Agreement.

Agreement Made this 16th Day of June, 1917, by and Between Kansas City Missouri Gas Company and Kansas City Gas Company, Corporations Organized and Existing under the Laws of the State of Missouri.

Whereas the Kansas City Missouri Gas Company is the owner of all the gas plant and distributing system in the City of Kansas City, Missouri, which was in existence prior to November 19, 1906, the date when natural gas was first furnished in Kansas City, and is also the owner of the five-million-cubic-foot-gas-holder and appurtenances at 20th Street and Indiana Avenue which has been erected since said date; and said Company has a capital stock of \$5,000,000, consisting of 50,000 shares of the par value of \$100 each, all of which was issued in 1897 and has at all times since been outstanding; and said Company has an authorized issue of \$5,000,000 First Mortgage 5% Bonds dated April 1, 1897, due April 1, 1922, secured by mortgage dated April 1, 1897, to Guaranty Trust Company of New York and Julius S. Walsh, of St. Louis, Trustees, and by Supplemental Mortgage dated February 14, 1898, to same Trustees, of which authorized issue of bonds, viz. . . . . \$5,000,000 there still remain unissued bonds to the amount of . . . . 22,000

Present total bonds issued . . . . . \$4,978,000

All of which were issued prior to April 15, 1913, and of which there were on May 1, 1917, in the Sinking Fund under the Supplemental Mortgage of February 14, 1898, bonds to the amount of . . . . . \$1,814,000

Leaving present amount of bonds outstanding . . \$3,164,000;

1587 And whereas the Kansas City Gas Company is the owner of all the gas property in said city other than that owned by the Kansas City Missouri Gas Company, that is to say, all the gas property installed in said city since November 19, 1906, excepting said five-million-cubic-foot-holder and appurtenances above mentioned. The authorized capital stock of the Kansas City Gas Company is \$2,500,000, consisting of 25,000 shares of the par value of \$100 each, of which \$1,250,000 is Preferred stock, entitled to non-cumulative dividends at the rate of 6% per annum, and to preference in the distribution of assets upon liquidation; and \$1,250,000 is Common stock. Of said stocks \$812,500 Preferred stock and \$812,500 Common stock were issued in 1911, and the same has been since that time, and is now, outstanding. The balance of \$437,500 of each class of stock remains unissued. Since the making of a certain instrument in writing dated November 16, 1906, between the Kansas City Missouri Gas Company and Hugh J. McGowan, Charles E. Small and Randal Morgan (predecessors of the Kansas City Gas Company, to which Company said instrument in writing was assigned on August 10, 1911) said McGowan, Small and Morgan, or their successor, the Kansas City Gas Company, have been in possession of and operating certain property of the Kansas City Missouri Gas Company. The current liabilities of the Kansas City Gas Company as of May 31, 1917, amounted to . . . \$2,812,284.61 of which the amount due the Kansas City Missouri Gas Company and accrued to May 31, 1917, under paragraph (a) of Article IX of said instrument in writing of November 16, 1906, is . . . 937,500.00

Leaving balance of other current liabilities of \$1,874,784.61

All of said current liabilities were incurred by the Kansas City Gas Company for the construction, completion, extension and improvement of its plant and distributing system and for the improvement and maintenance of its service; and it will be necessary to incur further current liabilities for the same purpose pending the carrying out of this agreement, which shall be added to the foregoing items on the final execution and performance of this agreement.

1588 And whereas the Kansas City Gas Company proposes to file with the Public Service Commission of Missouri a Petition Supporting New Schedule and for authority to Acquire Properties, Construct Works and Issue Stock, copy of which petition has been submitted to the Board of Directors of each of the parties hereto, and which is hereby referred to and made a part hereof, and which contemplates among other things, the purchase of the properties of the Kansas City Missouri Gas Company and the construction of certain additions to the gas-manufacturing-plant and trunk mains at an estimated cost of approximately \$1,800,000, as mentioned in said Petition and the Plans and Specifications to be filed therewith, and said Plans and Specifications contemplate that said additions to the gas-manufactur-

ing-plant shall be erected on land belonging to the Kansas City Missouri Gas Company;

And whereas in order to secure the additional capital to provide for the construction aforesaid it is necessary to increase the capital stock of the Kansas City Gas Company, and in order to make it possible to sell said increased capital stock it is necessary to provide for the payment of the debts of both of said companies other than the first mortgage bonds of the Kansas City Missouri Gas Company;

Now, therefore, this agreement witnesseth that in consideration of the premises and of the mutuality hereof, it is hereby agreed by and between the Kansas City Missouri Gas Company and the Kansas City Gas Company as follows:

1. The Kansas City Gas Company shall, by proper proceedings to that end, as required by law, increase its authorized capital 1589 stock from the present authorized amount of \$2,500,000 to a total authorized amount of \$15,000,000, to consist of 150,000 shares of the par value of \$100 each, an increase of \$12,500,000. When effecting such increase the Articles of Incorporation of the Kansas City Gas Company shall also be so amended that the present 6% Preferred stock (\$1,250,000 authorized—\$812,500 issued) shall lose its preferences and become Common stock. Of the aforesaid increase of \$12,500,000 stock of the Kansas City Gas Company \$4,125,000 shall be Common stock and \$8,375,000 shall be 8% Preferred stock. The 8% Preferred stock shall have the following preferences:

(a) The holders of the Preferred stock shall be entitled to receive, when and as declared, from the surplus or net profits of the Company, dividends at the rate of eight per centum per annum, and no more, payable in such installments and at such times as may be determined by the Board of Directors. The dividends on the Preferred stock shall be cumulative, and shall be payable before any dividends on the Common stock shall be paid or set apart; so that, if in any year dividends amounting to eight per centum shall not have been paid on the Preferred stock, the deficiency shall be payable before any dividends shall be paid upon or set apart to the Common stock. Whenever all cumulative dividends on the Preferred stock for all previous years and the accrued installment for the current year shall have been declared and paid, or a sum sufficient therefor set apart and appropriated to the payment thereof, the Board of Directors may declare dividends on the Common stock, payable then or thereafter, out of any remaining surplus or net profits;

(b) In the event of any liquidation or dissolution or winding up, whether voluntary or involuntary, of the Company, the holders of the Preferred stock shall be entitled to be paid in full the par amount of their shares, and the unpaid dividends accrued thereon, before 1590 any amount shall be paid to the holders of the Common stock, and after the payment to the holders of the Preferred stock of its par amount, and the unpaid dividends accrued thereon, the remaining assets shall be distributed to the holders of the Common stock;

(c) From time to time, the Preferred and the Common stock may



be increased according to law, and without the consent of the holders of any specific amount of both or of either of the classes of stock, unless some such consent is required by law, and the amounts of Preferred stock and Common stock at any time remaining unissued, either before or after any increase as aforesaid, may be issued in such amounts and proportions as shall be determined by the Board of Directors, and as may be permitted by law;

(d) The whole of the Preferred stock may be redeemed and retired at any time at par and accrued and unpaid dividends on sixty days' notice in writing mailed to the respective holders thereof at their respective addresses as the same appear on the books of the Company.

After the authorized capital stock of the Kansas City Gas Company shall have been increased and the present 6% Preferred stock shall have lost its preferences as aforesaid, the authorized capital stock of said Company will be as shown by the following:

*Table No. 1.*

(1) Present Common stock, already authorized issued and outstanding. . . .	\$812,500
(2) Present Common stock, already authorized but not issued. . . . .	437,500
(3) Present 6% Preferred stock, already authorized issued and outstanding, but which is to lose its Preferences. .	812,500
1591	
(4) Present 6% Preferred stock, already authorized but not issued, and which is to lose its Preferences. . . . .	437,500
(5) Total Present authorized. . . .	\$2,500,000
(6) Increase as above . . . . .	4,125,000
(7) Total authorized Common stock. . . . .	\$6,625,000
(8) Authorized 8% Preferred stock . . . . .	8,375,000
(9) Total authorized Capital stock. . . . .	\$15,000,000

Of which, however, there will, until the carrying out of this agreement, be only \$1,625,000 stock issued and outstanding, being the stock shown in items numbered (1) and (3) above, viz.:

(1) Present Common stock, already authorized issued and outstanding . . . . .	\$812,500
(3) Present 6% Preferred stock, already authorized issued and outstanding, but which is to lose its Preferences . . . . .	812,500
	<hr/>
	\$1,625,000



2. The Kansas City Missouri Gas Company shall sell, assign, transfer, convey and deliver to the Kansas City Gas Company, its successors and assigns, all the Kansas City Missouri Gas Company's property, real, personal and mixed, and all its rights, privileges, franchises, contracts, choses-in-action and assets of every kind and character, and the Kansas City Gas Company shall purchase and take over all of the same and shall assume and become liable for all the Kansas City Missouri Gas Company's debts, contracts and liabilities of every character as the same are now or may hereafter be established.

1592 3. In consideration of such sale, assignment, transfer, conveyance and delivery, and in satisfaction and payment of the sum of \$937,500, due or accrued on May 31, 1917, under said instrument in writing of November 16, 1906, and in consideration of the further use of the properties of said Kansas City Missouri Gas Company pending the final execution and performance of this agreement, the Kansas City Gas Company shall issue and deliver to the stockholders of the Kansas City Missouri Gas Company, in proportion to their respective holdings, \$5,000,000 Common stock and \$937,500 Preferred stock of the Kansas City Gas Company, together with such additional Preferred stock as will at par equal the amount which shall have become due or accrued in favor of said Kansas City Missouri Gas Company under paragraph (a) of Article IX of said instrument in writing on the date of such sale, conveyance and delivery; said Common stock and Preferred stock to be issued and delivered only on surrender by said stockholders of their respective certificates of stock in the Kansas City Missouri Gas Company; and said Common and Preferred stock of the Kansas City Gas Company shall be issued and delivered as full-paid and non-assessable stock.

4. In order to provide for the payment of the remainder of the current liabilities of the Kansas City Gas Company, to-wit: \$1,874,784.61 on May 31, 1917, incurred for construction and extension of plant and distributing system and for the improvement and maintenance of service, and to provide for the payment of such further current liabilities as may accrue for like purposes, pending the final execution and performance of this contract, the Kansas City Gas Company shall sell at par for cash, \$1,874,784.61 of its Preferred stock, together with such additional amount of Preferred stock as will at par equal such additional current liabilities as may accrue pending the final execution and performance of this contract.

1593 5. In order to provide the new capital for the construction of the aforesaid additions to the gas-manufacturing-plant and trunk mains at an estimated cost of approximately \$1,800,000, as set forth in said Plans and Specifications, the Kansas City Gas Company shall sell for cash at par \$1,800,000 Preferred stock or such less amount of Preferred stock as will, when sold for cash at par, provide such amount of new capital as the Commission shall find necessary and proper, and approve and authorize for that purpose.

6. After the carrying out of the transactions provided for in para-

graphs 3, 4 and 5 above the authorized and issued Common and Preferred stock and the authorized Preferred stock remaining unissued of the Kansas City Gas Company will be as shown by the following:

*Table No. 2.*

	Authorized.	Unissued.
Common stock (Table 1) . . . . .	\$6,625,000.00	
Issued (Table 1) . . . . .	\$1,625,000.00	
Issued, as provided for in paragraph 3 . . . . .	5,000,000.00	
Total Common issued . . . . .	6,625,000.00	
Bal. Common unissued . . . . .		None
Preferred stock (Table 1) . . . . .	\$8,375,000.00	
Issued as provided for in:		
paragraph 3 . . . . .	\$937,500.00	
paragraph 4 . . . . .	1,874,786.61	
paragraph 5 . . . . .	1,800,000.00	
Total Preferred issued . . . . .	3,612,284.61	
Balance Preferred stock remaining unissued for future needs subject to future approval of Public Service Commission . . . . .		\$4,762,715.39

Provided, however, that said amounts of Preferred stock shown in the above table No. 2 as \$937,500, \$1,874,786.61 and \$1,159,800,000 respectively, will be subject to variation as mentioned in said paragraphs 3, 4 and 5 and said balance of \$4,752,715.39 Preferred stock will be subject to corresponding variation.

7. Upon the carrying out of this agreement the said instrument in writing of November 16, 1906, shall be cancelled and each party thereto shall acknowledge full accord and satisfaction thereof and each party thereto shall be released from all further obligation and liability thereunder.

8. This agreement shall not take effect nor be in force unless and until,

(A) The Public Service Commission of Missouri shall have made all orders required by law for the carrying out of the terms and provisions hereof; and

(B) Said Commission shall have made all the orders prayed for by the Kansas City Gas Company in said Petition; and

(C) The stockholders of the parties hereto shall have taken all such proceedings as may be required by law to effectuate this Agreement.

1595 In testimony whereof the parties hereto have caused this Agreement to be signed by their respective Presidents and

attested by their respective Secretaries, and their respective corporate seals to be hereto affixed, all by order of their respective Boards of Directors, the day and year first above written.

KANSAS CITY MISSOURI GAS  
COMPANY,

By J. C. JAMES, *President*.

Attest:

[SEAL.] A. HURLBURT, *Assistant Secretary*.

KANSAS CITY GAS COMPANY,

By E. L. BRUNDRETT, *President*.

Attest:

[SEAL.] J. M. SCOTT, *Secretary*.

1596

EXHIBIT 1012.

Map of gas fields of Kansas and Oklahoma referred to in par. 7 of statement of evidence is Original to be sent up under order of United States Supreme Court.

1597

Filed Aug. 13, 1917.

In the District Court of United States, District of Kansas, First  
Division.

In Equity.

No. 1351.

JOHN L. MCKINNEY and THE FIDELITY TITLE & TRUST COMPANY,  
Plaintiffs,

vs.

KANSAS NATURAL GAS COMPANY et al., Defendants.

In Equity.

No. 1-N.

FIDELITY TITLE & TRUST COMPANY, Plaintiff,

vs.

KANSAS NATURAL GAS COMPANY et al., Defendants.

*Order.*

Now on the 31st day of July, 1917, this cause came on to be heard upon the report and application of the Receiver filed herein for certain orders and instructions relative to the supply of gas and dis-

tribution and sale thereof; and upon consideration thereof by the Court:

1. It is ordered by the Court that the Receiver and the distributing companies be and are hereby authorized to establish and put into force and effect in the several cities hereinafter named, the following schedule of minimum net rates to the consumer recommended by the Receiver for the sale of natural gas through the distributing companies in the several cities of Kansas and Missouri, to-wit:

1598

Name of city.	Name of distributor.	Net rate to consumer per thousand cubic feet.
St. Joseph, Missouri....	St. Joseph Gas Company.....	60
Weston, Missouri.....	Weston Gas Company.....	60
Atchison, Kansas.....	Atchison G. L. & P. Co.....	60
Leavenworth, Kansas..	Leavenworth L. H. & P. Co.....	60
Tonganoxie, Kansas....	Tonganoxie G. & E. Co.....	60
Lawrence, Kansas.....	Citizens L. H. & P. Co.....	60
Topeka, Kansas.....	Consumers L. H. & P. Co.....	60
Baldwin, Kansas.....	Baldwin Gas Co.....	60
Kansas City, Mo.....	Kansas City Gas Co.....	60
Kansas City, Kansas..	Wyandotte Co. Gas Co.....	60
Merriam, Kansas.....	Johnson County Gas Co.....	60
Lenexa, Kansas.....	Johnson County Gas Co.....	60
Olathe, Kansas .....	Olathe Gas Co.....	60
Gardner, Kansas .....	Gardner Gas Co.....	60
Edgerton, Kansas.....	Edgerton Gas Co.....	60
Wellsville, Kansas.....	Wellsville Gas Co.....	60
Ottawa, Kansas.....	Ottawa Gas & Elec. Co.....	60
Princeton, Kansas.....	Princeton & Richmond Gas Co.....	60
Richmond, Kansas.....	Princeton & Richmond Gas Co.....	60
Welda, Kansas.....	Anderson County Gas Co.....	60
Colony, Kansas.....	Anderson County Gas Co.....	60
Bronson, Kansas.....	Ft. Scott & Nevada L. H. W. & P. Co...	60
Moran, Kansas.....	Ft. Scott & Nevada L. H. W. & P. Co...	60
Ft. Scott, Kansas.....	Ft. Scott G. & E. Company.....	60
Deerfield, Missouri....	Ft. Scott & Nevada L. H. W. & P. Co...	60
Nevada, Missouri.....	Ft. Scott & Nevada L. H. W. & P. Co...	60
Thayer, Kansas.....	Thayer Gas Co.....	50
Liberty, Kansas.....	Liberty Gas Company.....	50
Altamont, Kansas.....	American Gas Co.....	50
Oswego, Kansas.....	American Gas Co.....	50
Columbus, Kansas.....	American Gas Co.....	50
Scammon, Kansas.....	American Gas Co.....	50
Cherokee, Kansas.....	American Gas Co.....	50
Weir City, Kansas.....	Weir Gas Co.....	50
Pittsburg, Kansas.....	Home L. H. P. Co.....	50
Galena, Kansas.....	American Gas Co.....	50
Carl Junction, Mo.....	Carl Junction Gas Co.....	50

1599

Name of city.	Name of distributor.	Net rate to consumer per thousand cubic feet.
Oronogo, Mo.....	Oronogo Gas Co.....	50
Joplin, Mo.....	Joplin Gas Co. ....	50
Jasper County, Mo.....	Kansas Natural Gas Co.....	50
Independence, Kansas..	Kansas Natural Gas Co.....	30
Coffeyville, Kansas....	Coffeyville Gas & Fuel Co.....	30
Elk City, Kansas.....	Elk City Oil & Gas Co.....	30
Parsons, Kansas.....	Parsons Natural Gas Co.....	35

Country consumers served direct from the lines of the Receiver to be charged the same rates for gas as herein provided for consumers in the city situated nearest to them.

2. The foregoing net rates are not maximum rates and are authorized without prejudice to the rights of the distributing companies to establish, collect and receive any greater or more compensatory rates than those herein mentioned if the same can be done by agreement with the cities or otherwise, but the Receiver shall charge and collect as compensation for such gas so sold by such distributing company at such greater rate, a price equal to the below named percentage of the rate applicable to such distributing company herein above specified and authorized.

3. The Receiver and distributor shall charge and collect from each consumer a minimum bill of fifty cents (50c.). The settlements between the Receiver and the distributing companies shall be made on or before the 15th day of the month. The receiver shall receive of the proceeds of the sale of gas and of the minimum bill and forfeited discounts, 57½%; and the distributing companies shall receive 42½%, except in St. Joseph, Missouri, where the Receiver shall receive fifty per cent (50%) thereof, and the St. Joseph Gas

Company, 50%; and the division of the proceeds of gas sales 1600 at Fort Scott, Kansas, shall be as heretofore obtaining, to-wit:

50% to the Receiver; 25% to the Fort Scott and Nevada Light, Heat, Water and Power Company; 25% to the Fort Scott Gas & Electric Company; and at other cities on the Gunn Pipe Line the division shall be: 50% to the Receiver and 50% to the Fort Scott and Nevada Light, Heat, Water and Power Company. In the event of failure of a consumer to pay for the gas furnished him as herein authorized, the Receiver and distributing companies shall discontinue the service to such consumer, after notice. Should the distributing company fail to make settlement promptly as directed, the Receiver may discontinue the service to such company. The Receiver and distributing companies are authorized to charge for the gas consumed by each consumer at a rate of 10% in excess of the net rate to the consumer on all bills not paid within ten days after due.

4. That if at any time it becomes necessary to supply gas on peak-load days or otherwise from the main trunk line or from wells now furnishing gas to the main trunk line or then capable of doing so,

operated by the Receiver, to any of the distributing companies or cities above named which are selling gas at less than 50c. per thousand cubic feet, then and in that event the Receiver and distributing companies distributing gas in said city shall charge 75 cents net per thousand cubic feet for all gas furnished from the trunk line and distributed and sold in said city.

5. That the Receiver and all distributing companies discontinue the sale of all gas for use under boilers to make steam for power purposes, for use in brick plants, cement plants, glass plants, smelters and oil refineries after September 1st, 1917, until the further order of the Court.

1601 6. The foregoing rates and the division thereof above provided for shall take effect and be in force for all gas sold and distributed by the distributing companies from and after special meter readings to be made by the distributing companies from September 1st to 10th, 1917, until further order of the Court.

7. That the Receiver uniformly apportion the gas to and among the various distributing companies supplied by him on the percentage basis of the number of meters in service in each city compared with the total number of meters in service supplied with gas from the Receiver's main pipe-line system from time to time.

8. It is further ordered that the Receiver shall maintain at the gates of the distributing companies' plants in each city and at the gates of the Gunn Pipe Line approved meters in good repair and shall carefully measure all gas delivered to each distributing company, and shall keep an accurate check on all gas sales reported by the distributor in order to ascertain the extent of leakage of gas. And if leakage exists in excess of the rate of 150,000 cubic feet per mile of three-inch main per year, in any distributing company's plant, or in said Gunn Pipe Line, he shall notify such company to repair its lines and reduce said excessive leakage, and if such company fail to reduce such leakage, he shall make application to the Court for an order in the premises, giving said distributing Company or said Gunn Pipe Line notice of the time when said application will be made.

9. It is suggested that each distributing company take immediate steps to inventory its plant with a view to having a valuation  
1602 made thereof by a master to be appointed by the Court as one of the bases for future changes in the schedule of rates herein.

10. The Intervenor herein, the Kansas City Pipe Line Company, and the Kansas City Gas Company and Wyandotte County Gas Company, appearing specially for this purpose only, object to the foregoing orders and each and all of them, and particularly the order fixing said 60c. rate and apportioning the same as aforesaid. Leave is hereby given to Kansas City, Missouri to make a special appearance in these causes for the purpose of objecting and excepting to this order. Pursuant to such leave, Kansas City, Missouri, now specially appears herein and objects and excepts to this order on the ground that its rights and interests are thereby adjudicated and determined adversely to it without due process of law in violation of

the Constitution of the United States, and especially of Article 5 of the Amendments to the Constitution, which objections were by the Court overruled, to which ruling said parties except. Exceptions will be allowed to each of the Missouri defendants and each of the defendant cities in Kansas and the Public Utilities Commission of Kansas and any other party adversely affected by these rates.

WILBUR F. BOOTH, *Judge*.

Filed in the District Court in case # 1-N consolidated with 1351, in equity, on Aug. 13, 1917. Morton Albaugh, Clerk.

(Here follow reproductions of various record cards, statements, etc., marked pages 1603-4, 1605, 1606, and 1607.)



Pa 696 71

ORDER NO.

SET

TURN ON

# Application for Natural Gas.

..... hereby make application to Kansas City Gas Company for Natural Gas under the said Company's rules and regulations (hereinafter set forth and made a part hereof) to be supplied to the premises at No. .... Street, Kansas City, Mo., ..... 191.....

occupied by ..... as a ..... and ..... agree to pay for the same promptly at the regular rate in force from time to time; and ..... also agree to pay for all the gas consumed on the said premises until three (3) days after notice has been duly given at the office of the said Company to discontinue the supply; ..... further agree that the inspector or other authorized agent of the said Company shall and at all reasonable times have the right of free access to the above mentioned premises for the purpose of examining, repairing, disconnecting, or removing the meter, service pipe, or fittings; provided, however, that every such agent shall wear a badge identifying him as an employee of the said Company, and ..... further agree to pay a minimum bill of fifty cents per month for such gas as may be used at said premises and for readiness to serve gas at said premises for each month in which the bill for gas consumed does not at the rate then in force exceed the sum of fifty cents.

**RULES AND REGULATIONS.—1.** All applications for the use of natural gas must be made in writing at the office of the said Company or its authorized representative.

2. In case of failure or deficiency of natural gas or in detection of leaks, immediate notice thereof, in writing, shall be given to the said Company. The notice is required to be in writing in order to prevent mistakes, disputes and misunderstandings.

3. The authorized agents of the said Company shall at all reasonable times have free access to the premises of the consumer with the right to shut off the gas and remove its property from the premises for any of the following reasons: 1st. For failure to pay within the time mentioned in their franchise ordinance, any bill due to the Company, and 2nd. For tampering with the meter or connections.

4. Before furnishing gas, or at any time after the gas is turned on, the said Company may require a deposit or a guarantee to be used to make payment for gas furnished, and may also require an increase in such deposit or guarantee. And such deposit may be used for or on account of any previously contracted or any other indebtedness.

5. The said Company shall not be liable for a failure or a deficiency in the supply of gas.

6. The said Company shall not be liable for any injury to person or property from any cause not directly due to negligence on part of said Company.

7. The meter and all pipes and fittings necessary to supply the gas from main to house connections shall be and remain the property of the said Company. The consumer shall not in any way interfere with nor make any change in such piping, fittings, or meter, but the same shall be under the exclusive care and control of the said Company.

(TURN OVER.)

1603

Ph

2. Whenever gas shall be turned off or meter disconnected by reason of non-payment for gas or non-compliance with the said Company's rules, a charge of 50 cents will be paid to the said Company at its office, or to one of the authorized representatives, before gas is turned on again.

3. Service lines from the curb to the building will be charged for according to the size of piping, but the same shall be and remain the property of the said Company.

10. The use of gas in any kind of a stove or heating apparatus or appliance not connected with a flue, as required by the city ordinance, is dangerous and the consumer is not to use the same.

11. The use of rubber tube or hose of any kind in connection with stoves or any kind of heating apparatus or appliances is dangerous and the consumer is not to use the same.

Upon acceptance of this application by the Company, or their authorized agent, the same shall, without notice to the applicant, constitute a contract between the parties.

KANSAS CITY GAS COMPANY

By

Deposit

Please sign name in full.

# BOOKKEEPER'S DATA.

OWNER.                      TENANT.                      LESSEE.

Premises occupied as

Residence .....

Store .....

Previously used gas

Business address

Send bill to

Owner or Agent's name and address

Order Clerk or Canvasser.

## CANVASSERS' REPORT.

Service in .....

Fixtures Hung .....

Will Use Appliances.....

CANVASSER.

OFFICE HOURS: 8:30 A. M. to 5:30 P. M. SATURDAY, 1 P. M.

SOUTH DIST.

TO KANSAS CITY GAS COMPANY, DR.  
908-910 Grand Ave., Kansas City, Mo.

Meter Reading	Dec. 1917	000
" "	Nov. 1917	000

Natural Gas Consumed 000 cu. ft. at 60c per M.

10 Per cent Added  
After Dec. 31

DUE DECEMBER 21

RECEIPT MAILED ONLY UPON REQUEST

THE COMPANY DOES NOT  
GUARANTEE THE DELIVERY  
OF THE BILL

ALL COLLECTORS AND ALL  
EMPLOYEES ENGAGED IN  
GAS APPLIANCE OR METER  
WORK WEAR BADGES.

Your responsibility for all gas consumed in these premises ceases only when written notice has been received.

Pay 7106 71

Ph

12 1917

10 Per Cent Added  
After Dec. 31

WHEN REMITTING BY MAIL  
ALWAYS ENCLOSE THIS  
COUPON

**Kansas City Gas Company,**  
908-910 Grand Avenue  
Kansas City, Missouri

To

Order No.

DATE	INVOICE	ACCOUNT

APPROVED:

CORRECT: {

PRESIDENT

CORRECT: {

TREASURER

ENGINEER

G AGENT

RECEIVED \_\_\_\_\_ 191 \_\_\_\_\_

FROM KANSAS CITY GAS COMPANY

DOLLARS IN FULL FOR ABOVE BILL

100

1606

FORM N O. 108

PER \_\_\_\_\_

RECEIPT AND RETURN TO KANSAS CITY GAS COMPANY, KANSAS CITY, MO.

# KANSAS CITY GAS COMPANY

VOUCHER NO. \_\_\_\_\_

Paid

\$

What for Name

CLASSIFICATION

Accounts Payable - - - -

*Exhibit*  
*1017*

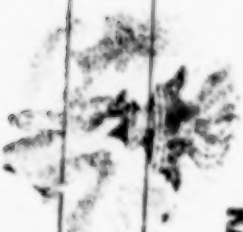
**KANSAS CITY GAS COMPANY**

800 - 810 GRAND AVE

11998

KANSAS CITY, MO.

**PAY TO**  
**THE ORDER**  
**OF**



**\$**

*20*

**DOLLARS**

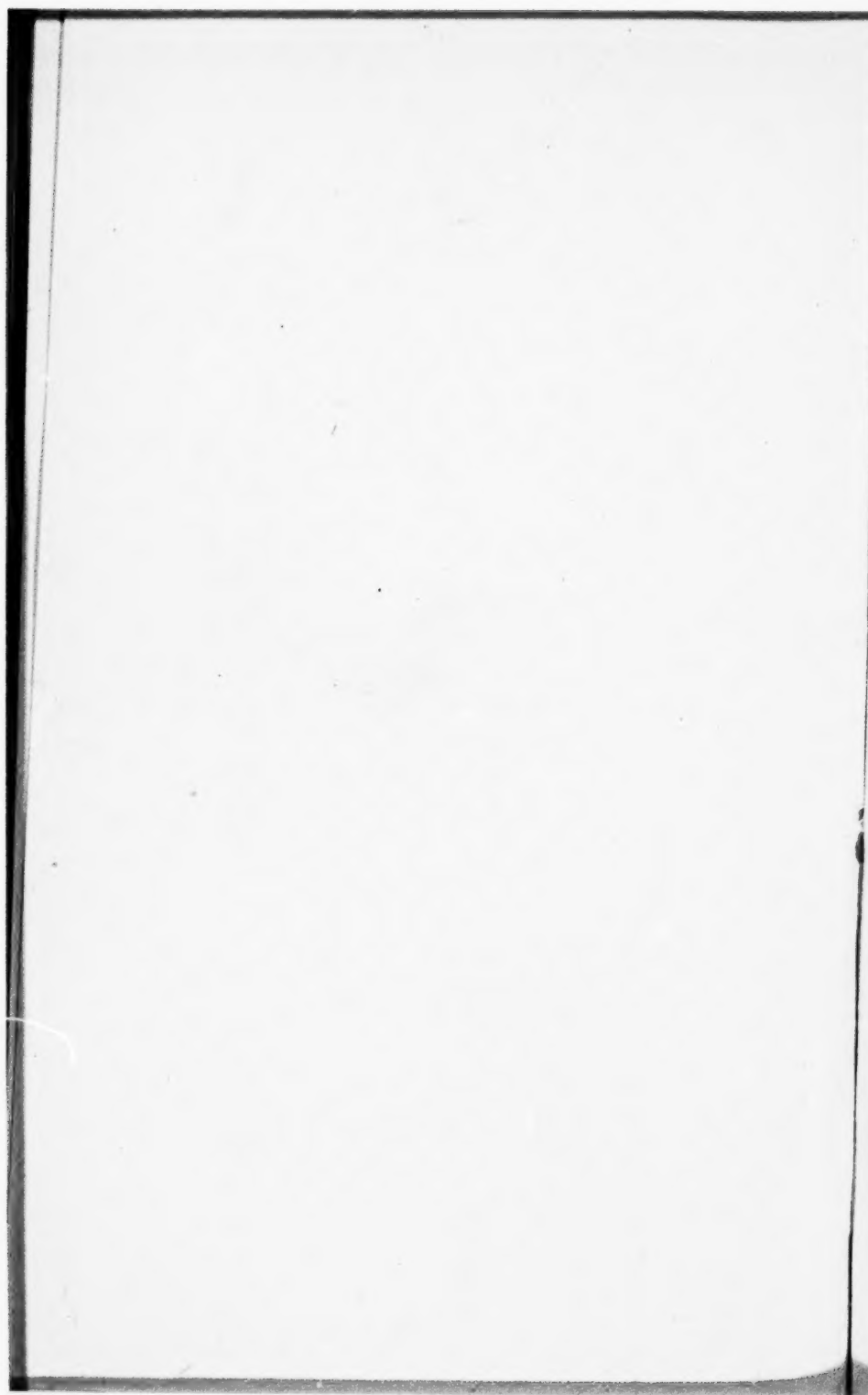
**FIRST NATIONAL BANK**  
**KANSAS CITY, MO.**

CHAS. H. KENNEDY

**1607**

PRESIDENT

TREASURER





1608 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

F. S. Jackson, H. O. Caster, Attorneys for the Defendants.

1608½ In the District Court of the United States for the District  
of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Statement of the Evidence, Under Rule 75, Paragraph (B), Made  
by the Appellants and Amended by the Court Upon Suggestion of  
Appellees.*

Come now appellants and present this condensed statement of the  
evidence in said cause for the purpose of having the same made a  
part of the record on appeal under the provisions of the Rules of  
Practice in Equity, as stated in Rule No. 75, paragraph (b).

In this statement, the statement and findings of fact made by the  
district court will be followed in the main, omitting inferences and  
conclusions, and inserting, in a few instances, additions from the  
record to supplement and explain such findings, the object being to  
present to the court on appeal all the specific and detailed facts of the  
case necessary to a decision on its merits. The exhibits attached to  
the pleadings will not be repeated here, but it is intended that all  
such exhibits be considered a part of this statement.

1609 Thousands of pages of testimony and hundreds of exhibits  
have been introduced, covering almost every possible question  
that could arise in a rate controversy. Questions involved in the

valuation of the plant; questions as to the character and extent of the business, including the available supply of gas, and the life of the gas fields; questions as to extensions; questions touching the cost of operation and maintenance; the rate of return proper to be allowed; and the amount of income necessary to meet requirements have all been covered with great fullness and particularity in the evidence.

#### History of the Kansas Natural Company and Its Property.

The company was organized under the laws of the state of Delaware in April, 1904, with a capital stock of \$6,000,000. In July, 1905, it obtained a license to do business in the state of Kansas. The principal business of the corporation was the production and sale of natural gas, but it was authorized under its charter to purchase the stock, business and property of other corporations. Its first gas fields were located in the state of Kansas. Prior to 1912 the company had, by purchase and consolidation with other companies, largely increased its initial holdings. It had by means of various contracts undertaken to supply gas through distributing companies to more than thirty cities in the state of Kansas, as well as certain cities in the state of Missouri, including the cities of St. Joseph and Kansas City, Mo. These contracts were of various types, but, generally speaking, covered a considerable period of years, and provided for increases in the rates at certain fixed dates. They provided further for a division of the price paid by the consumers between the distributing company and the Kansas Natural Gas Company, generally on a basis of one-third to the distributing company and two-thirds to the Kansas Natural Gas Company.

The character of these franchises and contracts and the rules provided for therein appear in Exhibit B to plaintiff's bill, and Exhibits A to E, inclusive, of the amended and supplemental answer of L. G. Treleven, receiver of Consumers Light, Heat and Power Company—

the same being typical of each of said contracts and franchises.

1610 For the purpose of completing its lines to Kansas City, Mo., the company had caused to be incorporated the Kansas City Pipe Line Company, and became owner of 50 per cent of the stock of said company, the other 50 per cent being owned by the United Gas Improvement Company. Shortly thereafter, in November, 1906, the Kansas City Pipe Line Company leased to the Kaw Gas Company (a subsidiary corporation of the Kansas Natural Gas Company) all of its property for ninety-nine years. In place of this lease a new lease was substituted between the Kansas City Pipe Line Company and the Kansas Natural Gas Company in January, 1908. For the purpose of extending its pipe lines into Oklahoma, the Kansas Natural Gas Company had caused the incorporation of the Marnet Mining Company, and through stock ownership controlled said last-named company. Two issues of bonds had been made by the Kansas Natural Gas Company: First mortgage series and second mortgage series; and one by the Kansas City Pipe Line Company and one by the Marnet Mining Company. The properties of the

three mentioned companies were operated as a unit, and included a continuous pipe line from the fields in Oklahoma to the two Kansas Cities, with other lines extending to various cities in Kansas and Missouri. The company during the year 1912 was supplying natural gas to approximately 150,000 households, and selling for household and industrial uses upwards of 28 billion cubic feet of gas per annum.

The financial operations of the company, including its acquisitions of leaseholds for the purpose of gas production, were as follows:

That in 1903 R. M. Snyder and associates formed a copartnership, known as the New York Oil and Gas Company, and acquired nearly 18,000 acres of gas leases, upon which they developed a supply of gas and secured a franchise to use the streets and alleys of Independence, Kan., to supply gas to the citizens thereof. During the same year said Snyder and associates obtained from the Consolidated Gas, Oil and Manufacturing Company and the Independence Gas Company, corporations then owning a plant for the sale and distribution of gas in the city of Independence, an option to buy said plant in Independence and some 80,000 acres of leases located principally in the counties of Montgomery and Chautauqua, in Kansas, paying for said option the sum of \$10,000. The full purchase price for said property was to be \$550,000.

During the same year T. N. Barnsdall and James O'Neil acquired about 90,000 acres of leases and brought in some producing gas wells thereon, located principally in Allen, Neosho, Wilson and Labette counties, Kansas, and organized the Kansas Natural Gas Company.

In 1904 the said Barnsdall and Snyder and their associates consolidated their propositions and increased the stock of the Kansas Natural Gas Company from \$6,000,000 to \$12,000,000, and each group of associates transferred to the Kansas Natural Gas Company their various properties herein enumerated; the said Barnsdall and associates received for their property \$6,000,000 of the capital stock of the Kansas Natural Gas Company, and Snyder and his associates received the remaining \$6,000,000 of said capital stock. Said Snyder and associates received in addition thereto the sum of \$900,000 in money, \$540,000 of which was to be devoted to the payment of the balance of the purchase price of the properties of the Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company; that the \$900,000 paid to Snyder and his associates was realized from the sale of the first mortgage bonds of the Kansas Natural Gas Company.

On these leases there were 32 oil and 132 gas wells, all producing. When the original contract was made these leases were producing 400,000,000 cubic feet a day from the Snyder leases and by April 15, 1904, the production had increased 24,900,000 cubic feet on the Snyder leases and 221,923,000 cubic feet on the other leases. The leases transferred for stock have produced in ten years about \$24,000,000 gross, the cost of producing being very considerable. The present leaseholds are carried on the balance sheet of the company

at \$1,670,370. They may be worth nothing to-day and \$100 an acre tomorrow, depending on business developments. A good deal of this acreage was beyond reach of the Kansas Natural lines. These leaseholds were valued by the engineer for the Commission in 1915 at \$1,126,359.34.

That the Kansas Natural Gas Company thereafter acquired other leases, all of which said leases cost the Kansas Natural Gas Company not to exceed \$4,100,000, and said sum included the value of all materials used in the wells. The Kansas Natural Gas Company had two mortgage bonds issues on its property, a first-mortgage bonds of \$4,000,000, which was sold at par, and a second-mortgage bonds for \$4,000,000, which sold for \$750 per share of the par value of \$1000. These two bonds issues of the Kansas Natural Gas Company were secured by a mortgage on all the property of the company then owned or afterwards acquired.

When the Kansas City Pipe Line Company was organized, with a capital stock of \$4,500,000, the bonds of this company were issued in the sum of \$4,745,000. All the bonds of this company were bought by the United Gas and Improvement Company of Philadelphia. The stock of the Kansas City Pipe Line Company represented no value above the bonded debt. The Marnet Mining Company was organized to extend the pipe lines of the company farther south into Oklahoma. All the lines of the Marnet Mining Company are located in the state of Oklahoma. So it will be seen that the Kansas City Pipe Line Company and the Marnet Mining Company have always been, in fact, subsidiary companies to the Kansas Natural Gas Company, and the property of the three companies is one contiguous whole, all used in producing and transporting gas from the Mid-Continent gas fields to the consumers within the states of Kansas and Missouri, and all this property is in the possession of and is operated by the receiver. The following table shows the amount of capital stock and bonds issued by each of these three companies:

#### Kansas Natural.

Common stock .....	\$12,000,000
First-mortgage bonds .....	4,000,000
Second-mortgage bonds .....	4,000,000

#### Kansas City Pipe Line Company.

Stock .....	4,500,000
Bonds .....	4,745,000

#### Marnet Mining Company.

Stocks .....	2,500,000
Bonds .....	2,000,000
	<hr/>
	\$33,745,000

The statement shows that these companies have issued bonds of the face value of \$14,745,000, for which they received \$13,404,250. Of this amount \$1,035,000 was invested by the Kansas Natural Gas Company in the bonds of the Marnet Mining Company, 1613 leaving a balance of \$12,269,250 outside money actually received from the sale of said bonds.

The table on page 6 is a statement prepared by the accountant for the Commission after an examination of the books of the receiver to show the investment and property at the close of each year, together with the accrued depreciation and net investment, and divided as between transportation and production property, columns 2 and 3 being his deductions and conclusions from the data drawn from the books of the receiver and the valuation placed upon the

TABLE NO. 2.—EXHIBIT K.

## Kansas Natural Gas Company.

*Property Statement Showing the Investment and Property at the Close of Each Year, Together with Accrued Depreciation and Net Investment, and Divided as Between Transportation and Production Property.*

	Property account. Transportation.	Investment.	Less accrued depreciation at rate of 5.116% per annum. (Accumulated.)	Investment, less accrued depreciation each year.
July 1, 1905, \$6,357,478.32, half year—equals for 1 year .....				
1906 .....		\$3,178,739.16	\$162,624.30	\$3,016,114.86
1907 .....		6,919,980.31	516,650.49	6,403,329.82
1908 .....		7,081,176.07	878,923.46	6,202,252.61
1909 .....		9,266,149.14	1,352,979.65	7,913,169.49
1910 .....		9,642,505.22	1,846,290.22	7,796,215.00
1911 .....		11,506,458.47	2,434,960.61	9,071,497.86
1912 .....		11,601,907.18	3,028,514.17	8,573,393.01
1913 .....		11,723,851.33	3,628,306.39	8,095,544.94
1914 .....		11,823,096.29	4,233,175.98	7,589,920.31
1914 .....		11,926,812.97	4,843,207.33	7,083,605.64
Total for the period .....		\$94,670,676.14	\$22,925,632.60	\$71,745,043.54

	Production property.	Rate 11.70% per annum.	
July 1, 1905, half year—equals for 1 year.	\$1,251,268.83	\$146,398.44	\$1,104,870.39
1906	2,741,414.47	467,143.94	2,274,270.53
1907	2,758,321.63	789,867.57	1,968,454.06
1908	2,822,372.11	1,120,085.11	1,702,287.00
1909	2,845,454.82	1,453,003.32	1,392,451.50
1910	3,559,635.72	1,869,480.70	1,690,155.02
1911	4,241,551.88	2,365,742.27	1,875,809.61
1912	4,174,627.10	2,854,173.64	1,320,453.46
1913	4,146,067.38	3,339,263.52	806,803.86
1914	4,113,563.46	3,320,550.45	*293,013.01
Total for the period.	\$32,654,277.40	\$18,225,708.96	\$14,428,568.44
Total for the period combined.	\$127,324,953.54	\$41,151,341.56	\$86,173,611.98
Add working capital, 9½ years at \$200,000 per year.			1,900,000.00
Average investment per year for 9½ years.			\$88,073,611.98
			9,270,906.50
			\$97,344,518.48
			\$1,104,870.39
			2,274,270.53
			1,968,454.06
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\*Covers cost of material in wells and that portion of warehouse stock assigned to production.



1614 property by the engineer for the Commission. All of the money invested in the property after the organization of the Kansas Natural had been perfected, was derived either from the sale of the bonds or from earnings.

The Kansas Natural Gas Company had, however, in acquiring its properties and extending its system, violated the anti-trust statute of the state of Kansas; and in January, 1912, suit was begun in the district court of Montgomery county, Kansas, by the attorney-general of the state of Kansas against the Kansas Natural Gas Company, the Independence Gas Company, and the Consolidated Gas, Oil and Manufacturing Company; amongst other relief prayed for was the ousting of the defendants from the exercise of certain corporate powers within the state, and the appointment of receivers. The case was heard and resulted, so far as the Kansas Natural Gas Company was concerned, not in a complete ouster, but in the appointment of receivers, one of them being the plaintiff in the present suit, the order being filed February 17, 1913. Said receivers were to "manage the corporate property and business of the said defendant until the perversion and abuses of privileges by said defendant are corrected so as to protect the rights of all parties, especially all the gas consumers of the defendant company, and all parties interested in the property of the Kansas Natural Gas Company, whether as bondholders, trustees of bondholders, distributors of gas or otherwise."

Meanwhile, in October, 1912, a suit (No. 1351 Equity) was commenced in United States district court for the district of Kansas by John L. McKinney, a stockholder and a bondholder of the Kansas Natural Gas Company, alleging the insolvency of said company, and praying the appointment of receivers to take possession of and manage its property and assets. On October 9, 1912, Eugene Mackey, Conway F. Holmes and George F. Sharritt were appointed receivers. They immediately took possession of the property and began carrying on its business.

On February 3, 1913, another suit (No. 1-N Equity) was commenced in the United States district court for the district of Kansas by the Fidelity Title and Trust Company, trustee under the first mortgage of the Kansas Natural Gas Company, to foreclose  
1615 said mortgage; and on the same date the receivership theretofore existing in the McKinney suit was extended to the Trust Company suit, and the same persons were appointed receivers in the latter suit.

Immediately after the appointment of the receivers in the state court, and acting under the suggestion of that court, the attorney-general of the state of Kansas and the receivers appeared in the federal court and urged the prior jurisdiction of the state court, and prayed the federal court for an order directing its receivers to turn the property of the Kansas Natural Gas Company over to the receivers appointed by the state court. Litigation followed which finally resulted in all of the property of the Kansas Natural Gas Company, whether located in the state of Kansas, Missouri or Oklahoma, being turned over by the federal court to the two receivers of the state court, for the purpose of managing the

property and carrying out of the decree of the state court in the antitrust suit above mentioned. The history of this litigation may be found in 206 Fed. 772; 209 Fed. 300, and 217 Fed. 187. In the last-mentioned case the court in its opinion said: "The court below (United States district court for the district of Kansas) has the right to retain the foreclosure suit and await the progress and disposition of the action in the state court, with power to make such orders and decrees as future exigencies may require.

On January 9, 1915, the United States district court for the district of Kansas made an order appointing John M. Landon, the present plaintiff, ancillary receiver of the federal court for the properties located in Missouri and Oklahoma. At the present time John M. Landon is the sole receiver of the state court, and is ancillary receiver of the federal court, and George F. Sharritt is receiver under the federal court in the McKinney and Fidelity Trust Company suits, the other receivers having either died or resigned.

By chapter 238 of the Laws of 1911 of the state of Kansas, there was established the Public Utilities Commission for the state of Kansas, and with control over the public utilities and common carriers doing business in the state. Included under the term "public utility" were companies operating plants for the conveyance of oil and gas through pipe lines, also the lessees and receivers thereof. By said act it was provided that the rates charged by public utilities should be published and filed with the Public Utilities Commission.

1616 It was further provided that said Commission, either upon complaint of parties or upon its own initiative, should have power to investigate such rates, and fix and order substituted therefor other rates if found necessary. It was further provided that unless the Commission should otherwise order, it should be unlawful for any public utility to collect a greater rate than that fixed on the lowest schedule of rates for the same service on the first of January, 1911.

The federal court, shortly after the appointment of its receivers in 1912, established a schedule of rates to be charged by the receivers, but this schedule was shortly thereafter suspended by the same court.

In January, 1913, application by the attorney-general of Kansas was made to the Public Utilities Commission to cause an investigation to be made and to fix rates to be charged by the receivers of the Kansas Natural Gas Company. The receivers and numerous distributing companies appeared and asked for changes in the then existing rates. In July, 1913, the Commission made its order denying any increases in rates, and approving and confirming the rates then in effect.

Upon a further hearing in July, 1913, the Commission directed the receivers to make certain extensions of the pipe lines into the Oklahoma field, and thereupon the receivers applied to the federal court for directions as to their duties in respect to this order. Upon a hearing the receivers were directed not to comply with the order of the Commission. See 219 Fed. 614. This application and order, it will be noticed, were made prior to the time when the federal court turned over to the receivers of the state court all of the property of

the Kansas Natural Gas Company. This was not completely effected until September, 1914.

In December, 1914, various of the parties before the court in district court of Montgomery county in the suit brought by the state of Kansas (No. 13476), after consideration and investigation, entered into an agreement known as the creditors' agreement, covering certain phases of the financial management of the property of the Kansas Natural Gas Company, while the same should be in the hands of receivers and under the control of the state district court.

This creditors' agreement took the form of a stipulation filed in the state district court in case No. 13476. It provided, among  
1617 other things, for the scaling down of the outstanding stock of the Kansas Natural Gas Company from \$12,000,000 to \$6,000,000. It also provided for the scaling down of certain of the issues of bonds above mentioned. It recited that the opinion of experts after investigation was that the life of the gas field would be six years. It, therefore, provided for the payment of the several bond issues during such period. It provided payment out of earnings for extensions which would be necessary during such period, if the property should be operated at compensatory rates. It provided that application might be made, with the consent of the state court, to the Public Utilities Commission or other public authority when deemed advisable by the state court. It provided that creditors and lien holders should defer their rights of foreclosure or assertion of liens during the above-mentioned period, provided the agreement was being carried out, subject, however, to the order of the court. This agreement was consented to by the Kansas Natural Gas Company and its auxiliary companies, by the receivers, by the great majority of the bondholders of the several companies, and by the state of Kansas through its attorney-general.

This instrument appears as Exhibit A of the plaintiff's bill of complaint.

In April and May, 1915, the receivers, by direction of the district court of Montgomery county, filed a petition with the Public Utilities Commission requesting the Commission to establish a schedule of joint rates for the distribution and sale of gas by the complainants and the respondents' distributing companies. The schedule proposed by the receivers represented a decided advance in rates from the 25-cent rate then in force, and ranged 20, 25, 30, 35, 37, 40 and 45 cents, according to the location of the cities served, distance being one of the elements recognized. A large amount of testimony was taken, and the Commission filed findings July 16, 1915, to the effect that the rate ought to be raised in all markets where the price was 25 cents per thousand cubic feet to the flat rate, 28 cents. Included in the evidence before the Commission at that time was the creditors' agreement, and the findings of the Commission were based, to some extent at least, upon the estimates and figures found in the creditors' agreement. No order was, however, made by the Commission  
1618 at this time, and the reason given is stated by the Commission itself as follows:

"It developed upon the hearing that more than half the natural gas supplied and marketed by complainants is sold in the state of Missouri. It is conveyed, by means of pipe lines passing through Kansas, to Joplin, Kansas City, St. Joseph and other cities in our sister state. It would be manifestly unfair to permit complainants to advance the price of gas to their Kansas patrons unless a corresponding increase were made to consumers in Missouri. It is conceded that an advance in Kansas without a similar one in Missouri would be unavailing for the purposes contemplated by complainants, and they do not desire any advance in Kansas except as it may be simultaneous with a corresponding one in Missouri.

"The Commission, therefore, awaits the pleasure and action of the rate-regulating body or bodies of Missouri having jurisdiction of the subject matter; and if in that state proper and necessary orders be issued establishing a schedule of rates as herein outlined, an order, effective, if possible, simultaneously, will be issued by this Commission in accordance with the views herein expressed."

Shortly after this decision the receivers filed in the district court of Montgomery county an application for an injunction restraining the Public Utilities Commission from putting into effect the joint rate proposed in their findings of July 16, 1915. Service having been attempted to be made upon the Commission and the members thereof, special appearance was made on their behalf, and a motion made to quash the summons and the service thereof. Said motion being overruled, a demurrer was interposed by the Commission, also challenging the jurisdiction of the state district court. The demurrer was overruled, and the Utilities Commission elected to stand upon its demurrer. Thereupon testimony was introduced on behalf of the receivers, and on the 27th of August, 1915, the state district court entered its findings to the effect that the 28-cent rate was unreasonably low and not sufficient to carry out the requirements of the creditors' agreement; and authorized a 30-cent rate to be temporarily established. The court also expressed the opinion that the receivers were engaged in interstate commerce; and furthermore entered an order enjoining the Public Utilities Commission from putting into effect the rates proposed by it in its findings of July 16, 1915. An appeal to the state supreme court was taken by the Utilities Commission from the order overruling the demurrer above mentioned.

1619 Meanwhile, on August 17, 1915, the Public Utilities Commission filed in the state supreme court an application for an alternative writ of mandamus against the judge of the district court of Montgomery county and the receivers of the Kansas Natural Gas Company, praying that said judge be directed to vacate and set aside the order making the Public Utilities Commission a party defendant to the injunction suit; also to set aside the temporary restraining order, and also to dismiss the suit itself; and also that the receivers be compelled to perform their legal and public duty.

An answer was interposed by the receivers in the mandamus proceedings. These two matters, the appeal of the Public Utilities Commission from the order of the state district court overruling their demurrer, and the mandamus proceedings brought by the Public

Utilities Commission in the supreme court, were heard together in that court. On October 4, 1915, the order of the district court overruling the demurrer was reversed, the supreme court holding that no jurisdiction had been obtained over the Commission. The writ of mandamus was denied, the court holding that inasmuch as the Commission had made no order a writ of mandamus could not properly issue. The court concluded its opinion as follows:

"The demurrer of the Public Utilities Commission to the receivers' petition is sustained, and the injunction against the Commission is set aside. No writ of mandamus will issue at this time. The action in this court is dismissed as to Honorable Thomas J. Flannelly, but is retained as to the defendants John M. Landon and R. S. Litchfield for such orders and judgments as may be hereafter made." (96 Kan. 372.)

October 7, 1915, the receivers filed with the Public Utilities Commission a petition for rehearing. Further testimony was introduced and the entire matter was considered *de novo*. December 10, 1915, the Commission filed its findings and order; again finding that 28 cents, with certain exceptions, was a sufficient rate, and authorizing such a schedule to be filed. December 28, 1915, the receivers filed the authorized schedule, which was approved on the same day, and thereafter, on December 29, 1915, the receivers, by direction of the district court of Montgomery county, filed the bill of complaint in this court in the present suit, said suit being designated 136-Equity.

On the 3d day of January, 1916, the Public Utilities Commission presented an application in the mandamus proceeding above 1620 referred to, asking the state supreme court for an injunction restraining the receivers from prosecuting the present suit in the federal court. On January 7, 1916, the receivers filed a petition for removal of the mandamus proceedings from the state supreme court to the federal court. On the 3d day of January, 1916, the Public Utilities Commission also filed a supplemental petition in the mandamus proceedings, asking that the receivers be compelled to perform their official duties and furnish their customers efficient and sufficient service.

On January 16, 1916, the state supreme court filed a decision denying the petition of the receivers for removal, denying the petition of the Public Utilities Commission for an injunction, and dismissing the mandamus proceedings. (96 Kan. 833.)

The bill of complaint in the present suit, 136-N, alleges that it is dependent upon and ancillary to the suits above mentioned pending in this court, the McKinney suit No. 1351 and the Trust Company suit No. 1-N Equity.

At the hearing upon the application for a preliminary injunction before the enlarged court, the jurisdiction of the court was challenged by the Public Utilities Commission, as well as by other defendants, upon various grounds set forth at length either in their answers or in separate motion papers. The court held that it had jurisdiction; its opinion upon that question is found in vol. 234,



Fed. 152, 154. Upon the final hearing the jurisdiction of the court has again been challenged, largely upon the same grounds.

Motions to dismiss on the part of the Public Utilities Commission have also been made from time to time, during the final hearing and upon the final argument, on further grounds, some of them arising since the hearing on the application for the preliminary injunction. Among them are the following:

"That subsequent to the order granting the preliminary injunction an order has been made by the state district court having control of the receivers, instructing the receivers as to the rates to be charged by them; that this order changes the basis of the rate making, and so effects the present suit as to render it impracticable, if not impossible, for the court to proceed to a decision as to the character of the 28-cent rate."

1621 Touching the matter of the rates fixed by the state court subsequently to the temporary injunction, the trial court said:

"By the preliminary injunction the rates fixed by the Commission were enjoined, and the rates fixed by the statute of 1911, being the ones in force upon January 1st of that year, were also enjoined. It therefore became necessary for new rates to be temporarily fixed, so that the receivers might continue to carry on business. Upon application by the receiver the court made the order above mentioned. That this course of procedure, suspending the alleged confiscatory rate during the period of investigation, and fixing temporary new rates is proper, see *Love v. Railway Company*, 185 Fed. 321; *Telephone Company v. Utilities Commission*, 97 Kan. 136."

A further ground for dismissal is that subsequent to the granting of the preliminary injunction, the control of the stock and bonds of the Kansas Natural Gas Company changed hands, and that the new owners entered into certain agreements with the Utilities Commission, amongst others, that the suit in the state district court in which receivers had been appointed should be dismissed; also that the present suit in this court should be dismissed. It appeared, however, upon the argument that the new owners of the stock and bonds of the Kansas Natural were not parties to the present suit, nor had application been made by them to be made parties, nor was application made by the Utilities Commission that said owners should be made parties.

It further appeared that there was a dispute as to what agreements had in fact been entered into between the new owners and the Utilities Commission. It appeared further that no order of dismissal had been entered by the state district court.

Still another ground urged for dismissal was that the evidence showed that the relief really sought by the receivers was not judicial but administrative, and that they were seeking to be relieved from carrying out their obligations in respect to the character of the service to be rendered, fixed by certain franchise contracts, and that no relief should be granted in equity until the obligations under the franchise contracts were completely fulfilled.

A further ground for dismissal is that the creditors' agreement

above referred to really provided for an arbitration as to rates by the Utilities Commission, and that this was binding and not subject to review.

1622 It is also urged on the part of the defendants that the bill should be dismissed for want of equity, because the plaintiffs have not charged for gas in Montgomery county the rate which they were authorized to charge by the order of the Commission, and that the plaintiff- can not be heard to complain of a confiscatory rate so long as they are not charging as high a rate as they are authorized to charge. It is further claimed that the plaintiffs deceived the supreme court of Kansas, and led that court to believe that the rate fixed by the order of the Commission of December 10, 1915, had been put into force and effect, when, as a matter of fact, this was not true, and that the state supreme court relinquished its jurisdiction of the mandamus case, being induced by the deception practiced upon it by the plaintiffs. This state of affairs was called to the attention of the federal district court shortly after the present suit was filed, and again at the hearing for the preliminary injunction before the enlarged court, and still again upon the final hearing.

It appears that the rate in Montgomery county prescribed by the Commission in its order of December 10, 1915, was called to the attention of the state district court shortly after the rates were promulgated, and the district court, upon application of certain cities in Montgomery county, enjoined the receivers from collecting in those cities the rates authorized by the order of the Commission of December 10, 1915. To this proceeding the Commission was not a party. It is admitted by the plaintiff- that the rate that has been charged in Montgomery county since the order of December 10, 1915, has been 20 cents at all times and that is the rate now. The record shows that the rates in question in Montgomery county were competitive rates, and it does not appear that gas could have been sold in that territory by the receiver at a rate higher than 20 cents, the rate then in force; nor does it appear that if the gas had been brought to Kansas City and sold at 28 cents there would have been any greater profit for the receiver- than by selling it in Montgomery county at 20 cents. Finally, it appears that the rate in Montgomery county prescribed by the Commission in its order of December 10, 1915, was called to the attention of the state district court shortly after the rates were promulgated, and the district court upon application of certain cities in Montgomery county enjoined the receivers from collecting in those cities the rates authorized by the order of the Commission of December 10, 1915.

#### 1623 Facts Bearing Directly on the Merits of the Rate Controversy.

It will not be necessary to determine whether the Commission adopted the best and most scientific method in fixing the 28-cent rate; if that rate is not confiscatory, the method by which it was determined is immaterial here.

After determining the value of the plant for rate-making purposes the Commission allocated this value between the states of Mis-



souri and Kansas on a certain percentage basis. The Commission also adopted a flat rate as distinguished from a distance rate, to cover a great many cities in Kansas. The Commission further divided the valuation of the property into two parts, one covering that portion used for production purposes, and the other that portion used for transportation purposes.

### Value of the Property.

The evidence shows that the appraisers appointed under the direction of this court in the fall of 1912 found the value of the physical property to be \$14,803,200; this did not include anything for intangibles, going value or working capital.

In 1913 Mr. Witt, engineer for the Commission, valued the property as of January 1, 1913, at \$10,275,046. This also omitted the above-mentioned items.

Mr. Wyer, employed as an expert engineer by the receivers, fixed the value in 1912 at \$14,520,686, excluding the above-mentioned items.

In 1915 Mr. Strickler, engineer for the Commission, valued the properties at \$8,994,811, excluding the same items; he also valued the properties at \$8,602,993, by further excluding the distributing plant at Independence, and the supply lines at Elk City, Independence and Joplin.

Later Mr. Wyer made a reappraisal as of January 1, 1916, fixing the value at \$12,000,000, exclusive of the intangibles, going value, working capital, and stock supplies; excluding also the Independence plant and the supply lines at Independence, Joplin and Elk City.

In July, 1915, the Commission found the value of the physical property to be \$8,994,811, and estimated the salvage value as of December 31, 1920, at \$2,317,951, which would leave for amortization \$6,676,860. In August, 1915, the state district court, 1624 in reviewing the figures of the Commission, pointed out certain alleged errors on the part of the Commission in arriving at the salvage value, and estimated that value as of December 31, 1920, at \$867,229, which would leave for amortization, \$8,127,584. Both of these valuations included the leaseholds.

In December, 1915, the Commission fixed the valuation of the property used in transportation (which excluded leaseholds and certain other property) at \$7,083,605, amortizing the same on the basis of twelve years; going on the assumption that there would be no salvage at the end of that time. In reference to this matter, the Commission said:

"In providing for depreciation, nothing has been deducted for the salvage value of the property at the end of the estimated life, nor has anything been deducted for the warehouse stock assigned to the transportation branch of the business. In the computations it has been assumed that the entire plant, including the warehouse stock, will be wiped out at the end of the 20-year period. This, of course, is an assumption. At that time it may still be a valuable going concern, or it may be junk."

On the question the trial court found:

"It would seem that this method of procedure is open to criticism. It is hardly supposable that the property in question could be used and useful in transportation and distribution of gas up to a given date, and then overnight become junk.

"Upon a careful consideration of all the evidence bearing upon this question of valuation, I have reached the conclusion that the present fair value of the physical property used in transportation is at least \$7,000,000.

"Whether anything should be added to the value of the physical property for 'going value' is not free from doubt. The term 'going value' has been used in many of the reported cases as covering a number of different matters, among them: good will; organization costs, such as legal expenses, taxes and interest during construction; the cost of attaching customers to a completed plant; loss during early years of the business. The expression 'enhanced value' and 'development cost' are frequently found in the reported cases, and are helpful in elucidating what is meant by the 'going value' for which an allowance has quite properly been made. It will serve

no useful purpose to review the numerous cases on the subject; suffice it to say (1) it seems to be held by the weight of authority that 'good will' should not enter into the valuation of a public utility. (2) Overhead expenses during construction period and organization charges are not properly included in 'going value,' but are a constituent part of the cost of the plant. (3) The other two items mentioned, viz., cost of attaching customers and losses during early years are legitimate elements of 'going value.' 'Going value' thus understood might well be added to the physical valuation provided the evidence is sufficiently definite so that the amount can be fixed with reasonable certainty; and in the absence of countervailing circumstances.

"Mr. Wyer, a witness for the receiver, has estimated 'going value' at \$2,000,000. Mr. Walker, witness for the Commission, has estimated it at \$535,000. It appears from the evidence that there was a deficit in the early years; it also appears that no dividends have been paid to the stockholders. But it also appears from the evidence that in the early history of the company, upward of \$3,000,000 of earnings, instead of being distributed as dividends, was re-invested in the company as capital.

"Upon a consideration of all the evidence on the subject I have reached the conclusion that it is very doubtful whether any allowance for 'going value' would be justified, and have therefore omitted the same."

#### Supply of Gas.

Another important element is the supply of gas. The figures as to this matter which were used by the Commission in December, 1915, in arriving at the 28-cent rate, were approximately the figures for the year 1914, namely, 25,671,445 thousand cubic feet. It was considered by the Commission that the receiver would be able to

procure the same amount of gas for the year 1915 and thereafter, the same figures were adopted as a basis by the enlarged court in the hearing for the preliminary injunction. It is now claimed, however, that the evidence shows that the supply of gas obtainable is very much greater than the figures above mentioned. It is true that the evidence introduced upon the trial has shown the development of new fields having apparently large quantities of gas. Whether these fields will be fairly permanent, or come to a sudden end, no one can foretell. Few of the fields discovered are available to the receiver by the expenditure of a reasonable amount of money; most are available only by the expenditure of a very large amount. The experience of the receiver in making an expenditure of nearly \$700,000 under the direction of the court, for the purpose of reaching new fields and increasing the supply, and the results obtained by him, lead to the conclusion that even the best informed men are liable to be sadly mistaken as to future supply. In October the receiver and Mr. Bartlett, who is connected with the Braden interests, both testified as to bright prospects for a very largely increased supply of gas to be obtained by the Kansas Natural Gas Company within the next 60 or 90 days. At the hearing in February these expectations had given way to certainty; but the certainty was that there would not be an increase, at least to any considerable extent, in spite of diligent efforts.

On this question the court finds:

"A consideration of all of the testimony, including the report of this last experience on the part of the receiver, has convinced me that the Commission sitting in December, 1915, and the court sitting in June, 1916, were both justified in taking the figures of 1914 as the maximum supply probably attainable except upon the expenditure of several times the amount of money they then considered necessary.

"It is true that Mr. Doherty testified upon the final hearing that he had reasonable grounds for believing that he could furnish a supply largely in excess of the figures of 1914. This expectation, however, was based upon the condition that from \$2,000,000 to \$2,500,000 should be expended at once in making the necessary extensions, and that further considerable expenditure thereafter would also be made.

"One of two conclusions appears to be inevitable, either that the supply of 1914 will be the maximum upon the expenditure of such sums as this court in June, 1916, thought necessary; or, the alternate conclusion that to secure a substantially increased supply will necessitate a very large initial expenditure, followed by others of not inconsiderable amounts."

See further the evidence stated under the heading of "Life of the Field."

#### Life of the Field.

The Commission, in December, 1915, in fixing the 28-cent rate, proceeded upon the assumption that the life of the fields would be

twelve years. The experts upon whose opinions the creditors' agreement was based, estimated the life of the field at six years in December, 1914. In July, 1915, the Commission acted upon  
1627 the assumption that the life of the fields would be six years, as set out in the creditors' agreement, without approving it. The testimony of the experts at the final hearing seemed to be based partly upon known facts, and partly upon hopes. Mr. Bartlett, in October, 1916, testified that he thought there was gas enough to last five or six years, and that possibly the fields might exist for ten years. His testimony was given at a time when he also testified that he, as representing the Braden interests, was expected to furnish the receiver within the next thirty to sixty days 40,000,000 cubic feet per day. That he was badly mistaken in this latter estimate has been definitely demonstrated within a period of four months. Instead of furnishing 40,000,000 cubic feet a day, the average for the past three months has been less than 18 million.

Mr. Doherty, referred to before as the recent purchaser of Kansas Natural Gas Stock, and who claims to have much knowledge of the gas field, testified that he was reasonably certain of being able to furnish the Kansas Natural system a supply of gas very largely in excess of the figures of 1914 for at least two years; that he had hopes that it might continue for three years thereafter; and that it was not improbable that with further investigations in the Texas and Louisiana fields a supply might be available for even a longer period.

Mr. J. F. York gave the following testimony: He was for a year and a half with the corporation commission of Oklahoma as conservation officer, until November 15, 1916; was for five years with the United States government in charge of the oil business in the Osage territory, looking after the royalties due the Indians; employed in different capacities for thirteen years in the gas business.

It was his duty as conservation officer to carry out the law and look after the oil and gas business, and to see in general that there was no unnecessary waste of gas and wells were properly cased; to visit the various gas fields in Oklahoma and ascertain the open flow of gas in the wells and whether it was being wasted. In so doing he made a survey of the Oklahoma fields for the corporation commission and reported his observations to the commission, which were embodied in the report, a summary of which was introduced in evidence.

1628 By the term "mudding in" a well is meant that the stratum of gas is held back by use of mud when they don't go on and drill deeper for oil. Generally a mudded well can not be opened for gas, but you must drill other wells. However, some in the Osage can be opened.

By the term "shut in" is meant where they shut them up with a pressure gate on the inside string of pipes, and these wells can be used again. Under the law of Oklahoma, 25 per cent of the open flow of wells can be used and no more.

The witness offered a summary of the commission's report, based on his observations as follows:

*Oklahoma Gas Report.*

The gas conservation agent of the corporation commission makes a report covering the period of twelve months ending June 30, 1916. The same is in part as follows:

Amount of gas consumed for period of twelve months in the state of Oklahoma as follows:

	Cubic feet.
Domestic .....	25,949,911,000
Industrial .....	44,887,820,000
Kansas .....	24,502,465,000
Missouri .....	7,557,530,000
Drilling and lease purposes .....	13,000,000,000
Total .....	115,897,726,000
Open flow .....	2,402,000,000
Shut in .....	803,000,000
Mudded in .....	2,774,000,000
Approximate daily consumption .....	315,000,000

*Summary of Fields.*

	Rock press., lbs.	Mudded in.	Shut in.	Open flow.
Blackwell .....	500-1,460	1,500,000,000	.....	145,000,000
Osgoe .....	130-740	.....	90,000,000	330,000,000
Morrison .....	875	.....	60,000,000	60,000,000
Perkins .....	650	30,000,000	.....	.....
Ingalls .....	750	40,000,000	60,000,000	60,000,000
Yale .....	800-1,200	.....	25,000,000	45,000,000
Cushing .....	500-800	.....	.....	60,000,000
Terlton .....	700-	.....	.....	60,000,000
Stroud .....	6 and 14-15-7-1,100	58,000,000	28,000,000	28,000,000
Bristow .....	9-16-9	46,000,000	.....	.....
Catoosa .....	470-	.....	.....	80,000,000
Shamrock .....	500-700	1,000,000,000	490,000,000	800,000,000
Henryetta .....	350-	.....	50,000,000	75,000,000
Ada .....	150-200	.....	.....	50,000,000
Onapa .....	800-	.....	.....	75,000,000
Bixby .....	70-400	.....	.....	38,000,000
Haskell .....	100-200	.....	.....	134,000,000
Bald Hill .....	140-200	.....	.....	13,000,000
Okmulgee .....	90-500	.....	.....	25,000,000
Healdton .....	.....	100,000,000	.....	50,000,000
Fox .....	.....	.....	.....	124,000,000
Loco .....	.....	.....	.....	150,000,000
Total .....	.....	2,774,000,000	803,000,000	2,402,000,000

1629 Mr. York studied the field with the view of ascertaining its probable life as to gas supply. There would be gas to supply the present market for probably four or five years, but he can not say whether there is any gas territory which can be developed.

Mr. York stated that he did not mean by the statement that there would be gas to supply the present demand for four or five years, that he thought that was the life of the field, but did mean that if they take the fields that they outlined on the map, and assuming that remains as it is, and they then developed these fields as the gas is, that there will be enough gas down there for four or five years, and they are developing and extending the fields all the time; and that he knows there was more gas opened up in 1916 than there had been for years; and that the supply of gas is now greater than it was at any time since he has been in close touch with the situation—say for ten years.

That he reported the amount of gas used for domestic purposes in Oklahoma for the year 1916 to be 25,949,911,000 cubic feet, and that in addition to that, 44,887,820,000 cubic feet had been used for industrial purposes, exclusive of about 13,000,000,000 cubic feet used for drilling.

The witness recommended in his report that a law be enacted prohibiting the use of gas by industrial concerns, and conserving the same for domestic use.

The Wichita Gas Company already has a six-inch pipe line into the Blackwell field.

Mr. York has studied the duration of gas fields in Oklahoma and finds that the Haskell field and one other are among the oldest fields in the territory, and have been used seven or eight years, and are practically exhausted at this time. Many other fields have not lasted as long.

Mr. York stated: The Bixby and Haskell fields are tapped by the Oklahoma Natural (Braden) pipe line; that a good deal of the territory shown by the above table entitled "Summary for Fields" is not reached by any company's pipe lines, and lies considerably south of the Kansas Natural pipe line. There is a royalty of three cents a thousand feet on gas in the ground in the Osage nation. Where the gas from one field is being used by one pipe line it does not pay to

1630 extend another pipe line into that field unless it is a very large one. There is no field in Oklahoma already occupied by one line into which it would be expedient for the Kansas Natural to extend its line except the Blackwell. As long as gas is sold for a small price for domestic purposes it will be used for industrial purposes by consumers, such as smelters. Gas is being sold down there for industrial purposes for 12 to 15 cents, and unless the price of it is raised to more than 25 or 30 cents it will still be sold there for industrial purposes. In referring to the above table it shows 2,402,000,000 feet open flow. Hardly 25 per cent of this is being used. The daily consumption for 1916 was about 300,000,000 feet. The 803,000,000 feet that is shut in is included in the open flow, and in addition to this is the 2,774,000,000 feet that is mudded in. These same fields where the wells are mudded in are, some of them, also



already tapped by the wells which are included in the 2,402,000,000 open flow. In other words, you can not take the mudded-in wells and the open-flow wells and add them together and say that the total of the two represents the full capacity of those fields. That total amount would be very much in excess of the real availability of the field.

There is a smelter at Blackwell. The Cushing field is nearer the Oklahoma Natural than any other and it is about 65 miles from the Kansas Natural. All of the fields lying between Tulsa and Guthrie and Tulsa and Oklahoma City are closer to the Oklahoma Natural gas lines than any other lines. The Morrison pool is about sixty miles from the Kansas Natural pipe line. The Ingalls pool is a little south and east of Stillwater, and the Yale field is east of that, not very far from the Cushing field. The Oklahoma Natural runs through and taps the Cushing field, and it is now within sixteen miles of the Yale field. The Wichita Natural Gas Company is also in the North Cushing field. During the past year there has been a good deal of extension of lines for domestic use in Oklahoma. The domestic consumption has increased very much.

R. H. Bartlett, a witness produced by the plaintiff, in October, 1916, gave testimony as follows: That he is the treasurer of the Oklahoma Natural Gas Company and a managing officer of other gas companies, representing generally the interests known as the Braden interests in Oklahoma, and that he has been familiar since 1905 and 1907 with the gas field in Oklahoma.

1631 The Oklahoma Natural centers largely at Tulsa, extends southwest of Tulsa to Oklahoma City, taking in Guthrie, Shawnee and other small cities along the trunk line for a distance of about 100 miles. The company does not deliver gas at any place at a distance greater than 100 miles from the source of supply. One company belonging to these interests was completed ten days or a week prior to the time the witness testified, and was a 10-inch line, about 50 miles long, from Blackwell to Enid. The total mileage of the system is 400 miles. These interests supply gas for domestic consumption and industrial and manufacturing. The total open flow of the company at the time the witness testified in October, 1916, was 784,000,000 cubic feet. The system connects with the Kansas Natural Gas Company at a point north of Tulsa. The president of the company, Mr. Braden, had made an arrangement last week with Mr. Landon to deliver to the Kansas Natural Gas Company 40,000,000 cubic feet a day for the winter of 1916 and 1917, and the company was in hopes to do better than that, and in the judgment of the witness the company would be able to do at least that.

It will be possible for the Kansas Natural Gas Company to extend its lines west across the Osage nation and the Blackwell fields, a distance of about eighty miles. The Morrison field is thirty or thirty-five miles further from the Kansas Natural than Blackwell. The best-looking prospects for gas available to the Kansas Natural are the Blackwell and the Morrison fields. For the necessities of the Kansas Natural anything under a 15-inch line wouldn't be, practically, of any value. The line could be laid for from \$18,000 to \$20,000 a

mile and put in condition for use. There is a very large open flow volume in Blackwell fields that would be available at the present time. It might be possible to develop half a billion feet. The sand they have been penetrating only shows up a volume of perhaps 30 to 50 million feet. Of course there is quite a large acreage there, but it would take new wells to be drilled to obtain that service. In the opinion of the witness a large amount of new gas could be developed in that field from the present conditions. The extension to the Blackwell field would also include the Morrison field. That field would have to be further developed before it would be good business to spend half a million dollars on a pipe line. It is a very good 1632 prospective virgin field. If I were going to put my money into a pipe line I would want forty or fifty gas wells, which would cost probably \$10,000 a well. It would be possible to get other people to drill these wells if you could make them an interesting proposition. It would have to be assured that there would be a pipe line coming. The Kansas Natural, having no leases in the field, would have to interest the present lessees in that district and buy the gas in that way, or else buy the property as a whole.

In the opinion of the witness it can not be told how long the Blackwell gas field would last if such a line were built. The Oklahoma field would last for twenty years if we could keep the control of the entire field and keep out competing pipe lines. We can't do that.

In the opinion of the witness he had lost confidence in the gas business. The history of the field has been made up and has reached the point of progress, owing to the depletion of fields. The companies have been able to get along only by the development of new gas. There has been a development of gas in the southwest last year. The sands in the south and southwest are deep. The drop is on an average of 30 feet to the mile, and the wells are therefore deeper. It is the general opinion of the gas people that the deeper you find the paying strata the longer the life of the field. This was true in the eastern fields. No one can tell how long they will last. The Hogshooter was the largest and lasted only about two years. Some of them have not lasted a year. The fields in the west and the southwest are an unknown quantity. A great deal of wildcatting has been going on in southwest Oklahoma by the oil companies, most of which have not given any results, but there are some new gas pools. The development as yet is in its infancy. The supply in the Cushing field has increased considerably in the last year, and we find that we can maintain what we have there for a year or so at least. There is not a sufficient gas development at present to completely take care of all of the requirements. The original Cushing field didn't last two years, but we have had gas from there for over three years, and that is the best field in the state now. With the present pipe line at Cushing the gas can be taken out without additional development.

Whether it will last ten years no one knows. At the present 1633 time the wells in Oklahoma, on an average, will be exhausted in two years. How much we are going to develop in other fields further south and west can not be told. There are a million acres in Oklahoma under lease to-day, and development will go on there until the sand leaks out.

As to the two fields accessible to the Kansas Natural, on the expenditure of money indicated, if the producers would develop two million feet of gas in that pool, and they kept within the rules and did not abuse the wells, the fields would last probably five or six years, but to do this you would have to keep drilling new wells and get new production. The price of gas at Cushing is  $2\frac{1}{2}$  to 3 cents at the wells. At the Blackwell field they are charging 4 cents, and next year it is to be 5 cents at the mouth of the well. The records of the witness' company show that for the fiscal year ending February 28, 1916, the cost of gas delivered at any place on the trunk line system—we couldn't pick out any particular place—but the delivery cost at any place on the trunk line system, 6.13 cents. That is the cost for the gas delivered by our company to the Kansas Natural. We have been receiving 6 cents for it, but we have notified them that we would have to get 7 cents. Our experience has been that after gas pipes have lain in the ground more than ten years they are badly corroded.

On cross-examination the witness said that it had not been the experience of the government that pipe lines last twenty years, although the government has adopted that time as the theory of the depletion of the pipe lines, and the government has not changed its rule. The prospect is better for the development of gas now than it has been in the past two or three years in some of the wells they have been developing late. In some of the wells drilled in the Blackwell fields there is a showing of 40 to 50 millions of gas which has been developed and "mudded in." There is a supply of 50 to 60 million feet available for the market in the Morrison field. For the gas bought at the wells the company is paying  $2\frac{1}{2}$ , 3 and 4 cents. This includes the wells all over the field. Tulsa is the largest city in which the company distributes gas, but the pipe lines run to Oklahoma City and transport gas to that city from the Cushing field. The price at Oklahoma City is 30 cents, with 5 cents off if the bills are paid within ten days after they are sent in. The transporting company—that is, the witness' company—gets two-thirds of the domestic and 1634 three-fourths of the special manufacturers' rate, and that is the usual contract with the company. There is a very great development in the oil fields, and as a usual thing the gas that has been developed has come as an incident to oil development, but at present, in addition to the oil development, there is a large development of a new gas supply. In the opinion of the witness the supply of gas will be much better protected than in the past, and the company hopes to be in the present field for twenty years. This would mean the development of new wells and new fields.

Mr. J. C. McDowell, with more than 35 years' experience in the natural-gas industry in America, one of the organizers of the Kansas Natural Gas Company and at present an executive officer and consulting engineer with the Wichita Natural Gas Company, which is owned by the Henry L. Doherty interests and which it was proposed to consolidate with the Kansas Natural when Mr. Doherty purchased the stock of that company, and who, with others, appeared before the Commission to ask the issuance of a certificate of author-

ity for the union of these two companies after Mr. Doherty's purchase, testified on or about April, 1916, that he is familiar with the present developed gas supply available for Oklahoma, Kansas and Missouri markets, and that the present proven gas areas in the Kansas and Oklahoma field are much greater in extent than during any past period of their history or development, and he does not hesitate to say that there is, or will be, an available supply of gas for these markets for many years, and that the outlook is better now than at any previous time; that gas has been produced and utilized in Kansas in large quantities for over fifteen years, and the prospects of future supply for the Kansas, Missouri and Oklahoma markets are better to-day than the prospect for the future supply was ten years ago.

Mr. Alfred J. Diescher, vice president and general manager of the Wichita Natural Gas Company, mentioned above, a civil engineer by profession, with many years' experience in the gas business, who also appeared before the Commission to assist in obtaining a certificate of authority for the consolidation of the Wichita Natural and the Kansas Natural companies on the occasion of Mr. Doherty's purchase of the stock, referred to herein, stated on or about April, 1916, that he is of the opinion that there will be a greater supply of natural gas developed in Kansas and Oklahoma in the next 1635 five or ten years than has been developed or produced in the past five years. Not only has the known gas area extended, as proven by the deposits in Augusta and Winfield, Kan., Blackwell, Morrison, Billings, Yale and Cushing, Okla., and in various parts of Orange county, Oklahoma, and Butler and Franklin counties, Kansas, but that this western and southern development is showing a greater number of sands and offering greater possible exploration to greater depths than was in the case of the territory already developed or depleted. That there is no doubt in his mind that both Kansas and Oklahoma will develop greater quantities in the future than they have in the past; that this large quantity is indicated by various gas fields opened and scattered over an immense area; that during the past two weeks he has made a tour of the most productive fields, studying into the available supply and outlook for the future supply, and does not hesitate to say that there is developed in Kansas and Oklahoma to-day, and available for market, fully one billion cubic feet of natural gas, daily open flow, and this quality can be increased as the markets require. This provides for the present requirements. As to the future, there are so many pools recently opened and so many new wells drilled that he feels safe in saying that the production area of future development has been increased by more than double the area already developed. That he has great confidence in the future supply of gas for years to come in Kansas and Oklahoma available for Kansas and Oklahoma markets.

Relative to the matter of maintaining practically uniform rates of gas sales in various cities in Kansas along a given trunk line, will say that my experience in operating large natural-gas properties convinces me that it is absolutely necessary to maintain rates practically uniform in all cities supplied by the same trunk line. The

reason for this is, any rate based upon the distance from the source of supply must act against the interest of the consumer, in that it puts a premium on securing a supply at greater distance from the market, which means that the possibility of getting adequate and sufficient service is greatly reduced. It is impossible to operate great trunk lines in a way to give satisfactory service and take care of the sudden and temporary fluctuations in demand without a large percentage of the gas is produced quite close to the markets  
1636 supplied. It is impossible to take care of such fluctuating

demands, which are peculiar to the natural-gas business, from a source of supply at greater distance, for the reason that it takes hours, and often the greatest part of the day, for the gas to travel from one end of a long line to the other, thereby making it impossible to meet the increased demands from a distant field until hours after the demand has occurred, and often long after the supply has failed. Again, the life of a single field is very short. New fields are being brought in constantly, and those fields depleted, constantly changing the distance from the market to the sources of supply, making it impossible to base the gas-sales rate upon any such unstable basis. Further, that after a gas trunk line is installed and the force necessary to operate the same is employed, the bringing of new fields close to market does not help in reducing operating or investment cost, but, without exception, increases the cost of operation, again showing that distance from market is not a tangible basis for rate-making purposes. Further, that wide experience in natural-gas distribution and sales convinces me that the only way a large natural-gas plant can successfully operate is by charging a practically uniform rate to each class of its consumers, regardless of the distance from or proximity to the sources of supply.

The federal receivers, in 1912, in their report to Judge Pollock (1913 hearing, p. 25), stated that the fields from which the company drew its gas were being rapidly depleted, and cited as an illustration the Owasso field, the wells of which were turned into the lines of the company after their appointment as receivers. When turned in, these wells had a rock pressure of 416 pounds to the square inch, while at the date of the report, a few months later, the pressure had dropped to 237 pounds. When first appointed they tested the Tulsa field and found the rock pressure there to be 417 pounds, while at the date of the report, only a few months later, it had dropped to 322 pound-. As early as 1906 and 1907 the rock pressure had declined in the Kansas fields and the supply in Wilson and Allen counties was only sufficient for two years. (May, 1915, Hayes, pp. 8 and 9.)

The wells in the Hogshooter district, once so strong, are nearly exhausted and will not last more than two or three years. (May, 1915, hearing—Landon, p. 40.) None of the fields reached  
1637 when the plaintiff was appointed has been entirely exhausted, but they have declined, and one field where he secured over twenty million cubic feet a day has declined in rock pressure from 400 to a little better than 200 pounds. (May, 1915, hearing—Landon, p. 45.)

A well which shows 800 to 1000 pounds pressure when brought in frequently will not be producing one hundred thousand cubic feet in thirty days. For instance, the rock pressure in the Catoosa field from January 1, 1915, to March 1, 1916, has steadily declined from 350 pounds to 140 pounds, at which pressure no considerable quantity of gas can be taken into the pipe line. The rock pressure in the Vera field has declined from 375 pounds on January 1, 1915, to 155 pounds on May 1, 1915.

The decline in rock pressure is told in Mr. Hulbert's affidavit and report (October, 1915, hearing, p. 59), where the original rock pressure in the field and the present rock pressure are given. His affidavit is graphically shown on the map attached to his affidavit, a copy of which is Exhibit L to bill of complaint. On this map the red lines indicate the lines of the Kansas Natural, the yellow lines the Quapaw and Wichita Natural, and the green lines the Braden or Oklahoma Natural. The gas fields are also shown. Those in heavy black are fields once productive but now dead; those in cross sections were once productive but now more than 75 per cent exhausted; while those with single lines are still active and more than 25 per cent of the original pressure still maintained. Along the Kansas Natural lines, where statistics are available, are shown the number of wells with original rock pressure, and following is the present rock pressure. For instance, Northern Independence, 16 wells, 425 pounds original pressure, now 81 pounds; Southern Independence, 223 wells, 340 pounds original pressure, now 43 pounds; Hogshooter, 470 pounds original pressure, now exhausted; Catoosa, 24 wells, 350 pounds original pressure, now 184 pounds.

For instance, in the Southern Independence pool in 1905 there were 10 wells, showing an average of 340 pounds. In the middle of 1909, with 139 wells, it had fallen to 190 pounds, while at the end of 1915 the pressure had declined to 40 pounds, with 220 wells, and so the curve of each pool is shown on the several charts.

1638 The quantity of gas needed to supply the consumers served by the Kansas Natural and to maintain the revenue of the company during the next six years can not be purchased in the fields where the Kansas Natural is now buying gas. (October, 1915, hearing—Hayes, p. 49.)

In 1905 the supply of gas for all northern Kansas and Kansas City and St. Joseph was obtained from Wilson, Neosho and Allen counties, while southern Kansas and towns in southwestern Missouri were supplied from the Independence pool. In 1907 the Independence pool was tapped for Kansas City and northern Kansas. In 1909 it was necessary to extend the lines to the Vanderpool pool in Oklahoma, and in 1910 an extension was made to Hogshooter; in 1912 to Owasso and Tulsa; in 1913 to Bird Creek and Collinsville; and in 1915 to Catoosa; so that while the haul to Kansas City was from Altoona, a distance of 127 miles, it is now from Catoosa, a distance of 237 miles. (Wyer affidavit, Exhibit E, p. 59.)

The federal receivers, in reporting to Judge Pollock, stated that while the northern cities were wholly supplied in the first instance from Allen, Wilson and Neosho counties, "the gas fields in these



counties had rapidly waned, and the system was extended to Montgomery county and then into Oklahoma. The length of the system has been substantially doubled since gas was first supplied through it. These extensions and the acquiring of new gas leases to amplify the depleted fields has required enormous expenditures of money. In 1912 \$512,000 were expended in betterments; in 1911, \$251,000; in 1910, \$1,288,000; in 1909, \$1,430,000; in 1908, \$1,171,000; in 1907, \$1,260,000." If extended to the new Cushing field it would require an expenditure of about \$850,000. (1913 hearing, p. 26.)

Mr. Witt, engineer for the Commission, in 1913 estimated the cost of a 16-inch extension to the Cushing field at \$607,419. (1913 hearing, p. 69.)

The company has no undeveloped promising territory within reach of its lines. (May, 1915, hearing—Hayes, p. 12.) The acreage adjacent to the lines has been largely developed. In 1914 forty-five wells were drilled, and the plaintiff has drilled in every location likely to get gas. The last well drilled in the Hogshooter district cost \$1600, and only \$1100 of gas has been taken out of the well. In December, 1910, the Hogshooter district produced ninety million cubic feet a day. In October, 1914, the pressure was 1639 so low that the gas would not go into the lines. A considerable quantity of gas was being brought from Owasso and Bird Creek, but the rest of the gas, practically all, is purchased from the United Fuel Supply Company. (May, 1915—Hayes, pp. 22 and 23.) Gas may be procured if \$500,000 is expended for building new lines. (May, 1915—Hayes, p. 33.)

The cost of extensions to new territory is not in the nature of permanent improvements, but really a maintenance charge, and would only increase the salvage value of the plant. If a permanent supply of gas were found the trunk lines so extended possibly ought not to be charged to operating expenses. (May, 1915, hearing—Hayes, p. 14.)

The cost of extensions should be charged to maintenance for the reason that it only maintains the efficiency and earning power of the plant and adds nothing to it. In fact, it really does not maintain the earning power. In case of a large item of construction, it ought not to be absorbed in one year's income, but should be charged to the property account and the life of the field estimated, and each year there should be written off such an amount as would absorb the cost of that construction work by the time the field was exhausted, allowing for salvage. (May, 1915, hearing—Hayes, p. 30.)

At the May, 1915, hearing \$500,000 was estimated as the amount necessary for extensions, and if put in with additional compressor capacity it was estimated that the operating expenses would be increased from \$879,000 to \$900,000 per year. (May, 1915, hearing—Hayes, p. 33.)

In May, 1915, Mr. Landon testified (p. 45) that unless the proposed extension was made into the new field in Oklahoma he doubted whether he could furnish the northern district as much gas as they did the preceding winter.

With the increased cost of material Mr. Hayes estimated that ex-



tensions and new leases will require an average of \$400,000 per year for the next five years. (Hayes affidavit, p. 7.)

1640

## Rate of Interest Allowed on Investment.

On this proposition the trial court found:

"As to the rate of return upon investment the court, upon the hearing for the preliminary injunction, held that eight per cent was not excessive, in view of the nature of the business, the risks, hazards, and prevailing rates in other similar lines of activity. I see no reason for departing from that conclusion, and need not repeat what was then said.

"One additional observation may be made. It is conceded by all parties that continued extensions into fields outside of Kansas will be imperative. It has been held that the Public Utilities Commission has no power to order extensions outside the state. It therefore becomes necessary to attract capital to make these extensions. This can be done only upon the basis of a reasonable return in view of the character and risks of the business."

## Price of Gas to the Receiver Delivered at the Trunk Lines of the Receiver.

The Commission, in its investigation leading up to the 28-cent rate, concluded that 4 cents per thousand cubic feet would be sufficient. The trial court upon the hearing for the preliminary injunction, under the evidence then before it, concluded that 6 cents should be allowed. Considerable additional evidence has been introduced touching the price paid for gas in different localities in Kansas and Oklahoma. Mr. Bartlett testified that the price which the receiver would have to pay the Braden interests for gas purchased from them would probably be 7 cents, although it had not yet been definitely fixed. It appears that a royalty of 3 cents exists in the Osage field, where a considerable part of the supply is now obtained by the receiver. There was evidence that at certain points gas was sold at the mouth of the well for as low as 2 and 3 cents. It is also in evidence that industrial plants are in active competition at many points with purchasers who are seeking to transport gas to consumers at a distance for domestic purposes, and that in some instances these industrial plants pay as high as 10 to 12 cents for their gas.

Mr. York, conservation officer at Oklahoma, gave testimony as follows: The average price of gas in Oklahoma is 3 cents. This includes the Blackwell field and includes much territory that is out of the field of the Kansas Natural Gas Company. The price of gas

is lower where it is out of the reach of pipe lines, but eliminating the territory which is not adjacent to any pipe line, and considering only gas which is within a reasonable distance—say ten miles—of a pipe line, the price would probably be 3½ or 4 cents per thousand cubic feet. There may be some a little higher than that. There is some sold for industrial purposes as high

as 9 and 10 cents, but that is delivered. If the gas is delivered at the wells the price will be about  $3\frac{1}{2}$  or 4 cents. The price in the Osage territory would be 5 or 6 cents. The Wichita Pipe Line Company is taking most of this gas. You can only take 20 per cent of the open flow under the government rules. The Blackwell field, about ninety miles from the Kansas Natural's present lines, would seem to justify another pipe line. Mr. York does not know of any developed fields which are not connected with either the Kansas Natural pipe lines or other lines—that is, within a distance of 20 miles. The nearest of such fields that are not connected are Okmulgee, which is about fifty-three miles south of Tulsa, and Henryetta, about fifteen miles farther south.

Notwithstanding the large acreage of leaseholds acquired by the Kansas Natural, it has not been able to supply its customers therefrom. The quantity purchased and produced in the respective years is shown in the report of the federal receivers to Judge Pollock, at page 100 of the bill of complaint. The total amount produced from 1904 to 1912 was 150,402,175,000 cubic feet and the amount purchased 57,714,213,000. The amount purchased has increased while the amount produced has decreased during the later years. In 1913 the quantity purchased was 15,935,556,000, while the quantity produced was only 4,398,634,000. In 1914 the quantity purchased was 16,552,941,000, while the quantity produced was only 1,651,740,000. (May, 1915, hearing—Hayes exhibit, 96; Hayes, 6, 7, 33.)

The price paid has increased from \$0.0181 in 1906 to \$0.045 in 1912 (Federal receiver's statement, bill of complaint, 100); to \$0.05 in 1915 (May, 1915, hearing—Hayes, 88), and to \$0.06 in 1916. (Hayes Aff. 5.)

The greatest problem confronting the receiver is the obtaining of an adequate supply of gas. With the growing scarcity of gas, competition for it in the field increases. Two other large companies enter the general field covered by the receiver—the Oklahoma Natural, and the Quapaw or Wichita Natural. (May, 1915—Hayes, 1642 17.) Smelters and cement plants in Montgomery county, the Kaigan Gas Company and the Cross-Wolf-Brown Gas Company are large users and competitors in Kansas. (May, 1915, hearing—Landon, 42; May, 1915, hearing—Burns, 85-86.) There are four gas plants at Sapulpa that use 5,000,000 feet per day during the winter months; two smelters at Bartlesville that use a little over 16,000,000 feet per day; one at Caney using 7,000,000 feet per day; one at Deering using 4,000,000 per day, and a smelter at Independence which uses 2,000,000 or 3,000,000 per day. (October, 1915, hearing—Robinson, 3.) Robinson also furnished a statement, shown at page 73 as Exhibit 2D, showing a list of industrial plants with a consumption capacity of over 77,000,000. These smelters, which at present are very active, are paying as much as \$0.10 $\frac{1}{2}$  a thousand for gas in the field. Two smelters at Collinsville use in the neighborhood of 20,000,000 per day. Carthage and Joplin are willing to pay \$0.12 $\frac{1}{2}$  for gas under their boilers. These smelters run continually and their demand is uniform, whereas the Kansas Natural demands more in one season than in another. (October, 1915, hear-

ing—Hulbert's 67.) Mr. Hulbert, at page 71, makes the following summary: "From the foregoing analysis and the map hereto attached it appears that the gas fields are of short duration; that competition is very keen for natural gas, (1) between the three great trunk lines, (2) between the smelters and factories in the field and the domestic consumers in the cities; that the Kansas Natural, having no control of the sale price, is laboring under a ruinous handicap as against the other transportation companies and their patrons, the smelters and factories; that the domestic trade should be the most desirable market; and that the duration of the supply of natural gas for domestic consumption is dependent almost wholly upon the financial ability of the Kansas Natural to compete therefor with the smelters, cement plants, glass, brick and other factories in and near the field; in other words, upon the willingness of the Kansas and Missouri public-service commissioners to compete—or permit the Kansas Natural to compete, or permit the domestic consumers to compete with the smelters and factories—for said gas."

The cost of purchasing gas during the years of 1914 and 1915 has been approximately \$0.06 at the wells, and the price is constantly increasing. Great competition exists between the receiver and the Oklahoma Natural, the Quapaw Gas Company and the Wichita Natural Gas Company, and the many industrial and manufacturing concerns operating in southern Kansas and northern Oklahoma. (Landon affidavit, 8.)

The delay of the Kansas Commission in granting reasonable rates and the prolonged litigation has embarrassed and tied the hands of the receivers and put them to a disadvantage with their competitors. The smelters during the past year have been able to pay extraordinary high prices for natural gas because of the extremely high price of their product, caused by the European wars. (Landon affidavit, 13; Hayes affidavit, 4 and 5.)

#### Division of Rate Between Receiver and Distributing Companies.

It is to be noted that the 28-cent rate fixed by the Commission was a joint rate; that is, a rate covering both the compensation to the receiver and to the distributing companies, which joint rate was to be paid by the ultimate consumer. Under the contracts made by the Kansas Natural Gas Company with the various distributing companies, a division of the rate to be paid by the ultimate consumer was provided for, which division was generally two-thirds to the Kansas Natural Company and one-third to the distributing company, although, in a few instances, this proportion was different; in the two Kansas Cities it was 62½ per cent to the Kansas Natural.

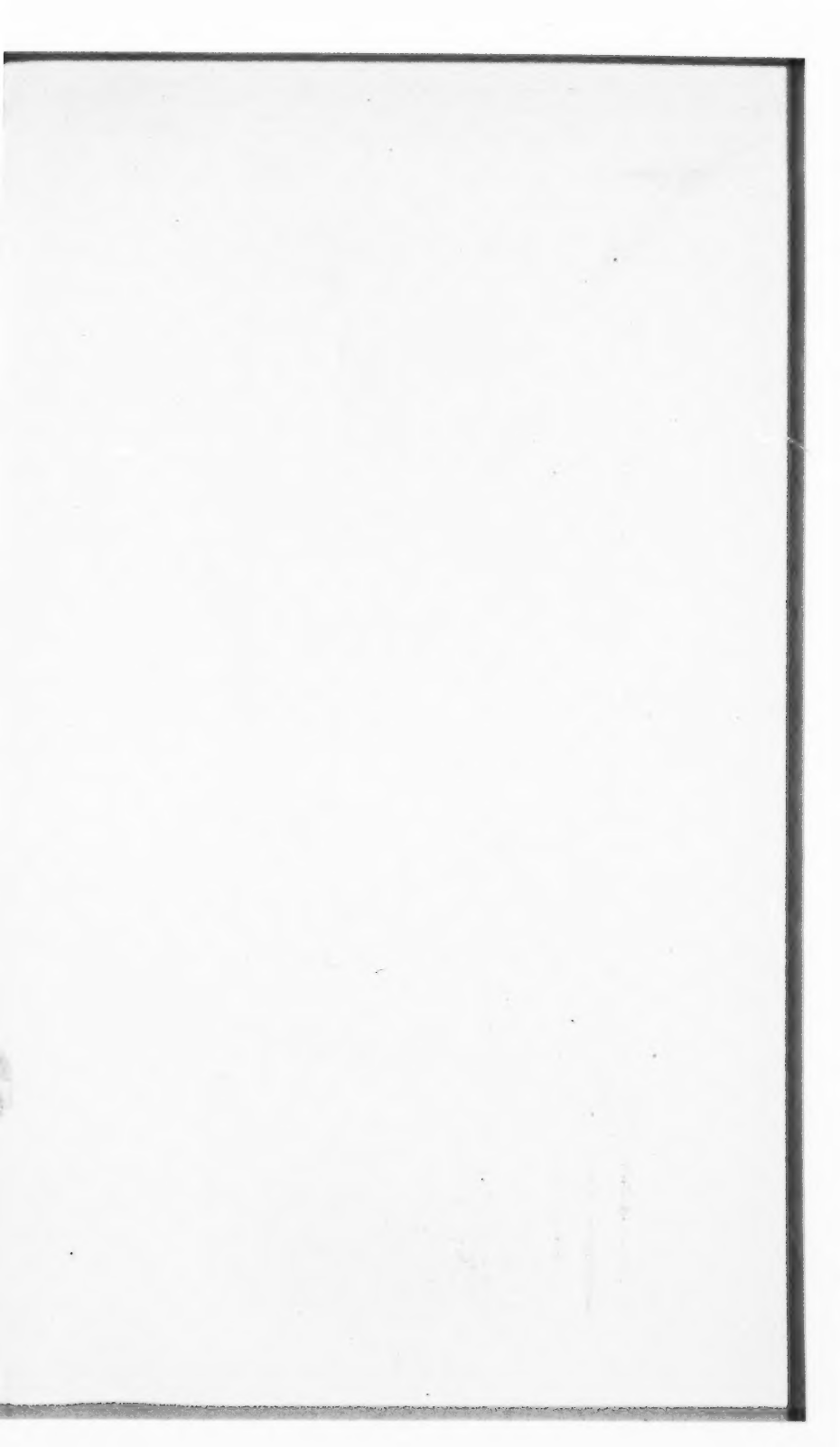
These contracts between the Kansas Natural and the various distributing companies were never adopted by the receivers appointed by the state court, and the order of the federal court, appointing the original federal receivers, provided that these contracts should not become binding upon the receivers, except by the express order of the court. No such order has ever been made. The receivers, however, continued to distribute gas to the various distributing com-

panies, and to collect therefor upon the ratio of the division of rates fixed by the contracts.

At the hearing before the Public Utilities Commission it was assumed that any joint rate fixed by the Commission would be divided between the receiver and the distributing companies upon the same basis, namely, two-thirds and one-third. At the hearing before the enlarged court, upon the application for a preliminary injunction, the same assumption was made. When the case came on for final hearing, however, the attorneys for the Commission took the position that the assumption would no longer be acquiesced in by the Commission, and that the basis of rate-making had been changed by the position taken by the receiver, under the direction of the district court of Montgomery county, to the effect that he would no longer deliver gas on that basis. Under the view taken by the trial court, this left the question open whether the receiver could reasonably expect to secure a greater percentage of the joint rate fixed by the Commission than the two-thirds, and it became necessary to determine this question because, even though it might be established that two-thirds of a 28-cent rate would be confiscatory to the receiver, it would not follow that five-sixths or seven-eighths would be confiscatory. In the absence of an assumption that two-thirds was all that could be obtained, evidence was required as a basis for a finding with regard to the matter. Accordingly, considerable evidence was introduced touching the financial status of the various distributing companies, the valuation of their plants, the character and extent of their business, their operating expenses and other allied matters. This evidence was introduced, not for the purpose of ascertaining with accuracy what would be a just and fair rate to be charged by the various distributing companies, but solely for the purpose of ascertaining whether there was any reasonable grounds for holding that the receiver could obtain more than two-thirds of the 28-cent joint rate. This evidence was taken and the inquiry made on the basis of laying aside temporarily the contracts between the Kansas Natural Company and the distributing company, and without undertaking to pass upon the validity of those contracts as between the original parties.

A summary of that evidence is as follows:

Testimony was offered by the receiver tending to show that under the 28-cent rate each of the following-named distributing companies operating under the 28-cent rate on a basis of one-third to the distributing company and two-thirds to the receiver, except in case of the Wyandotte County Gas Company, which was operating on a division of  $37\frac{1}{2}$  to the distributing company and  $62\frac{1}{2}$  to the receiver, were unable to make any profits, to wit: Wyandotte County Gas Company, Atchison Railway Light & Power Company, Consumers' Light, Heat & Power Company, American Gas Company, Baldwin Gas Company, and the Ottawa Gas & Electric Company, and the Olathe Gas Company, the Atchison Railway Light & Power Company, the Consumers' Light, Heat & Power Company, the Olathe Gas Company and the Wyandotte Gas Company showing a considerable net loss.



Results of operations for the fiscal year ending June 30, 1916, as shown by their annual reports made to the Commission, of some of the companies distributing natural gas. (Compiled from Exhibits 116-128.)

Name of Company.	Location.	Intangible capital.	Tangible capital.	Total fixed capital.	Capital stock outstanding.	Bonded debt outstanding.	Working assets.	Working liabilities.	Surplus.
The Arkansas Valley Gas Co.	Arkansas City	\$50,001.45	\$22,274.93	\$142,276.38	\$150,000.00		\$70,774.66	\$46,820.06	\$17,965.06
The Bakwin Gas Co.	Bakwin	10,000.00	10,000.00	30,000.00	10,000.00		21,362.73	3,218.55	4,044.18
The Western Distributing Co.	Bartholomew	10,000.00	197,499.96	107,918.32	17,000.00	\$4,000.00	58,971.69	57,454.40	25,658.09
The Casey Gas Co.	Casey	448.36	50,570.42	50,570.42	42,000.00		16,180.69	1,823.66	3,177.45
The Coffeyville Gas & Fuel Co.	Coffeyville	300,000.00	120,992.07	420,992.07	300,000.00	36,500.00	27,409.81	20,314.50	92,104.08
The Fredonia Gas Co.	Fredonia	56,001.87	167,309.08	223,400.85	100,000.00		20,058.14	6,051.88	139,536.91
The American Gas Co.	Galena	213,667.40	126,826.94	342,514.43	105,000.00	12,600.00	48,171.30	26,788.63	8,966.70
The Humboldt Gas Co.	Humboldt	13,250.00	57,545.94	71,065.94	50,000.00		8,293.53	3,269.36	23,000.84
The Hutchinson Gas & Fuel Co.	Hutchinson			530,637.45	300,000.00	42,000.00	34,313.45	2,369.11	102,270.99
Citizens Light, Heat & Power Co.	Lawrence			644,096.38	300,000.00	300,000.00	109,853.55	8,312.13	145,294.28
The Hale Gas Co.	Needles			112,669.50	100,000.00		54,969.36	34,733.00	14,983.89
The Newton Gas & Fuel Co.	Newton			240,479.90	150,000.00	35,000.00	6,541.08	3,935.27	18,102.75
Ottawa Gas & Electric Co.	Ottawa	250,000.00	75,000.00	325,000.00	250,000.00		33,079.57	25,079.55	9,500.22
Osweston Gas Co.	Osweston				100,000.00				
Peaks	Peaks			209,239.03	100,000.00	92,500.00	11,250.65	7,664.79	20,834.80
The Parsons Natural Gas Co.	Parsons	50,025.00	156,214.03	206,239.03	100,000.00	45,750.00	12,316.85	17,167.13	10,000.00
The Parsons Gas & Electric Co.	Wichita		163,666.79	163,666.79					
Kansas Gas & Electric Co.	Wichita								
Winfield Natural Gas Co.	Winfield	81,860.83	89,795.47	141,606.30	100,000.00		31,573.47	14,462.75	57,276.09
<b>Total</b>		<b>\$997,223.70</b>	<b>\$1,313,055.63</b>	<b>\$3,879,032.56</b>	<b>\$2,442,000.00</b>	<b>\$642,750.00</b>	<b>\$530,478.68</b>	<b>\$287,035.26</b>	<b>\$723,559.28</b>

\*Purchase gas from the receiver.

Mr. Hayes, the auditor for the receiver, and the president of the Kansas Natural, testified that he had negotiated with the various distributing companies supplied by the receiver in an effort to ascertain whether or not the Kansas Natural or the receiver could get from such distributing companies a larger proportion than two-thirds of the gross receipts from the sale of gas; that the result of such negotiations was that none of the distributing companies supplied by the Kansas Natural could or would make a division with the Kansas Natural by which such distributing companies were to receive less than one-third of the gross revenue derived from the sale of gas at the 28-cent rate.

(Here follows table marked page 1646.)



1647 In a number of the cities in northern Kansas, after the temporary injunction, the receiver negotiated for 18 cents per thousand feet at the gates of the city, and at others on the southern trunk he negotiated for 16 cents.

The Annual Requirements of the Gas Company and Its Probable Receipts and Disbursements.

The Commission, in its decision of December 10, 1915, presented a table showing its estimate of the requirements of the receiver for the year 1915, and the estimated revenue under the 28-cent rate. The table follows:

Table No. 5.—Kansas Natural Gas Company.

*Statement of Estimated Revenue and Requirements for the Ensuing Year Based on 1914 Figures, Revised as Previously Explained, for the State of Kansas.*

	Requirements.	Transportation.	Kansas.
25,671,445 M cubic feet gas at 4c.....		\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation.....		510,536.14	223,245.11
Receivership expenses .....		32,228.00	14,093.30
Uncollectible gas accounts .....		12,555.07	6,395.14
Taxes, Kansas City Pipe Line.....		32,288.27	16,860.51
Taxes, Marnet Mining Company.....		10,497.35	5,316.91
Maintaining organization, Marnet Mining Co.....		690.20	349.59
Total .....		\$1,626,652.83	\$780,269.57
Present value of transportation property, \$7,083,605.64; depreciation on basis of 12 years .....		590,300.00	268,468.44
Requirements exclusive of a return on property investment.....		2,216,952.83	1,048,738.01
*Return on present value.....	\$7,083,605.64		
Add for working capital.....	200,000		
Total .....		\$437,016.35	\$198,755.00
		\$2,653,969.18	\$1,247,493.01

\*The division of these items between Kansas and Missouri has been on basis of use of property as shown in Table No. 1.

## Estimated Revenue.

Gas sales, 1914 .....	\$1,192,089.82
+Gas used in compressor stations (on basis of use) .....	31,737.70
Total .....	<u>\$1,223,827.52</u>
Estimated revenue from increased rates .....	171,513.63
Total estimated revenue from Kansas .....	<u>\$1,395,341.15</u>
Deduct requirements as above .....	1,048,738.01
Estimated net revenue .....	<u>\$346,503.14</u>
1648	
Which is equal to a return of 10.46% on the present value \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,605.64, or total estimated revenue for Kansas .....	1,395,341.15
Less requirements including a 6% return .....	<u>1,247,493.01</u>
Surplus .....	<u>147,848.14</u>

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<sup>†</sup>This item is placed here to balance an equal sum included in the expenditures. It is a bookkeeping entry solely.

The enlarged court in its opinion in granting the preliminary injunction, pointed out wherein it thought the foregoing table should be revised. It said:

"Turning now to the table of the Commission quoted above the result is that, laying aside other considerations and conceding the substantial correctness of the Commission's other findings for the purpose of the decision of this application for injunction, its estimates of the requirements of the company and of the receiver for the first and the succeeding five years of the life of the gas company as a going concern were too low by the following amounts:

On account of estimating twelve years instead of six years as the life of the going concern by.....	\$590,300.00
On account of lack of allowance for extensions by..	247,916.00
On account of estimate of cost of gas at 4 cents per M cubic feet instead of 6 cents per M cubic feet by	513,428.90
On account of allowance of 6 per cent instead of 8 per cent interest.....	145,672.10
Total .....	\$1,497,317.00

The estimated cost of immediate extensions has been reduced by the value of new pipe recently bought by the receiver and not yet received, amounting to something over \$200,000. The balance of the amount recently expended by the receiver under order of court amounting to over \$400,000, though unsuccessful as an investment, must nevertheless be provided for either by being placed in capital account and amortized, or by being charged to maintenance, proper allowance to be made in either case for salvage.

The rates put into effect by the receiver after the taking effect of the temporary injunction were 35 cents to the consumer in the cities on the northern trunk line in Kansas City, Kan., and Topeka 50 cents for the first 3000 feet. The rate in Montgomery county remained 20 cents. The following figures were shown by defendant's Exhibit D-103 and plaintiff's Exhibit 35:

	1916.	1915.
Field trunk .....	636,911,000	738,793,000
Southern trunk .....	2,105,192,000	1,906,770,000
Northern trunk .....	4,233,827,000	4,511,703,000
Kansas City 16-inch line.....	6,771,492,000	7,983,157,000
	<hr/> 13,747,422,000	<hr/> 15,140,423,000

The amount used in compressors in 1915 was 1,430,105,000 cubic feet. The amount sold in 1916, outside of Montgomery county, Kansas, was 15,177,427,000 feet, including the gas used in

1649 compressors. There was a total sale of gas of more than 19 billion cubic feet in 1916. There was 636,911,000 cubic feet sold at Elk City and Coffeyville in Montgomery county. Missouri takes about 55 per cent of the total product, leaving 45 per cent consumed in Kansas. There was approximately one billion cubic feet less consumed in Kansas in 1916 than in 1915. Plaintiff's Exhibit No. 30 read as follows:

"If the volume of gas sales in 1916 has been as much as those in 1915, and at the 28-cent rate, the sales for 1916 would have been \$2,089,194.59, and the increase would have been \$100,471.27, or \$59,562.14 more than it was."

The exhibit then shows:

Gas sales 1915 .....	\$1,988,723.32
Gas sales 1916 .....	2,029,632.45
Increase .....	40,909.13

Plaintiff's Exhibit No. 50 shows gas delivered north of Ottawa:

Gas Delivered North of Ottawa First Four Months of 1915.

	No. meters.	Total gas.
St. Joseph line .....	33,263	1,639,353 cu. ft.
K. C. 16-in. line .....	79,352	3,986,708 cu. ft.

Gas Delivered North of Ottawa First Four Months of 1916.

	No. meters.	Total gas.
St. Joseph line .....	33,437	1,290,328 cu. ft.
K. C. 16-in. line .....	81,272	3,015,871 cu. ft.

As to power gas, the same exhibit shows:

"Power gas sales as follows:

1914 .....	2,227,205
1915 .....	1,209,162
1916 (8 months) .....	1,939,890

"In 1914 and 1915 there were some power gas sales in every month, but in 1916 there were none shown in January, February or March."

Plaintiff's Exhibit No. 131 shows the service in Kansas City, Mo., and Kansas City, Kan., for January, 1916 and 1917:

Kansas City, Mo.

Gas Supplied to Domestic Consumers.

Sales 1916 .....	663,846,000 cu. ft.
Sales 1917 .....	445,929,000 cu. ft.
Loss .....	217,917,000 cu. ft.

Kansas City, Kan.

Sales 1916 .....	193,080,000 cu. ft.
Sales 1917 .....	144,443,000 cu. ft.
Loss .....	48,637,000 cu. ft.

Plaintiff's Exhibit No. 65 shows that the average price of power gas in Montgomery county for three months ending December 31, 1916, was less than 6 cents per 100 cubic feet.

The banner year for the Kansas Natural Gas Company was 1910.

Its gross income that year was \$4,237,375, but in 1914 this had declined to \$2,826,345. The operating expenses, interest and taxes in 1910 were \$2,381,694. These have increased until in 1914 they were \$3,000,830. The net income in 1910 was \$1,855,681, while in 1914 there was a deficit of \$174,484. These figures do not take into account such expenditures as extension of mains, oil properties and sinking fund for bonds. These items aggregated in 1914 \$820,078, and the total deficit for that year was \$1,003,563. (May, 1915, hearing—Hayes, pp. 5, 6 and 24; table, page 95.)

There is no corresponding decline in the operating expenses of a gas plant as compared with its decline in business. The plant remains the same in extent, and it is necessary to keep the same number of employees and to operate the same pumping stations when business declines as when the company is handling its full capacity. (May, 1915, hearing—Hayes, p. 12.)

The two tables below were —. One of these tables is an analysis of the expenses of the Kansas Natural Company from January 1, 1910, to December 31, 1914. This gives the expenses for those years in considerable detail under two headings, "Maintaining" and "Conducting," which together are considered as the operating expenses. These show that the total operating expenses for the respective years have been as follows:

1910 .....	\$890,406
1911 .....	869,225
1912 .....	1,059,941
1913 .....	806,614
1914 .....	741,888

The other table is a statement of income and expenditure from July 1, 1904, to December 31, 1914, and shows that the total income for 1914 was \$1,003,563 less than the total operating expenses and other expenditures for that year. The other expenditures include such items as extensions, expense on oil properties and sinking fund for the first and second mortgage.

This statement shows that no dividends have been paid on any stock since the year 1909.

The operating expenses and taxes for the year 1915 were \$814,205, and the receivers expended for gas purchased during that year \$1,114,175. The above does not include any amount for depreciation or amortization of property, depletion of leases or necessary extensions.

(Here follow tables marked pages 1651 to 1654, inclusive.)





**Exhibit—Statement prepared by V. A. Hayes, Auditor, and offered at hearing in May, 1915.**  
**ANALYSIS OF EXPENSES FOR PERIOD—JANUARY 1, 1910, TO DECEMBER 31, 1914—EXHIBIT 46-A.**

ALL DIVISIONS.		1910.	1911.	1912.	1913.	1914.
1	Changing construction—extraordinary:					
	Moving compressor stations				\$8,539 82	
	Moving pipe line				87,525 75	
	Changing construction—ordinary				1,997 39	\$6,243 26
1	Repairs of lines	\$27,232 33	\$43,065 69	23,858 38	25,127 13	16,222 55
2	Repairs of measuring stations	22,998 87	21,376 56	21,893 95	1,953 82	1,634 29
2a	Repairs of wells				7,709 12	7,907 11
3	Repairs of buildings	17,210 57	13,449 35	11,830 87	829 15	254 26
4	Repairs of telephone and telephone	646 42	1,632 58	195 25		
6	Repairs of motors	6 30	2,868 80	3,204 68	2,861 28	2,722 39
6	Repairs of telegraph	3,010 94	49,906 18	79,921 05	66,910 68	49,711 61
7	Drilling of wells	64,113 24	3,020 74	3,723 60	4,181 68	5,948 76
8	Depreciation	2,500 08	4,911 76	2,516 65	898 03	1,785 07
9	Drilling tools	4,163 39				
	Total maintaining	\$133,582 67	\$136,508 45	\$375,428 01	\$121,457 50	\$52,149 16
10	Operating lines					
10a	Operating measuring stations				\$43,674 21	\$26,370 54
11	Operating wells	\$75,384 92	\$60,028 15	\$58,655 49	14,127 60	15,379 02
12	Livery and barn	9,454 36	11,356 96	10,000 15	11,902 33	10,335 70
13	Damages	17,699 47	12,371 96	13,223 25	13,761 64	10,824 90
13	Taxes	5,305 78	16,002 94	1,281 50	2,921 65	1,256 96
14	Lease rentals (free gas)	70,511 81	73,762 13	73,373 08	81,325 89	93,818 94
15	Lease rentals	29,639 84	27,825 45	27,292 33	24,607 85	22,947 68
16	Well rentals	79,284 73	69,257 43	47,740 35	46,726 33	37,076 98
16	Telegraph and telephone	51,471 55	48,487 70	47,145 00	54,149 20	52,276 33
17	Salaries and expenses of officials and superintendents	18,871 58	18,148 19	15,953 25	17,382 36	16,257 94
18	Office	58,276 43	60,621 18	56,060 91	40,766 87	26,557 12
19	Tools	92,675 14	77,269 12	68,183 16	41,262 84	35,293 69
20	Leasing, etc.	2,610 64	1,035 45	1,016 19	1,063 52	1,065 36
21	Pumping stations	6,862 09	3,969 66	4,836 78	4,787 74	8,881 54
22	Legal	210,472 86	235,280 61	235,800 29	258,805 76	229,493 90
23	Insurance	20,018 96	22,822 14	31,568 14	2,285 52	50 65
24	Miscellaneous	590 57	1,127 38	1,675 38	585 99	815 19
25	Reclaiming material—lines	2,780 79	11,412 84	8,846 06	13,260 00	17,271 18
26	Reclaiming material—wells	3,291 14	7,056 52	8,249 67	6,212 42	2,793 43
27	Total conducting	\$756,824 02	\$738,716 70	\$684,116 98	\$635,156 38	\$649,788 95
27a	Total operating	\$390,405 59	\$369,225 14	\$1,085,941 99	\$908,614 04	\$741,868 11

\*OPERATING PUMP STATIONS:

Grainham	\$54,835.37	\$53,257.48	\$97,071.28	\$80,473.30	\$73,445.22
Petrolia	71,627.27	70,449.38	55,580.79	56,200.80	50,216.03
Sedro	42,183.12	30,454.60	13,506.32		
Village	10,982.86	9,259.68	8,413.59	10,413.23	10,804.93
Rice Creek	3,943.56	7,702.53	2,715.57		
Nickelasha	10,828.82	10,937.09	9,522.74	10,526.80	7,207.33
Altoona	9,262.06	7,625.85	7,577.19	8,418.15	7,731.67
Fisher	6,796.84	5,543.85	5,449.51	4,575.84	4,346.46
Hornhooker			5,764.30	30,763.85	68,463.47
Mound Valley	12.98			7,483.79	7,278.79
Dearing					
	\$210,472.88	\$225,250.51	\$205,800.29	\$258,805.76	\$229,493.90

Amounts shown in black type appear in red on original statement.

**Exhibit—Statement prepared by V. A. Hayes, Auditor, and offered at hearing in May, 1915.**

**STATEMENT OF INCOME AND EXPENDITURE—JULY 1, 1904, TO DECEMBER 31, 1914.—EXHIBIT 46-B.**

	1904-1905.	1906.	1907.	1908.	1909.	1910.
<b>INCOME:</b>						
Sales of gas	\$449,288 08	\$1,933,800 50	\$2,916,528 45	\$3,519,570 80	\$3,783,642 05	\$4,216,958 55
Sales of oil	37,242 41	8,703 81	5,648 64	3,666 42	1,933 14	1,602 82
Miscellaneous	57,191 18	9,002 53	30,730 26	27,861 45	16,209 82	18,814 27
<b>Total</b>	<b>\$543,721 67</b>	<b>\$1,951,506 84</b>	<b>\$2,952,897 35</b>	<b>\$3,551,118 17</b>	<b>\$3,801,805 01</b>	<b>\$4,237,375 64</b>
<b>EXPENSES:</b>						
Gas purchased	\$54,165 92	\$54,165 92	\$140,546 55	\$122,147 21	\$32,608 83	\$195,155 49
Operating and taxes	\$457,463 31	456,244 96	759,040 97	769,160 61	914,314 31	693,003 28
Reevestorship expense						
Oil expense	14,029 38	7,164 44	3,365 25	3,124 62	2,335 84	1,731 47
Bad accounts	4,516 53	21,467 59	22,996 35	29,801 04	84,800 97	28,306 88
Property Rentals		134,916 20	449,342 18	720,824 86	701,763 55	801,406 80
Interest and bond premium	295,231 56	474,763 86	454,089 89	438,478 00	481,488 80	464,685 00
<b>Total</b>	<b>\$771,241 28</b>	<b>\$1,157,722 07</b>	<b>\$1,829,381 19</b>	<b>\$2,083,536 34</b>	<b>\$2,187,314 30</b>	<b>\$2,384,290 92</b>
<b>OTHER EXPENDITURES:</b>						
Extensions maintenance		\$362,314 06	\$173,231 32	\$1,161,798 00	\$448,414 83	\$1,091,728 17
Oil properties						500 00
Taxes		10,000 00	48,200 00	9,683 53	5,657 48	28,354 00
Office building, Pittsburg, Pa.		256,166 66	376,198 75	380,776 25	399,885 00	400,000 00
First mortgage sinking fund				300,000 00	300,000 00	300,000 00
Second mortgage sinking fund				660,000 00	420,000 00	
Dividend						
<b>Total</b>		<b>\$628,480 72</b>	<b>\$597,630 07</b>	<b>\$2,512,257 88</b>	<b>\$1,574,927 31</b>	<b>\$1,820,582 17</b>
<b>Grand total</b>	<b>\$771,341 56</b>	<b>\$1,786,202 79</b>	<b>\$2,427,011 26</b>	<b>\$4,595,794 22</b>	<b>\$3,762,241 61</b>	<b>\$4,304,873 09</b>
<b>Surplus or deficit</b>	<b>\$227,819 61</b>	<b>\$165,304 05</b>	<b>\$525,886 09</b>	<b>\$1,014,676 84</b>	<b>\$39,563 40</b>	<b>\$32,502 55</b>

Amounts shown in black type appear in red on original statement.

**Exhibit—Statement prepared by V. A. Hayes, Auditor, and offered at hearing in May, 1915—concluded.**

**STATEMENT OF INCOME AND EXPENDITURE—JULY 1, 1904, TO DECEMBER 31, 1914—EXHIBIT 46-B.**

	1911.	1912.	1913.	1914.	Total.
<b>INCOME:</b>					
Sale of gas.....	\$4,119,114.64	\$3,954,277.16	\$2,979,683.05	\$2,726,173.29	\$30,829,046.07
Sale of oil.....		17,539.84	47,567.55	57,667.51	165,261.94
Miscellaneous.....	57,035.23	19,027.34	40,901.46	57,566.71	334,289.25
<b>Total.....</b>	<b>\$4,176,149.87</b>	<b>\$3,991,044.14</b>	<b>\$3,067,652.06</b>	<b>\$2,836,346.51</b>	<b>\$31,129,617.26</b>
<b>EXPENSES:</b>					
Gas purchased.....	\$631,503.71	\$726,137.85	\$762,397.72	\$841,612.56	\$3,256,274.94
Gas pricing and taxes.....	869,225.14	1,069,941.99	806,614.04	741,888.11	7,735,897.22
Receivership expense.....		6,888.03	79,745.68	137,463.11	224,096.82
Oil expense.....		3,067.41	33,586.42	96,285.90	104,690.73
Bad accounts.....	169,404.27	46,349.04	24,201.96	12,555.07	354,399.67
Property rentals.....	867,671.46	933,860.23	990,718.36	866,636.33	6,567,183.36
Interest and bond premium.....	377,009.31	582,277.64	254,031.29	264,829.73	3,766,383.06
<b>Total.....</b>	<b>\$2,904,813.88</b>	<b>\$3,088,512.16</b>	<b>\$2,931,295.47</b>	<b>\$3,000,830.81</b>	<b>\$22,308,983.42</b>
<b>OTHER EXPENDITURES:</b>					
Extensions maintenance.....	\$298,371.00	\$190,979.08	\$11,909.18	\$96,749.94	\$3,811,797.32
Oil properties.....		34,845.46	8,485.24	32,328.90	75,759.60
Texas operations.....	15,453.97	11,000.00			30,158.97
Office building, Pittsburg, Pa.....	34,034.98	9,143.63			146,573.72
Pittsburg sinking fund.....	400,000.00	399,871.25	400,000.00	400,000.01	3,412,867.92
Second mortgage sinking fund.....	300,000.00	294,722.55	301,000.00	300,000.00	2,094,722.66
Dividend.....					1,090,000.00
<b>Total.....</b>	<b>\$1,094,564.95</b>	<b>\$940,681.97</b>	<b>\$806,676.06</b>	<b>\$829,078.85</b>	<b>\$10,651,879.99</b>
<b>Grand total.....</b>	<b>\$3,956,378.83</b>	<b>\$3,979,194.13</b>	<b>\$3,647,971.83</b>	<b>\$3,829,909.66</b>	<b>\$32,960,818.40</b>
<b>Surplus or deficit.....</b>	<b>\$219,771.04</b>	<b>\$11,860.01</b>	<b>\$480,319.47</b>	<b>\$1,003,533.15</b>	<b>\$1,631,291.14</b>

Amounts shown in black type appear in red on original statement.

1655

## Interstate Commerce.

The trial court, in passing on the question of interstate commerce and as to whether state regulation was an interference with that commerce, within the meaning of the federal constitution, adopted the facts found by the supreme court of Kansas in *State v. Flannelly*, supra, and we are satisfied with that statement of facts as to how the business is, in fact, transacted. This statement is as follows:

"The gas sold by the receivers is produced in both Kansas and Oklahoma. It is transported from the wells through pipe lines beginning in Oklahoma, entering the state of Kansas near Coffeyville, at which place gas is first distributed and sold to consumers. The remainder is transported north through pipe lines into which gas from wells in Kansas is conveyed, and the gas from Oklahoma and Kansas is then transported through the same pipe lines and through compressing stations to Independence and north and east throughout this state and after supplying the consumers in this state it is transported into the state of Missouri, where it is sold to other consumers. After the gas from this state is discharged into the pipe lines with the gas from Oklahoma, it is impossible to distinguish one from the other or to separate one from the other. About 85 per cent of the gas sold is produced in Oklahoma, and 15 per cent is produced in Kansas. About 60 per cent of the gas sold is sold in Missouri and 40 per cent is sold in Kansas. The gas sold in Kansas is delivered to the consumer thereof in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities, fixing the rates charged customers for gas. These distributing companies act as agents for the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Company, under the control of the receivers, into the pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers. The gas is consumed as fast as it is sold, and is consumed immediately after passing through the meter measuring the gas to consumers."

1656

## Statement.

The opinions of the Commission, appearing as Exhibits H and K to plaintiff's bill, are hereby referred to and made a part of this statement to the same effect as though copied in full herein.

The above and foregoing is a full and complete statement of the evidence in the above-entitled cause, and contains all parts essential to the decision of the questions presented by the appeal herein, and is made under the terms, and requirements of Rule 75 of the Rules

of Practice in Equity for the purpose of perfecting the record in said cause on appeal.

F. S. JACKSON,

H. O. CASTER,

*Attorneys for the Defendants.*

*Attorneys for the Defendant Public Utilities Commission for the State of Kansas, H. O. Caster, Its Attorney; S. M. Brewster, Attorney-General, and the Defendant Cities of Kansas, Parties to Said Suit.*

Above record is hereby approved.

WILBUR F. BOOTH, *Judge.*

Upon the application of the appellees, and by order of the court, the following affidavits and statements were added to the foregoing statement of the evidence, to wit: The affidavit of Samuel S. Wyer; affidavits of John M. Landon and V. A. Hayes; plaintiff's Exhibits No. 15 and 16, containing supplemental affidavit of V. A. Hayes; plaintiff's Exhibit No. 18, the affidavit of S. S. Wyer; plaintiff's Exhibit No. 23, containing supplemental affidavit No. 3 of V. A. Hayes; and a statement prepared by V. A. Hayes showing the income and expenditures of the Kansas Natural Gas Company from July 1, 1904, to December 31, 1914.

1657 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Affidavit of Samuel S. Wyer, Consulting Engineer, on Present Situation of The Kansas Natural Gas Company.*



1657½ In the District Court of the United States for the District of  
Kansas, First Division.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.

1658 *List of Exhibits.*

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E Annual length of "gas haul" necessary to render natural gas service to Kansas City, Missouri, and net domestic gas rates at Kansas City, Missouri.....	59
F Interstate service relation of Kansas Natural Gas Company for 1915 .....	60
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R	Typical order of services that must be performed on "The Natural Gas Furnished by the Lord" before the gas becomes available or usable to a domestic consumer .....	74-75
S	Action of gas compressor .....	77
T	Effect of pressure on gas volume .....	78
U	Factors determining cost of natural gas service .....	79
V	Gas well drilling operations of Kansas Natural Gas Company in Kansas .....	80
W	Gas well drilling operations of Kansas Natural Gas Company in Oklahoma .....	81
X	Map showing intense competitive conditions in the natural gas territory furnishing gas to The Kansas Natural Gas Company .....	84-85
1659	<i>Affidavit of Samuel S. Wyer, Consulting Engineer, on Present Situation of The Kansas Natural Gas Company.</i>	

## STATE OF OHIO,

Franklin County, ss:

Samuel S. Wyer, Being duly sworn according to law, deposes and says:

1. That I am a consulting engineer, with offices in the Harrison Building, Columbus, Ohio.

2. That I am a member of:

- (a) American Society of Mechanical Engineers;
- (b) American Institute of Mining Engineers;
- (c) American Academy of Political and Social Science;
- (d) American Association for Advancement of Science;
- (e) American Gas Institute.

3. That I am the author of:

- (a) Treatise on Producer Gas and Gas Producers;
- (b) Pamphlet on Rate Regulation of Electric Power;
- (c) Treatise on Regulation, Valuation and Depreciation of Public Utilities;

- (e) Pamphlet on Natural Gas Service;
- (d) Pamphlet on Depreciation of Natural Gas Wells;
- (f) Compilation of Cases Relating to Gas Compression Question;
- (g) Paper before American Institute of Mining Engineers on "Is it Feasible to Make Common Carriers of Natural Gas

1660 "Transmission Lines?"

(h) Paper before the American Institute of Mining Engineers on "Development of the Law Relating to the Use of Gas Compressors in Natural Gas Production."

(i) Paper before the American Institute of Mining Engineers on "Effect and Necessary Use of Gas Compressors in Natural Gas Production."

(j) Paper before the American Society of Mechanical Engineers (jointly with Robert F. Earhart, Professor of Physics, Ohio State

University, Columbus, Ohio) on "Deviation of Natural Gas from Boyle's Law."

(k) Paper on "Criteria for Making Public Utility Service Extensions," published by Case and Comment.

4. That I have for many years given much attention and investigation to public utility problems in general, and natural gas problems in particular, with special attention to the investigation of the economic features of production, transportation and distribution of natural gas by natural gas companies, natural gas service, valuation of property of natural gas companies, and to many other questions affecting the production, transportation, distribution, and sale of natural gas.

5. That I have made valuations of:

(a) The property of the Kansas Natural Gas Company;

(b) Newark, Ohio, Natural Gas Plant;

(c) Ashtabula, Ohio, Natural Gas Plant and Manufacturing Gas Plant;

(d) Richmond, Indiana, Natural and Manufactured Gas Plants;

(e) Terre Haute, Indiana, Manufactured Gas Plant;

1661 (f) Bloomington, Illinois, Manufactured Gas Plant;

(g) Chillicothe, Ohio, Water Works Plant;

(h) Richmond, Indiana, Private Electric Plant;

(i) Richmond, Indiana, Municipal Electric Plant;

(j) Lorain, Ohio, Electric Plant.

6. That I am now at work making valuations of natural gas properties in several states and over one hundred towns.

7. That I have made reports:

(a) To the city of Columbus, Ohio (jointly with Professor E. A. Hitchcock), on the natural gas service rendered it by The Columbus Gas and Fuel Company.

(b) To the Public Utilities Commission of Ohio on natural gas pressure regulators.

(c) On Municipal Natural Gas Plant Failures in Ohio.

(d) On Vital Features of the Natural Gas Industry in the United States.

(e) On Necessary Use and Effect of Gas Compressors on Natural Gas Field Operating Conditions in Ohio, this being by far the most elaborate study of actual field operating conditions that has ever been made. In this, tests were made at over 100 different places, which required 7,000 miles of automobile driving, and consumed six months' time.

(f) On House Heating Furnace Efficiencies, with special reference to efficiencies that can be obtained with natural gas as compared with solid fuels.

(g) On Economy of Natural Gas Engine Plants, with special reference to the economies that can be obtained as against  
1662 other types of prime movers.

(h) On the distinction between natural gas and manufactured gas service.

(i) On cost comparison of producer gas and natural gas.

(j) On the feasibility of making common carriers of the main

lines of the Kansas Natural Gas Company, the Ohio Fuel Supply Company, and the Northwestern Ohio Natural Gas Company.

(*k*) On conservation of natural gas.

(*l*) On gas leakage with special reference to current practice in a large number of manufactured gas plants.

(*m*) Legal right of minimum charge in public utility service.

(*n*) Readiness-to-Serve charges for public utilities.

(*o*) Principles of valuing public utilities.

(*p*) Principles of natural gas leasehold valuation.

(*q*) Reasons why natural gas should not be sold on a sliding scale based on mere quantity.

(*r*) Electrolysis of gas mains from stray currents of electric street railways at St. Louis, Missouri.

(*s*) Electrolysis of gas mains from stray currents of electric street railways at Springfield, Ohio.

(*t*) Electrolysis of gas mains from stray currents of electric street railways at Lorain, Ohio.

(*u*) Electrolysis of gas mains from stray currents of electric street railways at Elyria, Ohio.

(*v*) Fire hazard due to stray electric currents from single trolley street railway return circuits.

8. That I am a member of the National Joint Committee on Electrolysis—of 21 engineers—now making a study of electrolysis in Europe and the United States with special reference to electrolysis of gas lines.

9. That I am now working jointly with the United States Bureau of Mines, Department of the Interior, Washington, D. C., on:

(*a*) Quality of natural gas in Ohio;

(*b*) Removal of gasoline from natural gas.

10. That I am now working jointly with the United States Bureau of Standards, Department of Commerce, Washington, D. C., on:

(*a*) Development of a standard type of apparatus for determining specific gravity of natural gas.

(*b*) National Gas Safety Code.

11. That I have been employed in connection with other investigations by individuals, gas companies, municipalities, and others, and am thoroughly familiar with, and an expert in, all matters pertaining to the operations of a natural gas company.

12. That in connection with the affairs of the Kansas Natural Gas Company, I have made:

(*a*) The original valuation under the order of the U. S. District Court, for the District of Kansas, dated October 22d, 1912. This included a thorough inspection of the property during the months of October, November and December, 1912, and the preparation of an "Engineering Report on the Wholesale Cost and Worth of Natural Gas Service at the Gates of the Various Towns and Valuation of all the Property of the Kansas Natural Gas Company." This report is on file in that case.

(*b*) In December, 1914, I again visited the property and made a careful investigation of the then proposed measure to make

1364 Common Carriers of Natural Gas Transmission Lines. With the data then obtained I prepared a report, showing that it was not feasible to consider the main lines of the Kansas Natural Gas Company as Common Carriers of Natural Gas.

(c) In May, 1915, I again visited the property and went over various operating problems with the Receivers.

(d) In January, 1916, and March, 1916, I made another personal inspection and prepared a detailed report as to the present fair valuation of the property of the Kansas Natural Gas Company.

13. If the total annual expenses of a utility are taken at 100%, then the "fixed charges" are that part of the total 100% of annual expenses that must be met in order to maintain the integrity of the property value, regardless of the service rendered. These "fixed charges" are higher for natural gas than for any other utilities, and compare as follows:

Natural gas .....	73%
Electric lighting .....	67%
Telephone .....	60%
Electric street railway .....	53%
Manufactured gas .....	49%

What the term "fixed charges" embraces is shown in Exhibit U.

14. That the operating hazard in the natural gas business is greater than in any other utility, the obtaining of natural gas being essentially a mining proposition, with more unknown, uncontrollable and uncertain features to cope with than exist in the mining of coal or other minerals, as has been judicially recognized by the West

1665 Virginia Supreme Court of Appeals (66 W. Va. p. 591, Garrett v. Oil Company) where the court said:

"We take judicial notice of the fact that mining for oil and gas is a very hazardous and dangerous business, involving great risk and requiring large expenditures of money."

This is because:

(a) It is more difficult to determine the outline and volume of a natural gas formation than it is to make a similar determination for coal or other minerals, as has been well said by the Supreme Court of Indiana in Consumers Gas Trust Company v. Littler, 162 Ind. p. 326:

"We judicially know, as a matter of common knowledge, that gas or oil does not exist in paying quantities under all lands within the recognized district, and there is no other generally acknowledged way than putting down a well to determine whether or not it does exist."

(b) The Kansas Natural Gas Company, in its drilling operations, has drilled 1,059 wells, and 258—24.3%—of these have been dry holes, as shown on Exhibits V and W.

(c) Wasteful methods by one company will deplete or destroy the supply of other companies operating in the same field. This feature is discussed in great detail in the Oklahoma Corporation Commission's Report on Conservation of Natural Gas, as reported in Public

Utilities Reports, Volume 1915-E, page 994. The features mentioned in this report have been especially troublesome to the Kansas Natural Gas Company.

(d) The intense competitive conditions surrounding the field operations of the Kansas Natural Gas Company are shown in Exhibit X. Not only are there a large number of companies engaged in cut throat competition, but a number of the companies that are removing gas are using it entirely for manufacturing purposes, either directly in, or immediately adjacent to the field. The use of this high grade natural gas for this manufacturing service where solid fuels would answer just as well, is an economic crime, and its continued use is due to the fact that the domestic consumers have not been willing to pay a fair price for the natural gas service, and the gas has been considered so cheap as not to be worth conserving. Had the fields from which the Kansas Natural Gas Company draws its gas supplies been operated as natural monopolies, as they should be, under unified regulated control, the domestic consumers depending on the Mid-continent field could have had a relatively low price, and an adequate and satisfactory natural gas service for years. Such a condition of unified regulated control would have resulted in an enormous conservation of resources that have no equal in domestic service.

1667 15. It is not ordinarily appreciated that the investment necessary to render natural gas service is very much greater per consumer than for any other utility service. That is, the investment per consumer in natural gas properties, from gas leases to domestic meters, is

(a) 300% more than in electric plants, thus requiring \$4.00 investment in natural gas plants to \$1.00 in electric plants for each consumer.

(b) 150% more than in water works plants, thus requiring \$2.50 investment in natural gas plants to \$1.00 in water works plants for each consumer.

(c) 100% more than all of the Bell Telephone Toll Lines and Bell Exchanges in the United States, thus requiring \$2.00 investment in natural gas plants to \$1.00 in telephones for each consumer.

(d) 50% more than in ordinary manufacturing gas plants, thus requiring \$1.50 investment in natural gas plants to \$1.00 in manufacturing plants for each consumer.

16. That the characteristics of natural gas service, frequently misunderstood, may be summarized briefly, as follows:

(a) The public does not appreciate the large investment necessary to transmit gas from the gas field to the consumers' premises. The constantly increasing length of lines and consequent investment necessary for this service is illustrated on Exhibits G to Q, inclusive.

(b) The depletion of the gas fields furnishing gas to the Kansas Natural Gas Company has been very rapid, as shown by the rock pressure decline curves in Exhibits A to D, inclusive.

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South Independence, Kansas,	shown on Exhibit A;
North " "	" " " A;
Altoona and East Altoona, Kas.	" " " A;
East Chanute, Kansas,	" " " A;
Neodesha, "	" " " B;
West Chanute, "	" " " B;
Vanderpool, Oklahoma,	" " " B;
Buffalo, Kansas,	" " " B;
Caney, Kansas,	" " " B;
South Chanute, Kansas,	" " " C;
South Fredonia, "	" " " C;
East Fredonia, "	" " " C;
Lenepah, Oklahoma,	" " " C;
East Tulsa, "	" " " C;
Owasso and Bird Creek, Okla.,	" " " C;
Catoosa, Oklahoma,	" " " C;
Woodson Co., Kansas,	" " " D;
Hogshooter, Oklahoma,	" " " D;
Matoka, Oklahoma,	" " " D;

1669 The simultaneous increase in length of gas haul to Kansas City, Missouri, and rates in Kansas City, Missouri, where about one-half the domestic consumers live, is shown in Exhibit E.

(c) The useful commercial life of every natural gas plant is limited by the commercial life of the gas fields. The only value remaining in the plant after the gas has been exhausted is the salvage value of the various structures. The cost of removal is so high that the net remaining salvage value will be very small. The gas compressor equipment is of such special construction that it cannot be used for any other purpose.

(d) A gas company has no control whatever over the quantity or quality of the gas supplied, which is entirely at nature's caprice, and it is not economically feasible to alter the quality furnished by nature. The latter feature was recognized and adopted by the District Court of Shawnee County, Kansas, when, on April 13, 1915, in the unreported case of Ely v. Public Utilities Commission, No. 22,229, the Court set aside the order of the commission fixing a minimum heating value for natural gas. No appeal was taken.

(e) The investment hazard is greater than that of any other utility, as enumerated in section 15 herein.

1670 (f) The fixed charges are greater than for any other utility, as enumerated in section 13 herein.

(g) There is a large variation between the maximum hour demand and the minimum hour demand. Based on actual measurements for the years 1914-15, at the 39th Street Measuring Station at Kansas City, Missouri, the demand during the maximum hour—which is typical of other cities—was 370% greater than the demand during the minimum hour, and about twice the average demand



during the year. For this reason, large investments must be made that are used only for a short period of each year.

(h) There is a large variation in the seasonal loads,—that is, from month to month.

(i) A natural gas company must carry a large investment in reserve leased ground in order to be able to maintain an adequate reserve supply of gas for future use. If the transportation company does not maintain all of this acreage direct, as is the case with the Kansas Natural Gas Company, then the price it must pay from time to time will be increased, on account of the increased value of reserve acreage that has been held by other producers. According to the statistics of the United States Geological Survey, 5 acres of land on an average throughout the United States are now held and reserved to insure continuous service to each domestic natural gas consumer.

(j) The underground structures of the Kansas Natural Gas Company represent the major part of its total property value.

(k) The unavoidable shrinkage in volume of gas due to leakage in transmission from the gas field to the consumer is considerable. This may be illustrated by the statement that in a 16-inch main, each coupler represents about 17 linear feet of possible leakage surface, or 4,590 feet of possible leakage surface per mile of pipe.

(l) A part of the gas produced must be used in furnishing fuel for the gas compressors in order to transport the gas through the main lines. This, too, decreases the available gas to the consumer.

(m) Each new consumer requires an additional investment, and this extends clear back to the reserve acreage that must be held and maintained to insure the continuity of the service,—that is, each new consumer puts more demand on the main trunk line capacity, gas compressor station capacity, gathering line capacity, actual well delivery capacity, and reserve acreage.

17. That the natural gas well capacities that are given to the public are always the open-flow capacity; that is, the capacity of the well in 24 hours when discharging freely into the atmosphere with no back pressure at all. This is misleading, and comes far from representing the true service capacity or true gas delivery capacity under routine operating conditions, of any gas well, because:

(a) The first open-flow measurements, which are usually the ones advertised in the newspapers, are nearly always made by the drillers, who do not have the facilities or skill to make an accurate test, and the errors are invariably on the side of a capacity larger than the actual facts. The volume is determined immediately after the well comes in, and is therefore larger than it would be several days afterward, on account of the fact that the well has not been drawn upon.

(b) In routine operations of natural gas wells it is not possible to keep a well in service 24 hours, day in and day out. For various operating reasons, such as repairs, salt water troubles, etc., it is necessary to rest wells at intervals. For this reason, the actual

operating period of a well will be, on an average, very much less than 24 hours a day.

(c) In a property operated as the Kansas Natural Gas Company's property is operated, it is not feasible to maintain atmospheric pressure conditions in the pipes into which the wells discharge, but on the contrary, the pressures are very much higher than atmospheric pressure. For this reason, the wells must discharge against considerable back pressure, thus retarding the amount of gas that will go out.

1673 (d) Based on actual operating tests made when I was employed in the valuation of the property of the Kansas Natural Gas Company in 1912, I found that the gas well capacity that could be delivered at the gates of the town of the local distributing companies was approximately 12% of the open-flow capacity of the wells as shown by Exhibit 8 of my report made to the Appraisers for the Receivers of the Kansas Natural Gas Company under date of December 28, 1912.

18. That there is no regeneration in gas wells.

19. That as the gas fields are used, the rock pressure declines, as shown in Exhibits A, B, C, and D, and necessitates the installation of additional compressing stations in order to render service to the consumer.

Furthermore, after a gas compressing station has been installed the further inevitable decline of the rock pressure which lowers the intake pressure of the compressing station, thereby lowers the capacity of such station. Thus, the output of a typical compressor operating against a discharge pressure of 300 lb. gage, declines as follows, for the respective intake pressures:

Intake pressure above atmosphere.	Capacity in cu. ft. free gas per 24 hrs., based on 14.4 lbs. atmos- pheric pressure.
150 lbs. ....	30,800,000
100 lbs. ....	20,700,000
75 lbs. ....	15,600,000
50 lbs. ....	10,500,000
30 lbs. ....	6,550,000
20 lbs. ....	4,170,000

1674 20. That a correct understanding of the operation of a natural gas plant necessitates a clear comprehension of the meaning of "gas," "gas pressure," and "gas flow."

(a) Gas is a fluid composed of a large number of molecules which are vehicles of energy continually in motion, and having an inherent tendency to get farther and farther apart. The range of motion of the molecules is limited only by the volume of the closed containing vessel in which they constantly move to and fro. The most distinguishing characteristic of gas is its universal property of completely filling an enclosed space.

(b) Gas pressure is the result of the combined efforts of all the moving molecules in the mass trying to get farther and farther apart;

that is, a mass of gas enclosed in a vessel expands and fills it, and being restrained from further expansion, it exercises a pressure against the walls of the vessel. The pressure is the same in all directions on equal areas of surface. With a given mass of gas, any increase in volume of containing vessel will give the molecules more range of motion, and thereby lower the pressure. Thus, if part of a given mass of gas is removed from a closed vessel or reservoir, the remaining mass of gas will expand instantaneously and keep the vessel or reservoir filled, but at lower pressure.

(c) Gas flow in pipes or underground reservoirs cannot take place except between openings of higher, to openings of lower pressure; that is, flow can be obtained only by sacrificing pressure. This is in accordance with universal natural law that as long as energy of any form undergoes no transformation it tends to gravitate to a lower degree of intensity,—that is, becomes more stable and approaches a universal level of stable equilibrium. Thus, water always seeks the lowest level, and confined gas always tends to expand to lower pressures. Even where gas compressors are used to increase the pressure, the gas is not pushed through the pipe like a plug of incompressible fluid, like oil or water, but goes through by virtue of the increased expansive force resulting from the higher pressure.

21. Rock pressure and volume must decline as gas is removed, because:

(a) When nature generated or deposited the natural gas in the rock reservoir a fixed amount of gas was placed in a fixed enclosing space. The pressure in the rock—called “rock pressure”—was the result of the pressing into this fixed rock space a larger volume of gas than the mere free air capacity of this rock reservoir. The degree of compression employed by nature in the formation process determined the intensity of the resulting pressure in the reservoir; that is, a high degree of compression produced a high rock pressure, and a low degree of compression produced a low rock pressure.

1676 (b) Coming now to the removal of this natural deposit of gas, we are confronted with the following:

1. A fixed volume of the reservoir.
2. A fixed amount of gas enclosed in this fixed reservoir.
3. A certain rock pressure resulting from the contraction of the gas volume into the fixed reservoir.

(c) Now, if a part of this fixed volume of gas is removed by tapping the reservoir from the surface of the earth, the remaining gas expands and keeps the reservoir completely filled.

22. That the courts have repeatedly taken judicial cognizance of this matter of declining gas volume discussed in the preceding section:

(a) “Oil and gas have no fixed situs under a particular portion of the earth’s surface within the area where they abound. They have the power, as it were, of self transmission. No one owner of the surface of the earth within the area beneath which oil and gas move can exercise his right to extract from the common reservoir in which the supply is held without to an extent diminishing the source of

supply as to which the other owners of the surface must exercise their rights."

United States Supreme Court: *Ohio Oil Co. v. Indiana*. 177 U. S. 190.

(b) "Oil and gas, unlike coal and iron, and other minerals, do not have a fixed situs under a particular portion of the surface, but are capable of flowing from place to place and of being drawn  
1677 off by wells entering their natural reservoir at any point.

They are part of the land and belong to the owner so long as they are in it or subject to his control, but when they flow elsewhere and are brought within the control of another by being drawn off by wells drilled in other land, the title of the former owner is gone. So, also, when one owner of the surface overlying the common reservoir exercises his right to extract them the supply as to which the other owners of the surface must exercise their rights if at all, is proportionately diminished."

United States Circuit Court: *Brewster v. Lanyon Zinc Co.*, 140 Fed. Rep. 801.

(c) "The mere fact that gas mining operations upon one tract of land are taking gas from the earth and thereby diminishing the quantity of gas which otherwise would go to wells on adjacent tracts of land furnishes no ground for complaint for culpable interference."

Supreme Court of Pennsylvania: *Hague v. Wheeler*. 157 Pa. 324.

23. That the reason natural gas is compressed is merely to expedite transmission—for the same reason that makes it necessary to compress cotton, hay, or straw, for shipment. The first feature is to contract the volume, and secondly, to secure enough pressure range between the intake and discharge of the transmission line to secure a large enough pressure drop to force the gas through the line.

(a) The effect of gas compression on its volume is shown graphically in Exhibit T. Here with 1,000 cubic feet of gas at 4  
1678 ounce gauge pressure, when the gauge pressure is increased to 300 pounds, the volume is contracted to 46 cubic feet.

(b) The operation of a gas compressor is illustrated and explained in detail in Exhibit S.

24. That Exhibit R shows the various steps between the natural gas sand under the ground, and the consumers' fixtures in the operation of a natural gas plant like that of the Kansas Natural Gas Company.

Referring to Exhibit R:

(a) From the gas sand shown in the lower left hand corner, the gas, by its own natural pressure, (in accordance with the principles defined in sections 20, 21 and 22, herein) rises to the surface, through the pipe, as shown.

(b) At the well top, shown in the upper left hand corner, the gas passes through the gate valves and is reduced to possession.

(c) From the various wells—although only one is shown, for

simplicity's sake—the gas passes through gathering lines and various measuring stations to the compressing station.

(d) By the time the gas reaches the compressing station the pressure has become very much reduced in overcoming the friction in the pipe lines. The function of the compressing station is to now raise this pressure so as to permit the further flow of the gas, in accordance with the reasons given in section 23, herein. The 1679 Kansas Natural Gas Company first compresses the gas at Owasso Station,\* Oklahoma; then re-compresses it at Hogshooter Station, Oklahoma, and again at Grabham Station, Kansas, and then it is compressed for the fourth time at Petrolia Station, Kansas.

(e) The gas in passing through the compressors becomes very hot. In order to protect the rubbers used in the pipe line joints, and also to contract the volume, the gas is cooled immediately after it leaves the compressors, by passing through pipes located in water, as shown in the gas-cooling basin, near the lower middle of Exhibit R. One of these cooling basins is located ahead of each large compressing station.

(f) From the cooling basin the gas goes into the main transmission line, and ultimately reaches the measuring station at the gates of the town, as shown near the middle and at the top.

(g) The gas then passes through the medium pressure regulator, which reduces the pressure down to about 20 lbs., as shown at the upper right hand corner.

(h) From the medium pressure regulator just mentioned, the gas goes into the medium pressure system. This is usually the belt line running around the outskirts of the town.

(i) From the medium pressure lines just mentioned, the gas goes through a low pressure regulator, as shown at the lower right 1680 hand corner, and is here reduced to the pressures maintained in the low pressure distributing system.

(j) From the low pressure regulator the gas passes into and through the low pressure system, and thence through the service cock, service line to the consumer's premises, through the consumer's gas meter, into the consumer's pipe and to the gas-using fixtures, as shown by the kitchen range.

25. That the factors determining the cost of natural gas on a property like the Kansas Natural Gas Company are outlined in Exhibit U.

26. That the fixed charges of a company like the Kansas Natural Gas Company must be sufficient to provide that all the property value, intangible and physical, dependent on the life of the gas field, must be returned during the period of the useful, commercial life of the gas field, particularly shown in Exhibit U and embracing:

(a) An annual reserve fund, sufficient to cover the functional depreciation—the term "functional depreciation" meaning the loss in value due to inadequacy or obsolescence. The term "inadequacy"

\*This is now nearing completion and ought to be in service by the middle of April, 1916.

covers depreciation that arises from increased demands of service so as to render the property in use uneconomical for operation, although in every way capable of performing the service for which it was installed. The term "obsolescence" covers the depreciation due to the development of something newer and more economical.

1681 It may necessitate the abandonment of a property long before it is worn out.

(b) An annual fund sufficient for the maintenance of the property at a proper state of efficiency.

(c) An annual allowance sufficient to create a reserve fund to cover all the species of contingent depreciation.

(d) An annual allowance sufficient to pay all fixed taxes, local, state, corporate and franchise.

(e) An annual allowance sufficient to pay all insurance charges.

(f) An annual allowance sufficient to pay all executive expenses.

(g) An annual allowance sufficient to pay all annual flat rate gas lease royalties.

(h) An annual allowance sufficient to pay the legal rate of interest on the property value, and in addition the minimum profit that would attract capital to such an enterprise.

27. That the variable charges of a natural gas company as shown on Exhibit U, consist of:

(a) Running costs.

(b) Liabilities assumed by the gas company under the contract to render service.

(c) A profit commensurate with the hazard involved and the risk assumed by the gas company in rendering service.

28. That, based on statistics compiled by the United States Bureau of Labor and the United States Geological Survey, food prices and farm products have increased very much more in the last few years from their normal prices than have natural gas rates.

1682 29. That, contrary to popular opinion, the total amount of money expended by the average family for natural gas service is relatively a very small part of the total annual income. An accurate analysis of a total family income, based on the budget studies of Dr. Richards of the Massachusetts Institute of Technology, being about as follows:

Food .....	45%
Rent .....	15%
Clothing .....	10%
Miscellaneous operating .....	14%
Higher living, books, insurance, savings, religious, etc.....	11%
Natural gas service .....	5%
	<hr/>
	100%

30. That the public does not appreciate the true value of natural gas service as compared with other heating and lighting services and commodities. The cost relationship, based on market quotations in the vicinity of Kansas City, are shown in the following:

(a) What \$1.00 Will Buy in Usable Heat Units.



	Number heat units.
Electricity @ 10c K. W. hours, used in electric heater. . .	34,100
Manufactured gas @ \$1.00 "M" cu. ft. used in gas furnace	400,000
Hard coal @ \$10.00 Ton used in coal furnace. . . . .	500,000
Soft coal @ \$4.00 Ton used in coal furnace. . . . .	1,250,000
Natural gas @ 37c "M" cu. ft. used in gas furnace. . . . .	1,600,000

1683 (b) What \$1.00 Will Buy in Illuminating Service in Candle Power Hours.

	Number candle power hours.
Coal oil @ 10c gallon, used in oil lamp. . . . .	6,420
Electricity @ 10c K. W. hour, used in Tungsten lamp. . .	8,000
Gasoline @ 18c gallon, used in Welsbach Burner. . . . .	13,000
Manufactured gas @ \$1.00 "M" cu. ft. used in Welsbach Burner . . . . .	13,000
Natural gas @ 37c "M" cu. ft. used in Welsbach Burner. .	35,640

(c) The above shows at once that 37c natural gas service, which is the proposed rate for Kansas City, is cheaper, either for heating or lighting, than any of the other utility services or competitive commodities.

(d) The prices given for coal include delivery to the house, but do not include the cost of handling the ashes or the labor in handling the solid fuel. The price used above for manufactured gas is the price that citizens of Kansas City will probably have to pay when they cease using the present natural gas service and go back to manufactured gas.

(e) In considering the usable heat units as between natural gas and solid fuel, due consideration must be given to the difference of efficiency of solid fuel and gaseous fuel heating appliances. Based on accurate knowledge gained on making elaborate tests, I have found that the efficiencies of natural gas heating appliances are very much higher than the efficiencies of coal heating appliances. The percentage of heat energy available from solid and gaseous fuels was shown in Exhibit I, of my original report to the U. S. District Court for the District of Kansas. Yet the Public Utilities Commission of Kansas in its opinion No. 541, in this case, and which appears in the present case in the bill of complaint as Exhibit E, ignored my efficiency figures and attempted to make a comparison without considering this efficiency feature, although it was plainly shown.

31. That in comparing the cost of natural gas service with commodities, the public does not appreciate that:

(a) The cost of coal delivered in the basement does not include the labor required in handling the coal as against the absence of operating labor for natural gas.

(b) The cost of handling the ashes from coal, and damage to



house decorations from coal smoke must also be considered in making a cost comparison.

(c) The average consumer does not appreciate that his coal pile goes down just as fast on a cold day as his gas bill goes up.

(d) Coal is paid for in advance long before it is used. Natural gas service is paid for long after it has been used, the consumer frequently forgetting the unusual weather conditions that prevailed during the preceding service period—which weather conditions were responsible for the high bill. That is, the memory of the high gas bill remains long after the service is forgotten.

(e) Considering natural gas bills for the year, the consumer remembers only the one or two high bills, forgetting all about the low bills, or even the mean average for the year.

32. That the fact that natural gas is non-luminous does not detract from its worth.

(a) The art of illumination at the present time has progressed so rapidly that even with manufactured gas it is not considered good practice to use the gas with anything except an incandescent mantle, in which mantle the illumination comes from the heat.

(b) As the natural gas has more heat than the manufactured gas, it can render better illuminating service than manufactured gas.

(c) Of the sixteen states that now have standards for manufactured gas service, only three have any requirements for candle power, and in two of these the standard applies to only two cities, namely: Baltimore in Maryland and New York City in New York. On January 1, 1916, the Public Service Commission of Maryland modified the standard at Baltimore, so as to make the heating value optional in that city.

(d) This indicates conclusively that the trend of the 1684 development of the art is squarely against candle power requirements.

33. That the fact that natural gas is non-poisonous, as distinguished from the poisons in all manufactured gas, makes it especially valuable for domestic consumers.

34. That, in brief, natural gas can do everything that manufactured gas need do, and many things that manufactured gas cannot do.

35. That the United States Bureau of Mines has repeatedly called attention to the lack of appreciation of natural gas service and the folly of trying to conserve the supply with low prices. This I know to be correct and especially applicable to the Kansas Natural Gas Co.

(a) More particularly, in its Technical paper 38, stating on page 25,

"Whatever may be the opinion of the general public in the matter, it is a fact that the rates charged by public-utility corporations for natural gas in this country are in most cases too low rather than too high, and that the most efficient regulation can be successfully accomplished only by raising rates to such a point that consumers will not waste gas."

(b) And again, on page 27 of Technical paper 38:

"The price of (natural) gas ought to be increased in every community that is now using it. There is no good reason why it should be sold at any less price than the fuel it displaces, or, in other words, why the better article should be sold for less than the inferior.

\* \* \* It may be urged that an increased price for gas would result in extravagant profit for the gas companies. It cannot be denied that there is a possibility of such a result, but as a matter of fact there are very few cases in the country in which companies have got back their original investment or see any good chance of getting it back. \* \* \* Although in many places the rates charged for artificial gas are too high, natural gas rates, on the other hand, are, and always have been, inexcusably low."

(c) And again, on page 22 of its Report Upon the Natural Gas Resources and Supplies of North Texas and Southern Oklahoma:

"The prices of natural gas for domestic consumption have generally been so low as not to provide, if only domestic sales were made, even sufficient income for overhead charges and operating expenses, so that in every case recourse has been had to large sales for industrial purposes to make up the deficiency. For these large sales which do not appreciably increase operating expenses, and do not require additional investment, and therefore do not increase overhead charges, the prices made have been relatively very low. Sometimes, of course, these sales have brought in large profits to the company, with the result that fields have been depleted in one quarter or one-third of the time that they would have been under a different adjustment of rates and sales. Restricted use of natural gas for industrial purposes is of immeasurable benefit to a community, but unlimited and uneconomical use because of cheapness is a calamity for which every individual of the community will eventually have to pay."

1688 36. That, contrary to popular opinion, natural gas is not always sold at low prices, as shown by the following rate schedules, all of which give the net prices to domestic consumers:

(a) The following five schedules for natural gas have been officially established by the Indiana Public Service Commission after due hearings:

#### Middletown.

First	2,000 cu. ft. ....	\$1.00 per	M.
All over	2,000 cu. ft. ....	0.50 per	M.
Minimum bill	.....	1.00 per month	

#### Noblesville, Tipton.

First	1,000 cu. ft. ....	\$0.75 per	M.
Next	4,000 cu. ft. ....	0.60 per	M.
Next	20,000 cu. ft. ....	0.40 per	M.
All over	25,000 cu. ft. ....	0.30 per	M.
Minimum bill	.....	0.75 per month	

#### Portland.

First	1,000 cu. ft. or any part thereof. ....	\$1.00 per	M.
All over	1,000 cu. ft. @ .....	\$0.10 per 100 cu. ft.	

## Union City.

First	5,000 cu. ft.....	\$0.75 per	M.
Next	3,000 cu. ft.....	0.55 per	M.
All over 8,000 cu. ft.....		0.40 per	M.
Minimum bill .....		1.00 per month	

(b) The schedules for Muncie, Riverside, Normal City, Alexandria, Anderson, Elwood, Fairmount, Marion and Hartford City, have been officially established by the Indiana Public Service Commission, after due hearings, and are as follows:

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First	1,000 cu. ft.....	\$0.70 per	M.
Next	1,000 cu. ft.....	0.60 per	M.
Next	1,000 cu. ft.....	0.55 per	M.
Next	1,000 cu. ft.....	0.50 per	M.
Next	1,000 cu. ft.....	0.40 per	M.
Next	5,000 cu. ft.....	0.35 per	M.
All over 10,000 cu. ft.....		0.30 per	M.
Minimum bill .....		0.75 per month	

(c) Lima, Wapakoneta, St. Marys, Celina, Coldwater, Fort Recovery, all in Ohio, have recently enacted rate ordinances, charging 50c for the first 1,000 cu. ft. or any fraction thereof, and 33c per 1,000 cu. ft. for all additional consumption.

(d) Rate ordinances have recently been passed for selling West Virginia natural gas—the first 5,000 cu. ft. each month at 40c net, all over 5,000 cu. ft. at 35c net—in the following Ohio towns: Greenville, Castine, West Manchester, Eaton, Eldorado, Euphemia, Lewisburg, West Alexandria, New Madison, New Paris, Yellow Springs, Fairfield and Osborn.

(e) Sidney, Ohio, recently passed an ordinance establishing a 40c rate, with a 70c minimum monthly bill.

(f) Piqua, Covington, Troy, and Tippecanoe City, Ohio, have recently passed ordinances establishing a rate of 35c, with a minimum monthly bill of 70c.

(g) Ashtabula, Geneva, Conneaut and Jefferson, all in Ohio, are now paying 36c.

(h) Toledo, Ohio, is now paying 35c.

(i) Dayton, Ohio, has just passed an ordinance establishing 34c.

1690 (j) Louisville, Kentucky, has the following natural gas rate schedule, just recently effective:

For the consumption in one month of:

## Net Rate.

100 cu. ft. or less.....	\$0.36
200 cu. ft. or less.....	0.42
300 cu. ft. or less.....	0.56
400 cu. ft. or less.....	0.56
500 cu. ft. or less.....	0.56
600 cu. ft. or less.....	0.56
700 cu. ft. or less.....	0.65
800 cu. ft. or less.....	0.65
900 cu. ft. or less.....	0.65
1,000 cu. ft. or less.....	0.65
1,100 cu. ft. or less.....	0.75
1,200 cu. ft. or less.....	0.75
1,300 cu. ft. or less.....	0.85
1,400 cu. ft. or less.....	0.85
1,500 cu. ft. or less.....	0.92
1,600 cu. ft. or less.....	0.98
1,700 cu. ft. or less.....	1.05
1,800 cu. ft. or less.....	1.09
2,000 cu. ft. or less.....	1.20

All additional gas over the first 2,000 cu. ft. per month at the rate of 35c net per 1,000 cu. ft.

(k) The following are the rates in some California towns:

Bakersfield, . . . . .	\$0.70 per M. Minimum bill	85c per month
San Fernando, . . . . .	0.68 per M. Minimum bill	85c per month
Taft, . . . . .	0.75 per M. Minimum bill	\$1.00 per month

1691

Burbank, . . . . .	0.68 per M.
Whittier, . . . . .	1.20 per M.
Orange, . . . . .	0.75 per M.
Anaheim, . . . . .	0.75 per M.
Fullerton, . . . . .	0.75 per M.
Santa Ana, . . . . .	0.75 per M.
Long Beach, . . . . .	1.00 per M.

(l) Dallas, Texas, is selling natural gas on a sliding scale, schedule starting at 45c, the average net rate for last year, under this sliding scale being 39.6c.

(m) Forth Worth, Texas, is selling natural gas on a sliding scale, the schedule starting at 45c, the average net rate for last year, under this sliding scale, being 41.3.

(n) Bellevue, Bowie, Sunset, Alvord, Decatur, Rhome, Bridgeport, Irving, Denison, Sherman, Whitesboro, and Denton, Texas, have the following sliding scale for selling natural gas:

## Monthly Rate.

First	10 M. cu. ft.	45c
Next	5 M. cu. ft.	40c
Next	15 M. cu. ft.	35c
Next	70 M. cu. ft.	30c
Next	900 M. cu. ft.	20c
Above	1,000 M. cu. ft.	14c

(o) At Corsicana, Texas, natural gas is sold on the following sliding scale:

## Monthly Rate.

First	50 M. cu. ft.	45c
Next	50 M. cu. ft.	36c
Next	100 M. cu. ft.	27c

(p) At Gainesville, Texas, natural gas is sold on the following sliding scale:

## Net.

First	10,000 cu. ft.	45c
Next	10,000 cu. ft.	40c
1692		
Next	10,000 cu. ft.	35c
Next	70,000 cu. ft.	30c
Next	150,000 cu. ft.	19.67c
All over	250,000 cu. ft.	13.25c
Minimum bill		50c per month

(q) At Abilene, Texas, the rate is 50c.

(r) In Brown's Gas Directory the following high rates are given:

Hot Springs, Ark.,	40c
Little Rock, Ark.,	40c first 5 M; all over, 30c
Covington, Ky.,	35c
Lexington, Ky.,	35c
Attica, N. Y.,	50c
Caledonia, N. Y.,	40c 1st 5 M—35c after
Canisteo, N. Y.,	35c
Gowanda, N. Y.,	32c
Honeoye Falls, N. Y.,	33c
Brantford, Ont., Can.,	35c
Chatham, Ont., Can.,	35c
Hamilton, Ont., Can.,	37½c

37. That it is not ordinarily appreciated that a large amount of industrial business for natural gas service can be secured at domestic rates:

(a) The industrial consumption at rates slightly above 30c net, for West Virginia natural gas in seven Indiana towns for the month of December, 1915, was 71,412,000 cu. ft.

(b) At Ashtabula, Ohio, 100,000 cu. ft. is sold per day at 30c net, for heating service in the New York Central Railway shops.

(c) At Toledo, Ohio, the Willey's-Overland Company recently made a contract to use a large amount of manufactured gas per day at 40c net. For the same service natural gas at 70c would 1693 have been no more expensive.

(d) In Cleveland, Ohio, natural gas at 30c is used in twenty-one factories for brass melting service, and broad operating experience has demonstrated that at this price it is only one-half as expensive as coke.

38. That the fact that the gas handled by the Kansas Natural Gas Company was made by nature has been responsible for many exaggerated and distorted ideas regarding its worth. Natural gas, like coal, is a natural resource which men have learned to use for the satisfaction of their wants. It is no more natural than any other minerals, or the soil itself, or the water in the streams. The misconception regarding the position of natural gas has arisen from failing to appreciate that "all production is carried forward upon the resources of nature by labor with the aid of capital. Every product of industry owes its origin to natural resources;—the field, the mountain, the water,—some natural agent was the starting point for each material good on its way through the intricacies of the industrial system. Food, clothing, wealth in all its forms, are derived originally from nature. The forces of nature, working through the ages, have created things which mankind need. Human effort expended on these products of nature, converts them into forms which are usable."

39. That, in reference to the Kansas gas situation, the Public Utilities Commission of Kansas, in its opinion—exhibit E of bill of complaint—stated that "the Lord furnished the gas and the public furnished the money." While it is true that the Lord furnished the gas—just as He furnished everything else pertaining to Kansas 1694 and the world at large—the gas was not usable until service was performed on it to make it available for human use, as shown in Exhibit R. While man may transform the energy or material substances of this world, he can neither create nor destroy these. This alone can be done by the Lord. Furthermore the Lord had no more to do in the creation of the Kansas Natural gas than in the creation of the soil of the Kansas farmer's corn field. The fact that the Kansas Natural Gas Company is handling this "Lord-made" natural product does not detract from the value of the service or the right to a fair compensation. "Modern economic society does not ask the property owner how he became possessed of his property; the fact of possession is sufficient to yield him an income."

40. That the magnitude and economic importance of the problem of correctly valuing natural gas leaseholds has manifestly not been appreciated by the Public Utilities Commission of Kansas. The

cost of acquiring and maintaining the necessary acreage to protect and maintain continuous service to each domestic consumer, represents a substantial part of the cost of the natural gas service to the consumer, and, as so well expressed by the United States Circuit Court, in *Haskell v. Cowham*, 187 Fed. Rep. 403:

"The right of a private citizen by means of his ownership of, or of his mining leases of, land to draw gas or oil from beneath its surface is property and sometimes valuable property."

41. That the cost of producing natural gas has steadily increased since the beginning of field operations of the Kansas Natural Gas Company, because:

1695 (a) The gas pools have steadily receded from the markets, as shown by comparing Exhibits G to Q inclusive.

(b) The Kansas Natural Gas Company's production—which originally was nearly all in Kansas—has so dwindled down that at the present time the major part of this production must come from Oklahoma, as shown on Exhibit F.

(c) The length of the gas haul has steadily increased, as shown on Exhibits E and G to Q inclusive.

(d) The rock pressure has declined very rapidly, as shown by Exhibits A to D inclusive.

(e) As rock pressure has declined it has been necessary to add compressing stations to supplement, by artificial means, the rapidly declining pressure.

(f) Of the intense competition in the field as shown in Exhibit X—for the relatively small amount of gas that is now available. This was forcibly brought out recently in the Osage Indian Hearing on gas lease matters, before Honorable Franklin K. Lane, Secretary of the Department of the Interior. At this hearing Smelter operators, located near the gas fields, anxious to get this best of all of nature's fuels, offered the unprecedented price of 3 cents per thousand cubic feet for gas in the ground, even before discovery.

1696 (g) The available pools now in use will be practically depleted within another six-year period.

(h) The price of gas in the field has increased so that in the future the Kansas Natural Gas Company probably will have to pay not less than six cents at the mouth of wells.

(i) The cost of extensions necessary to go after the gas has been very much greater than originally contemplated. This feature is very forcibly brought out by a study of the consecutive operating conditions, as shown by Exhibits G to Q inclusive.

42. That the rate received by the Kansas Natural Gas Company has not kept pace with the increased length of haul, as shown by Exhibit E.

43. That the operating problems of the Kansas Natural Gas Company are inter-state in their nature. That the more or less arbitrary rules established by the Courts in dividing railroad property as between inter-state and intra-state business can not be applied to the Kansas Natural Gas Company. In the case of a natural gas company with a system of lines such as is operated by the Kansas Natural Gas Company, I know of no method by which it is possible



to segregate the property devoted to intra-state from the property devoted to inter-state business. This is a problem to which my attention has long since been called, and to which I have given much thought, consideration and study.

44. That the Public Utilities Commission of Kansas, on page 7 of its order of December 10, 1915 in its attempt to allocate the 1697 property of the Kansas Natural Gas Company failed to recognize the fact that a natural gas company was not comparable with a steam railroad, and that a natural gas pipe line like that of the Kansas Natural Gas Company was not, and could not be made a mere transportation agency, because:

(a) There is a clear distinction between the duties of a railroad and the duties of a public utility like the Kansas Natural Gas Company, although the terms "Railroad" and "Public Utility" are frequently confused. A railroad is one that undertakes for hire to transport persons or goods, or both, from place to place for all persons indifferently. The fundamental duty of a railroad being indifference as to who shall be served, and an equal readiness to serve all who apply in the order of their application.

On the other hand a property becomes a public utility only when dedicated to a public use.

(b) Natural gas companies in general, and the Kansas Natural Gas Company in particular, are not chartered to act and do not offer to act merely as transportation agencies.

(c) Even though legislative enactments would be passed declaring natural gas lines public transportation agencies they could not be enforced because such legislation would be in direct conflict with well known economic and engineering facts. The entire natural gas

1698 transportation problem is controlled by economic and engineering laws. These laws can neither be abrogated nor altered by company policy, contractual relations, public opinion, legislative enactment, or judicial decree. They are entirely independent of human opinion, and as certain in their operations as the law of gravitation. Therefore, no mere statement of any governing body can make a public transportation agency of a natural gas line.

(d) The fundamental requirements of a transportation agency like a railroad is non-discrimination, and this can in no way be applied to the duties of a natural gas company. A natural gas company operating a natural gas transmission line and supplying domestic consumers from the very nature of things, gives its own consumers preference on account of public policy and the contractual relations existing between such consumers and the gas company.

(e) The consumers' interests and rights extend clear back to and depend on the gas wells and reserve acreage the producing company maintains to insure an adequate present and continuous future service. This interest cannot be interfered with by the publication of arbitrary allocation methods, such as applied by the Public Utilities Commission of Kansas.

(f) Natural gas service to the public is so unlike the service rendered the public by railroads that no comparison can be made between them.

1699 (g) Gas companies discharging their legal duty to their domestic consumers cannot depend upon the initiative of the occasional producer for a supply of gas, but must depend upon their own initiative in order to maintain proper field operating conditions and an adequate reserve acreage for future development to insure a good service to their patrons. Experience has many times shown that satisfactory continuous service to the consumer can be rendered only when the production, transportation, and distributing features are properly co-ordinated. To subordinate the transportation side of the business to either the producer's or the larger industrial consumer's interest is indefensible.

(h) The distinction between handling a commodity and rendering a service is an important one. The commodity may be manufactured at a relatively uniform rate of production, stored and sold when the market conditions are best. The service, on the other hand, must be used at the moment it is offered,\* or it becomes forever useless.

(i) Even though natural gas is a mineral it requires constant attention from the time it is reduced to possession at the well, and embodies an unbroken chain of service features until it is burned at the consumer's fixtures. A railroad may operate its line in many small units, rendering service to many different localities and  
1700 to many different people with unrelated, isolated service units.

(j) The natural gas service must be instantaneous. There can be no delays in rendering service, as is possible (and universally practiced) in transportation agencies such as railroads and traction lines. For instance, a railroad can very easily start one hour late in case of congested traffic, but a natural gas service that delivers gas for cooking breakfast one hour after the consumer needed it would not only be valueless to the consumer but would not be tolerated in any community. This instantaneous feature differentiates natural gas service from all transportation agencies.

(k) The gas is never at rest, but is a constantly seething, moving mass between the gas sand in the field and the consumer's fixtures in the cities.

(l) Gas travels at enormous velocity in the mains at a speed many times exceeding that of the fastest trains.

(m) The gas can go in only one direction.

(n) Storage facilities are not feasible for the gas either in the field or in transit.

(o) The gas pressures, for the reasons given in Section 20 herein, must be varied to suit the operating conditions of the line, that is, at the intake of the line the pressure must be large and at the discharge end of the line the pressure must be relatively low.

(p) There is no delivery until the gas has not only passed  
1701 through the consumer's meter, but is burned at the consumer's fixtures.

(q) In considering the gas that goes through the line there can be no "identity of property," no "segregation of ownership," and no

"original package containers," but all of the gas obtained from various sources passes through the line thoroughly intermixed with absolutely no possibility for identification.

(*r*) The capacity of the transmission lines is rigidly fixed and will not stand any over load. This has a marked effect in taking care of peak loads, in contradistinction to railroads, which may run extra trains to carry extra traffic.

(*s*) A natural gas line can handle only one commodity, whereas railroads can handle every known commodity.

(*t*) Railroads have vehicles of transportation. Natural gas lines have none. The pipe line is merely a continuous conduit between field and consumers' fixtures.

(*u*) A natural gas line cannot have extensive interconnecting service with other lines, whereas every railroad can handle commodities from every other railroad.

(*v*) The transportation of natural gas is naturally centralized relatively near the fields of production, the deliveries being made near the fields, and not throughout the whole United States, as are 1702 commodities handled by railroads. An inspection of the main lines shown on Exhibit Q shows that these are not connected to any other gas transmission system. An inspection of the railroads serving the same territory would show at once that they are either directly or indirectly connected to every other railroad in North America.

(*w*) The domestic gas consumers will not contract for, or agree to use, a fixed amount of gas each day, but take gas as they need it, in all cases insisting and requiring that the service be made and maintained continuous.

(*x*) The Company cannot create the commodity upon which it is performing its service as is possible with manufactured gas, electricity, or any of the transportation agencies, neither is there the constant replacement by nature of the commodity it is serving, as is the case in waterworks plants.

(*y*) The system must be operated as one unit without regard to State lines.

45. The attempt to convert natural gas transmission lines into mere transportation agencies like railroads, or even comparing them with railroads, for capital allocation purposes, presents many features that are impossible, and none that are feasible or expedient, because:

(*a*) To regard natural gas lines merely as transportation agencies will destroy the policy of conservation and greatly increase the waste of natural gas in industrial work, thus tending to soon 1703 exhaust the available supply and leave the householders with large investments of appliances and pipes which will be useless, owing to the permanent failure of the gas.

(*b*) It would so disorganize the existing business as to make it impossible to render satisfactory continuous service to either domestic or industrial consumers. This would be true regardless of what might be charged.

(*c*) Would make the consumers—especially the domestic—subordinate to occasional producers; that is, to the men who have no in-

tention of following the business of hunting for gas for future service, but would be interested only in finding a good market, at the expense of others, for such gas as might be found as a result of an occasional accidental venture.

(d) In all cases, where tried, would impair and usually destroy the cooking, heating, and lighting service of the domestic consumer.

(e) It would greatly increase the amount of gas used for manufacturing purposes, thus hastening the day when natural gas will be merely the memory of a wasted and unappreciated resource.

(f) It could be based only on distinctly local and selfish interests, and would have to ignore entirely the broad public interest in an effective and continuous service and a future generation's equity in a conserved fuel supply.

1704 46. The foregoing demonstrates that there can be no allocation based on state lines. The only allocation that can be employed is one that is based upon the arrangement of the whole system by considering the location of the field, compressors and varying sizes of pipe lines and volume of gas carried to the end that the rates to the different towns shall be determined by the cost of such service, which in no wise depends upon lines dividing the states. Hence, it must be apparent that the yard stick or standard of measure of a steam railroad employed by the Public Utilities Commission of Kansas in attempting to allocate the property of the Kansas Natural Gas Company is an impossible one and leads to no intelligible results.

47. That in the operation of a property like the Kansas Natural Gas Company the only way to correctly allocate the property value and work out an equitable rate schedule is to follow the principles originally laid down by the U. S. District Court, for the District of Kansas in its order of October 22d, 1912, and applied in detail in my report as referred in Section 12 (a) herein. These principles are essentially to:

(a) Determine a basic rate at some common initial point, like the Grabham Compressor Station;

(b) Then to this basic rate add a differential rate corresponding to the location of the town to be served. This additional rate must be made without regard to state lines and must obviously make the towns in Missouri pay more for the gas than some of the towns in Kansas nearer the field.

1705 48. That the Kansas Public Utilities Commission in its Opinion and Order under date of December 10, 1915, states that:

"The Wichita Natural Gas Company is supplying Wichita, Hutchinson and other cities in Central Kansas and Oklahoma with gas at 12½c for boiler and 27c for domestic uses and has made no request to this Commission for an increase of rates."

A large proportion of the production of the Wichita Natural Gas Company as used at Wichita, Kansas, comes from the local Augusta Field, about twenty miles away. However, taking the total haul of the Wichita Company, from the extreme southern points of its line to Wichita, Kansas, the haul becomes 173 miles. The haul of the

Kansas Natural Gas Company to Kansas City, Missouri, is 237 miles. Based on the Commission's own statement, the distance in haul alone would justify the increase in price asked for in Kansas City.

49. That unless the Kansas Natural Gas Company can secure adequate relief, the time is very soon at hand when the consumers will have to go back to manufactured gas.

(a) For such manufactured gas they will have to pay about \$1.00 per thousand cubic feet.

(b) This manufactured gas will be worth only about one-half what the present natural gas is and this will make the situation equivalent to paying \$2.00 per thousand for the gas service.

(c) The consumers are therefore facing either paying an adequate price for natural gas service, and enjoying this service 1706 for years, or else going back to manufactured gas service, and then looking on natural gas as a wasted and unappreciated natural resource.

(d) The facts just stated indicate that the consumers must be protected against their own folly in unwittingly asking to be furnished with a service for below its true cost or actual worth.

50. That since the Engineer testifying for the Public Utilities Commission of Kansas on cross examination said that he did not include "going value" or "any value to the property for the cost of attaching the business, or as a going concern," and since the Commission's valuation is the same as the Engineer's, we must conclude that the Public Utilities Commission of Kansas did not include any of these items in their valuation.

51. That the minimum rate of return (considering the hazards of the natural gas business) that ought to be computed on the true property valuation is not less than 10% for both the legal rate of interest and the minimum profit that would attract capital to such a hazardous enterprise.

52. That no rate lower than 37c, as asked for, can be considered as being fair either to the public or to the owners of the Kansas Natural Gas Company, and in addition to this rate a minimum charge of not less than \$1.00 per month ought to be made.

53. That based on a personal examination, I have made a detailed and accurate determination of the present fair value of the 1707 Kansas Natural Gas Company, as of January 1st, 1916. The fair value as of January 1st, 1915, would have been substantially the same.

My valuation was made in accordance with the well known principles laid down by Courts and Utility Commissions, defining the recognized correct methods for the determination of unit prices, overhead charges, reproduction cost new, going value or worth of connected load, and present fair value. This valuation is summarized as follows:

	Reproduction cost new.	Present fair value.
Gas leaseholds .....	\$1,547,522	
Physical Property .....	12,716,852	
Overhead charges for promotion, organi- zation, interest, taxes and lease rentals during construction and bond dis- count 13.6 per cent. of preceding items .....	1,945,000	
Total .....	\$16,209,374	\$12,000,000
Going value or worth of connected consumers.....		2,000,000
Total present fair value.....		14,000,000
Stock Supplies .....		250,000
Working Capital .....		200,000
Fair present value for rate making.....		\$14,450,000

The distributing plants at Independence, Kansas, Joplin, Missouri, and Elk City, Kansas, are omitted because they can not properly be included in a valuation for the determination of wholesale natural gas rates at the various other towns served by the Kansas Natural Gas Company.

1708 54. That the "present fair value" allowances made by the Public Utilities Commission of Kansas, and my own compare, as follows:

Items.	S. S. Wyer.	Public Utilities Commission of Kansas.*
Wells .....	\$493,500	Omitted
Leaseholds .....	1,547,522	Omitted
Drilling and Pulling Tools.....	4,500	Omitted
Physical Plant .....	8,495,728	6,530,794
Overhead Charges:		
Interest during construction .....	600,000	482,765
Taxes during construction .....	11,250	8,046
Lease rentals during construction ...	135,000	Omitted
Organization Cost .....	262,500	62,000
Promotion Expense .....	75,000	Omitted
Bond discount .....	375,000	Omitted
	\$12,000,000	\$7,083,605
Going Value or worth of Connected Consumers .....	2,000,000	Omitted
Total .....	\$14,000,000	\$7,083,605

\*This includes the distributing plants at Joplin, Mo., Independence and Elk City Kansas.

55. That in conclusion, the Utilities Commission of Kansas has erred in its treatment of the Kansas Natural Gas Company Gas Rate case in:

(a) Not allowing an adequate rate of return, considering the hazardous nature of the investment.

(b) Ignoring the lease values of the Kansas Natural Gas Company.

1709 (c) Placing entirely too low a valuation on the property of the Kansas Natural Gas Company.

(d) Ignoring the "going value" of the Kansas Natural Gas Company.

(e) Attempting to allocate the property of the Kansas Natural Gas Company on a railroad basis.

And further deponent sayeth not.

Sworn to and subscribed before me this — day of —, 1916.

\_\_\_\_\_  
Notary Public.

My Commission expires — —, —.

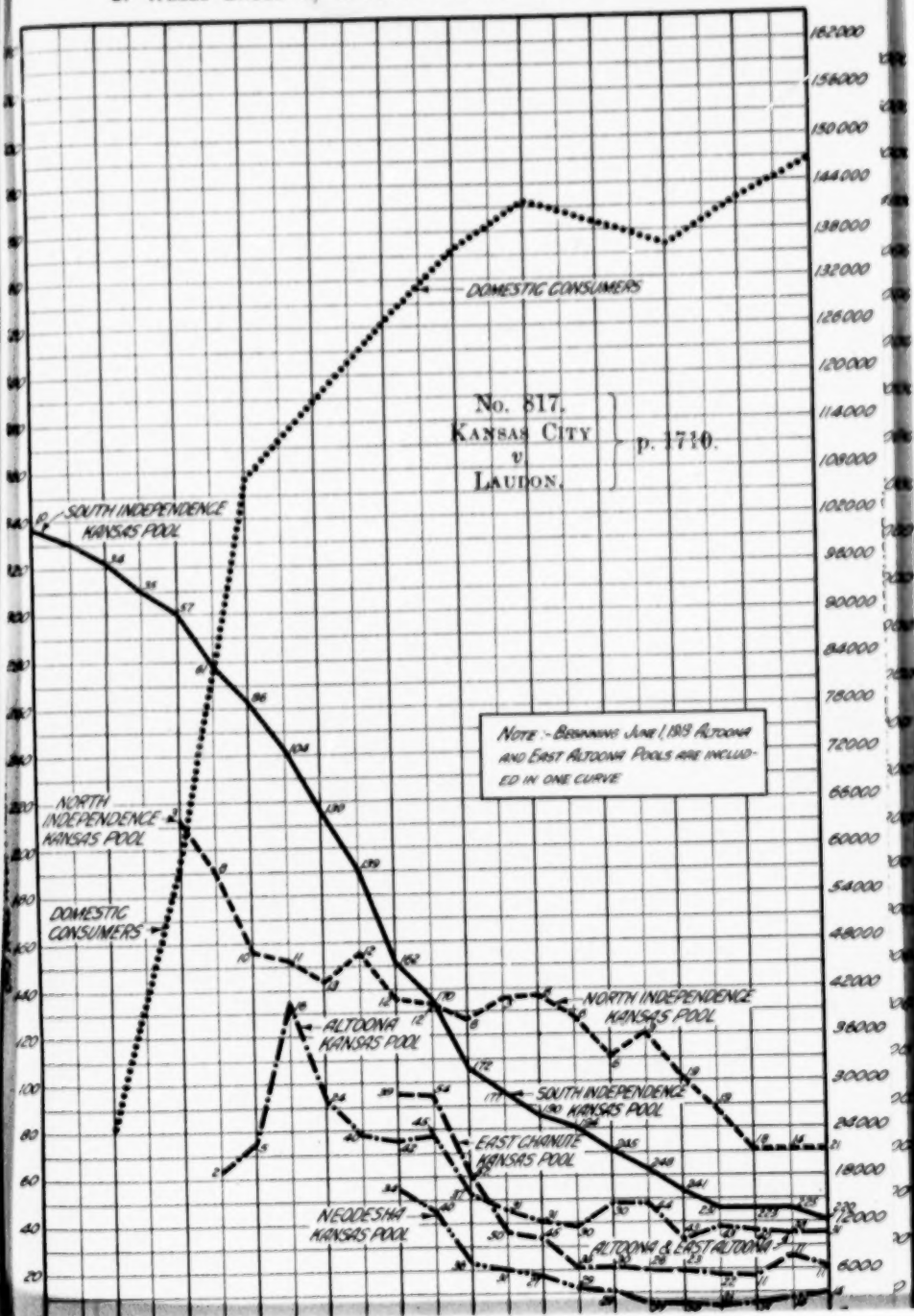
(Here follow diagrams marked pages 1710 to 1733, inclusive.)



# EXHIBIT A

ROCK PRESSURE DECLINE OF GAS POOLS OF KANSAS NATURAL GAS COMPANY  
WITH SIMULTANEOUS INCREASE OF ITS DOMESTIC CONSUMERS

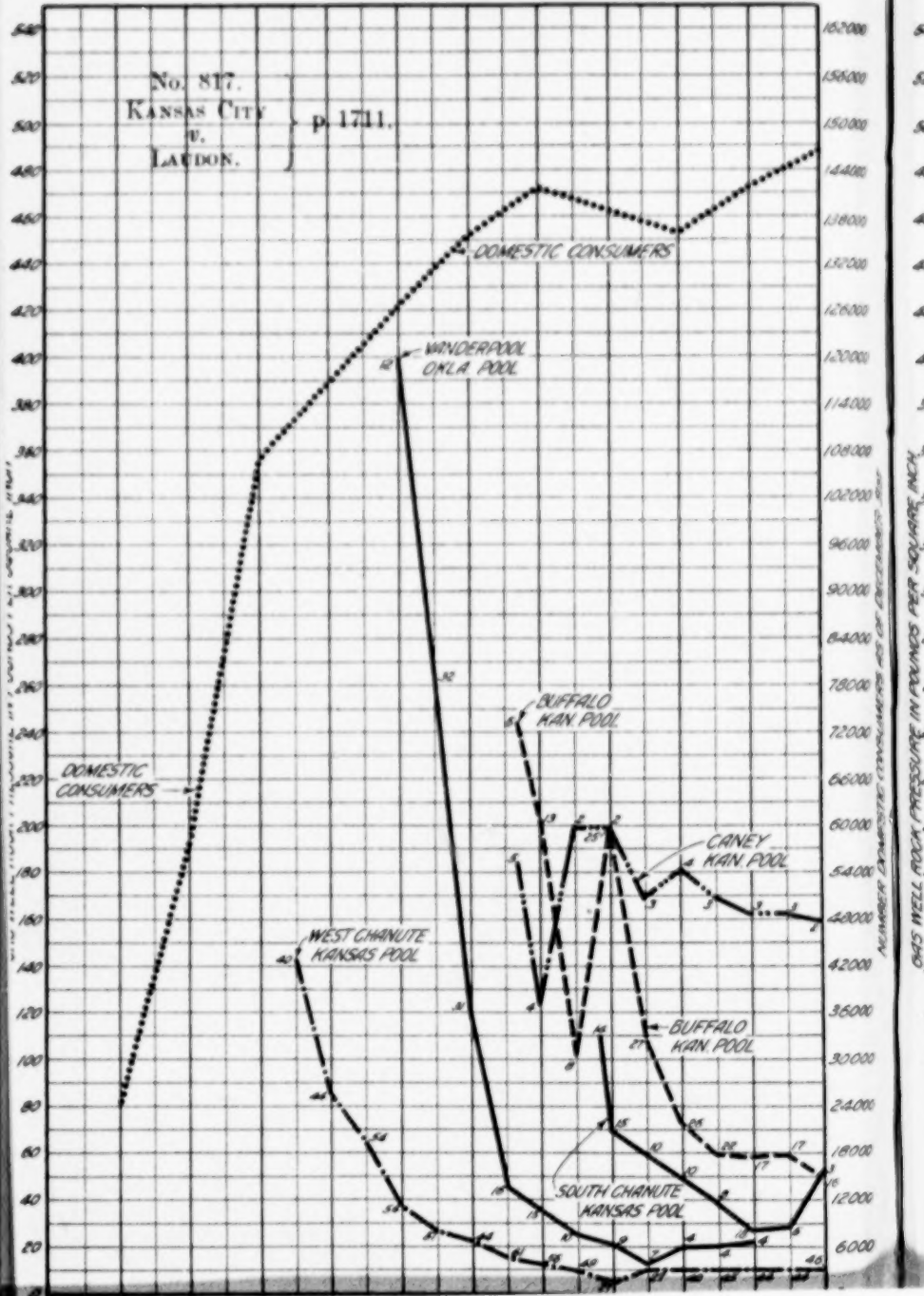
THE NUMBERS ADJACENT TO EACH CURVE INDICATE THE NUMBER  
OF WELLS GAGED TO SECURE THE AVERAGE RESULTS PLOTTED



# EXHIBIT B

ROCK PRESSURE DECLINE OF GAS POOLS OF KANSAS NATURAL GAS COMPANY  
WITH SIMULTANEOUS INCREASE OF ITS DOMESTIC CONSUMERS

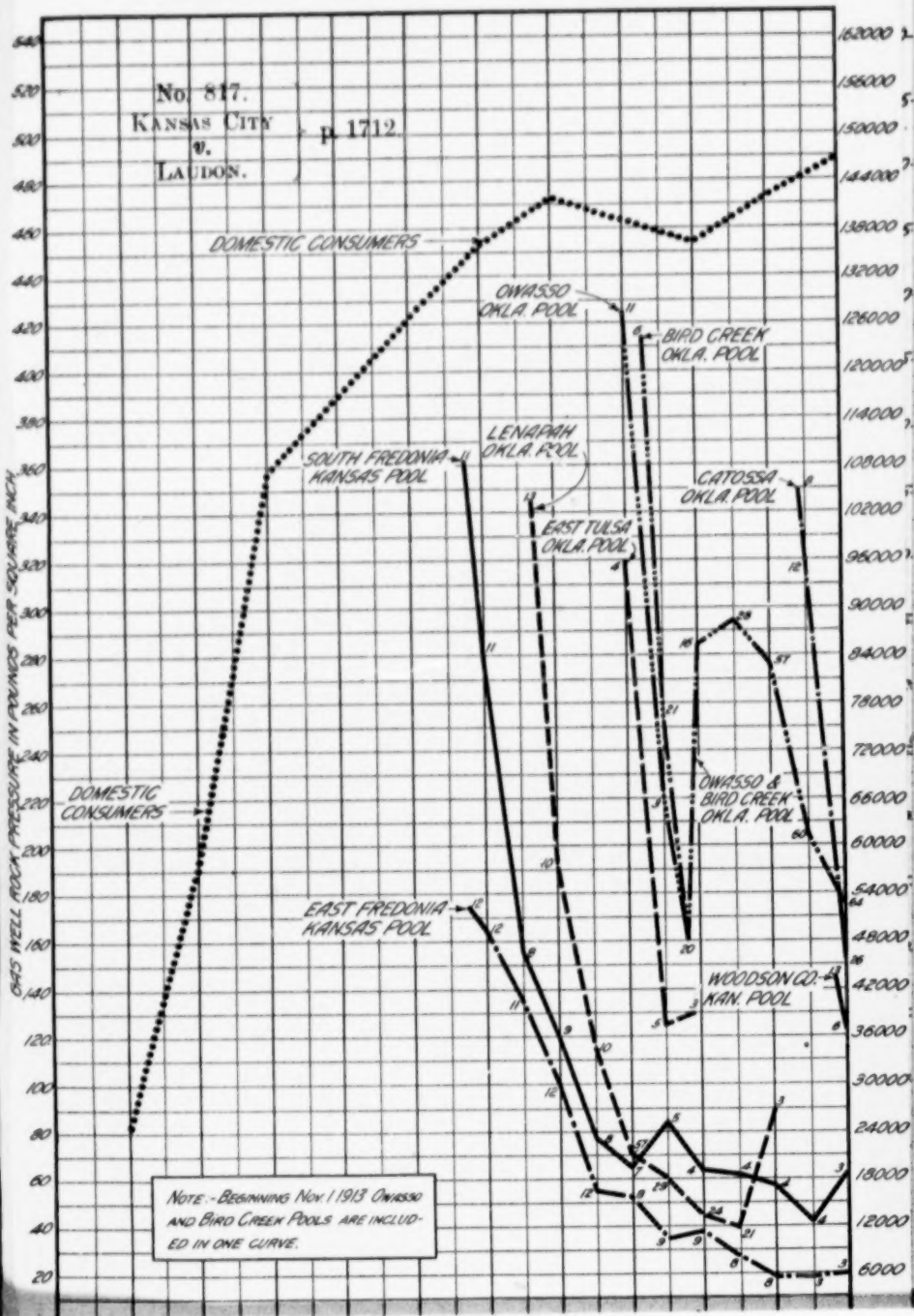
THE NUMBERS ADJACENT TO EACH CURVE INDICATE THE NUMBER  
OF WELLS GAGED TO SECURE THE AVERAGE RESULTS PLOTTED



# EXHIBIT C

ROCK PRESSURE DECLINE OF GAS POOLS OF KANSAS NATURAL GAS COMPANY  
WITH SIMULTANEOUS INCREASE OF ITS DOMESTIC CONSUMERS

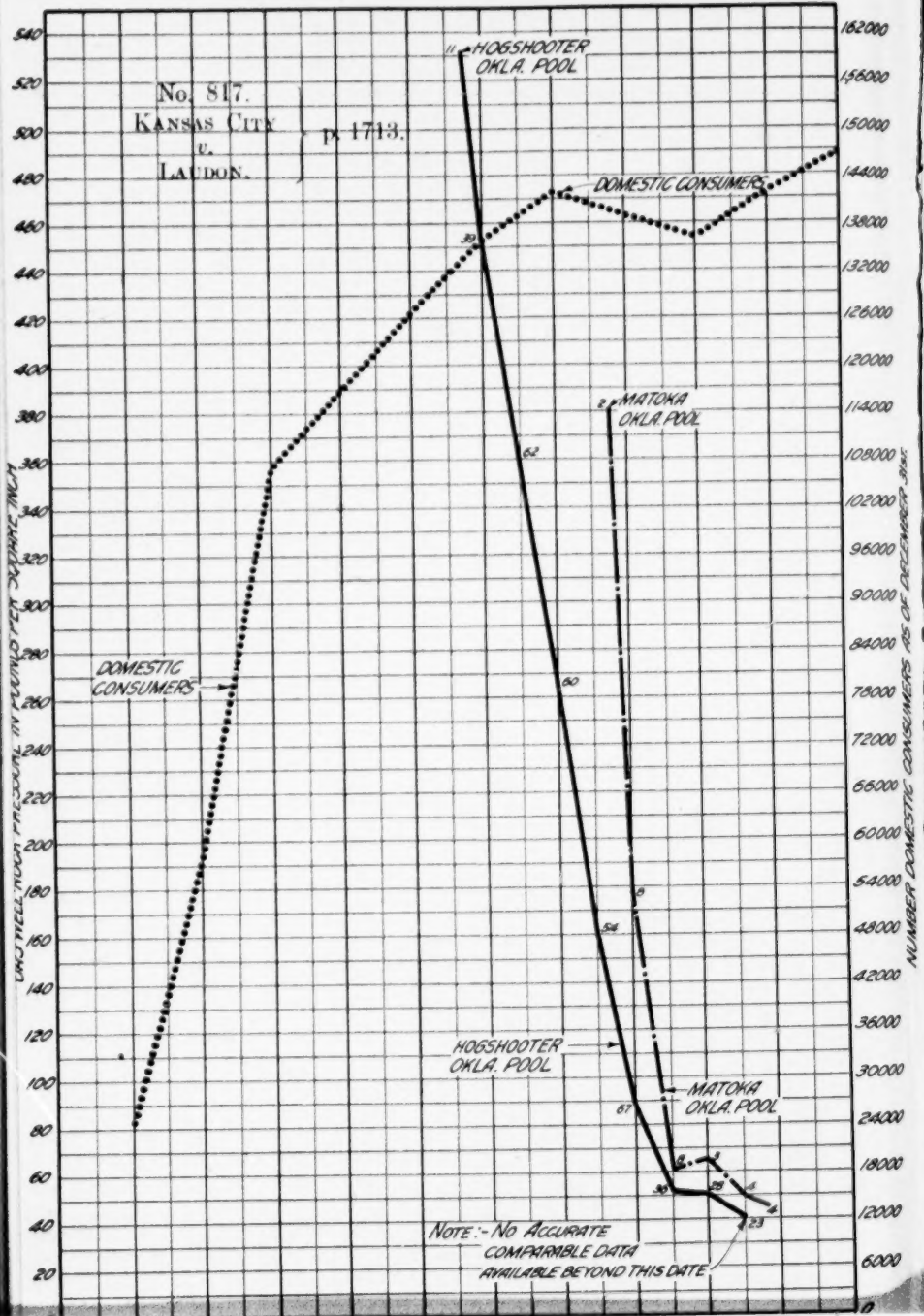
THE NUMBERS ADJACENT TO EACH CURVE INDICATE THE NUMBER  
OF WELLS GAGED TO SECURE THE AVERAGE RESULTS PLOTTED



# EXHIBIT D

ROCK PRESSURE DECLINE OF GAS POOLS OF KANSAS NATURAL GAS COMPANY  
WITH SIMULTANEOUS INCREASE OF ITS DOMESTIC CONSUMERS

THE NUMBERS ADJACENT TO EACH CURVE INDICATE THE NUMBER  
OF WELLS GAGED TO SECURE THE AVERAGE RESULTS PLOTTED



# EXHIBIT E

ANNUAL LENGTH OF "GAS HAUL" NECESSARY TO RENDER NATURAL GAS SERVICE TO KANSAS CITY, MISSOURI, AND NET DOMESTIC GAS RATES AT KANSAS CITY, MISSOURI

NOTE:-

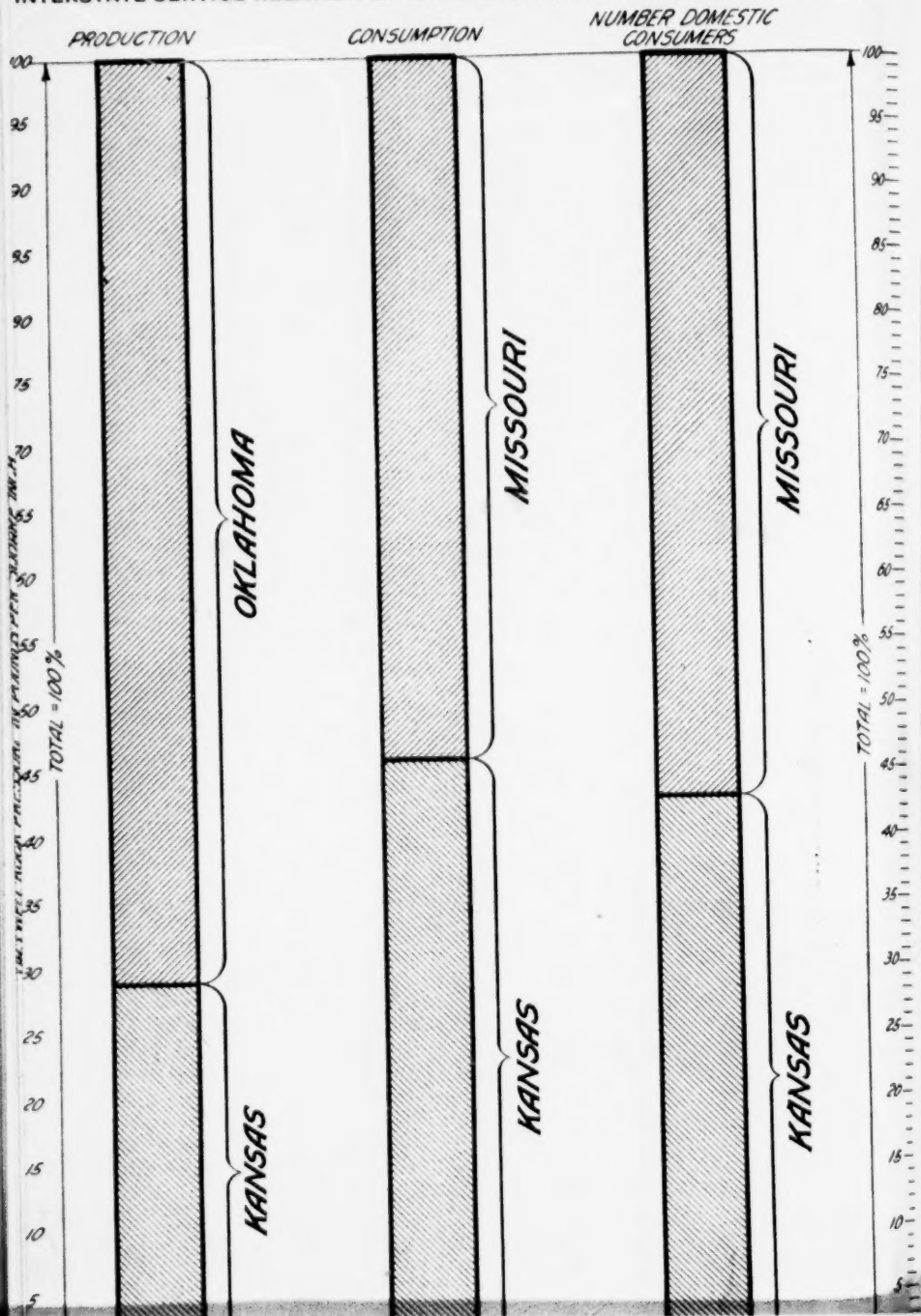
THIS IS ABOUT WHAT KANSAS CITY CONSUMERS MUST ULTIMATELY PAY FOR MANUFACTURED GAS OF  $\frac{2}{3}$  THE HEATING VALUE OF THE PRESENT UNAPPRECIATED NATURAL GAS SERVICE.

No. 817.  
KANSAS CITY  
v.  
LAUDON. } p. 1714.



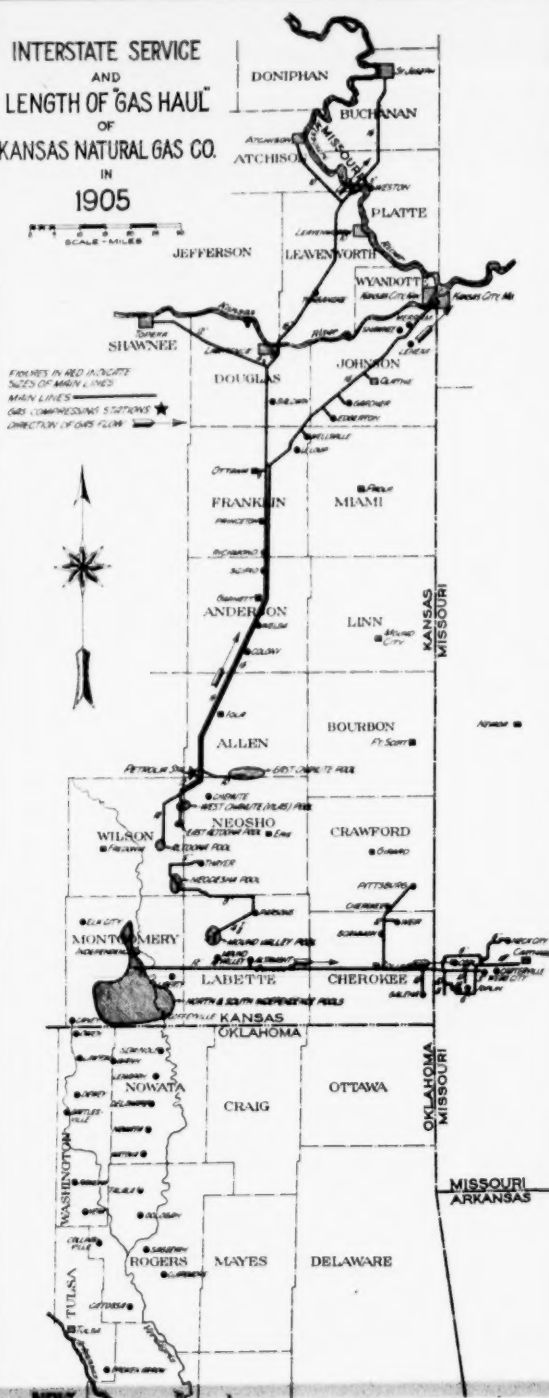
# EXHIBIT F

INTERSTATE SERVICE RELATION OF KANSAS NATURAL GAS COMPANY FOR 1915





INTERSTATE SERVICE  
AND  
LENGTH OF "GAS HAUL"  
OF  
KANSAS NATURAL GAS CO.  
IN  
1905

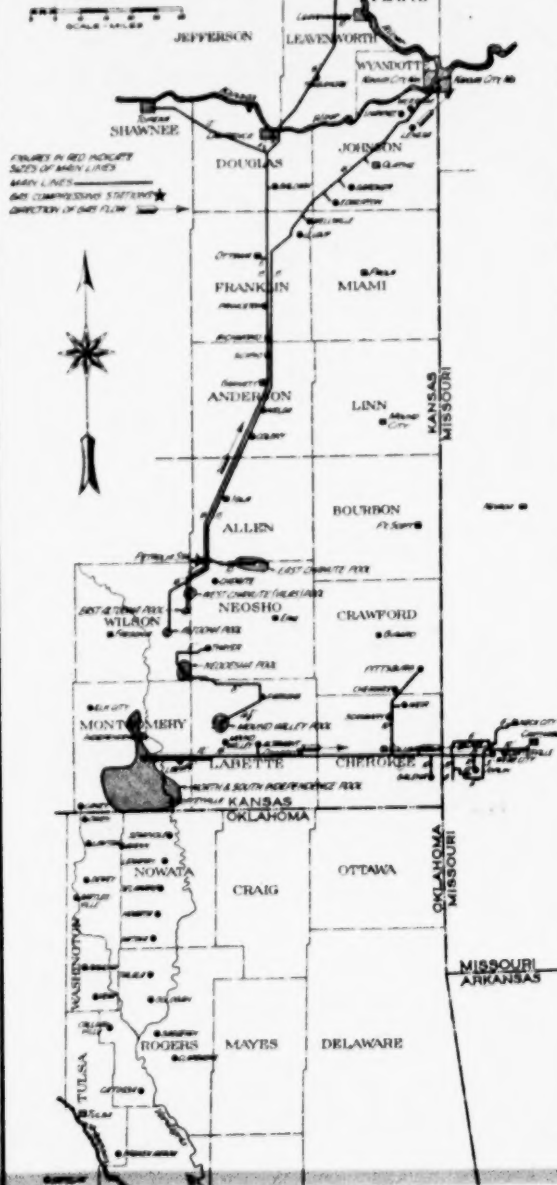


No. 817.  
KANSAS CITY  
v.  
LAUDON.  
p. 1716.



# EXHIBIT H

## INTERSTATE SERVICE AND LENGTH OF "GAS HAUL" OF KANSAS NATURAL GAS CO. IN 1906



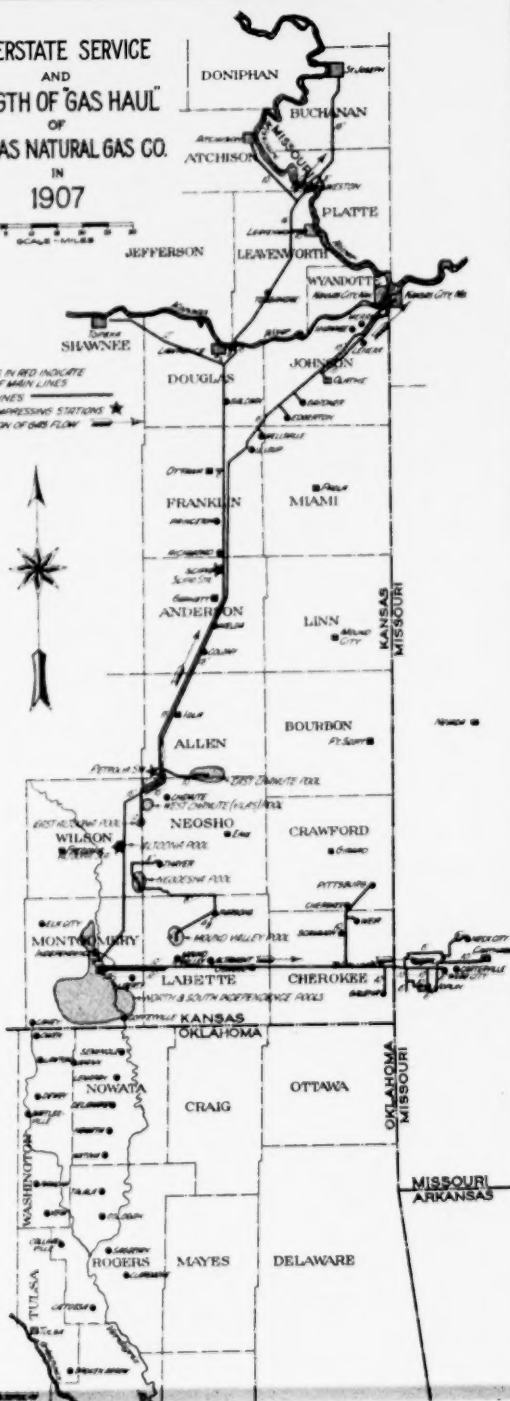
No. 817.  
KANSAS CITY  
v.  
LAUDON.  
P. 1717.

# EXHIBIT I

## INTERSTATE SERVICE AND LENGTH OF "GAS HAUL" OF KANSAS NATURAL GAS CO. IN 1907

1 2 3 4 5 6 7 8 9 10  
SCALE - MILES

FIGURES IN RED INDICATE  
SIDES OF MAIN LINES  
MAIN LINES  
GAS COMPRESSION STATIONS ★  
DIRECTION OF GAS FLOW →



No. 817.  
KANSAS CITY  
v.  
LAUDON.  
p. 1718.

# EXHIBIT J

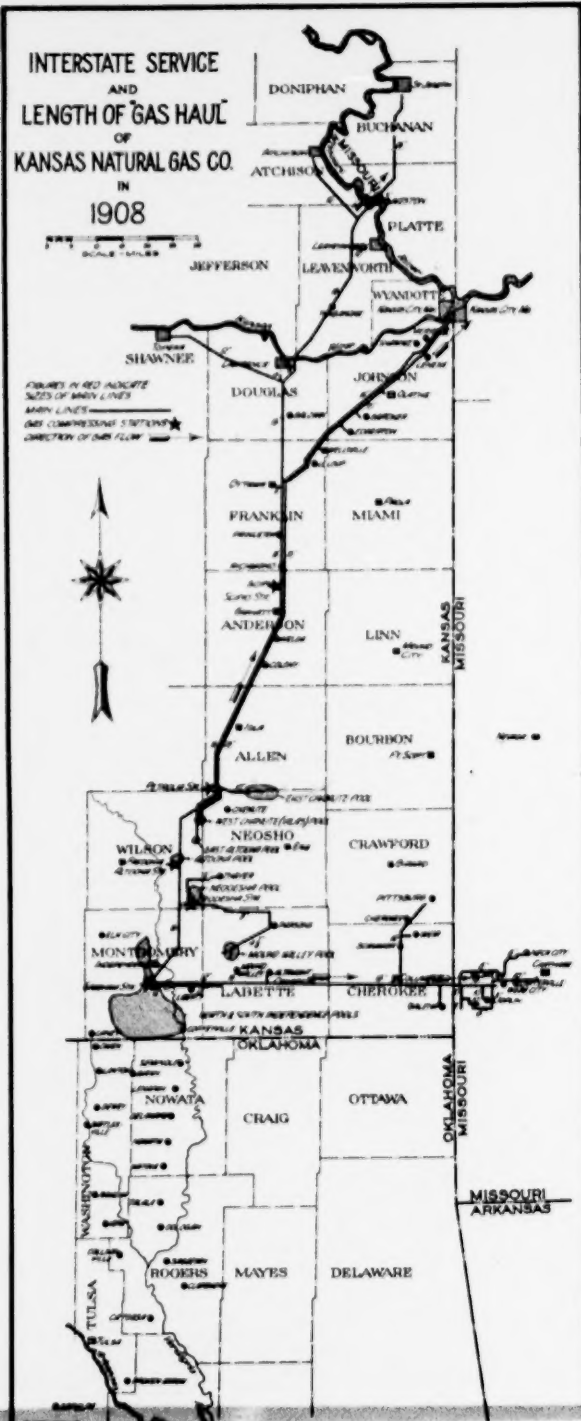
## INTERSTATE SERVICE AND LENGTH OF GAS HAUL OF KANSAS NATURAL GAS CO. IN 1908

SCALE - MILES

FIGURES IN RED INDICATE  
SIDES OF MAIN LINES  
MAIN LINES  
DASH COMPRESSOR STATIONS  
DIRECTION OF GAS FLOW



No. 817.  
KANSAS CITY  
v.  
LAUDON.

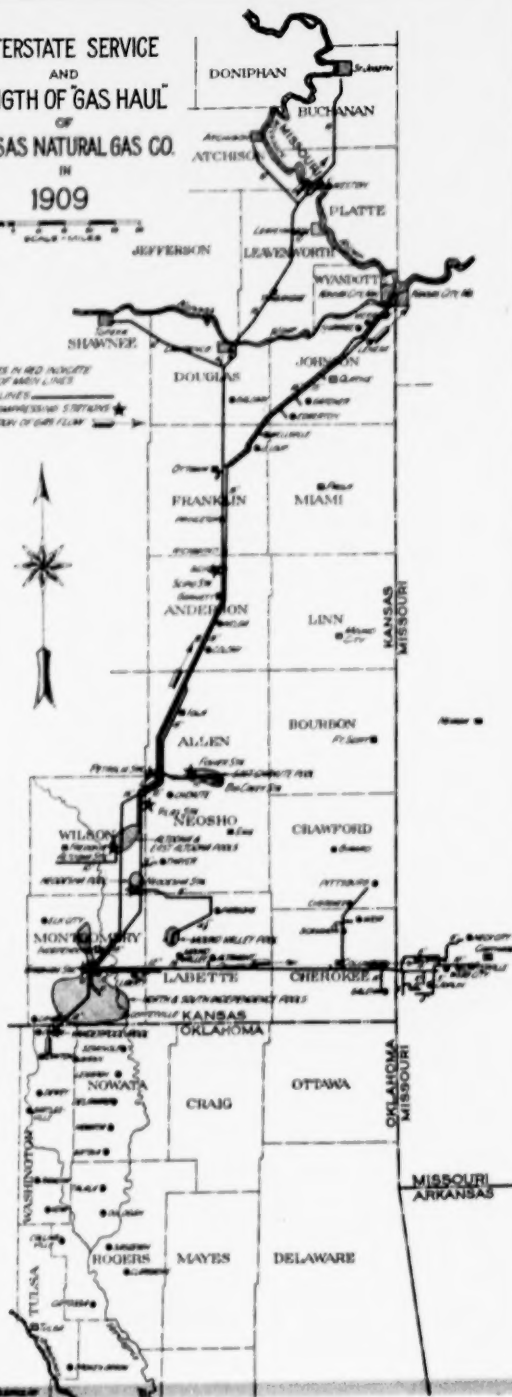


# EXHIBIT K

INTERSTATE SERVICE  
AND  
LENGTH OF GAS HAUL  
OF  
KANSAS NATURAL GAS CO.  
IN  
1909

1 2 3 4 5 6 7 8 9 10  
MILES

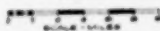
FIGURES IN RED INDICATE  
SIZES OF MAIN LINES  
MAIN LINES  
AND COMPRESSION STATIONS  
DIRECTION OF GAS FLOW



No. 817.  
KANSAS CITY  
v.  
LAUDON.  
p. 1720.

# EXHIBIT L

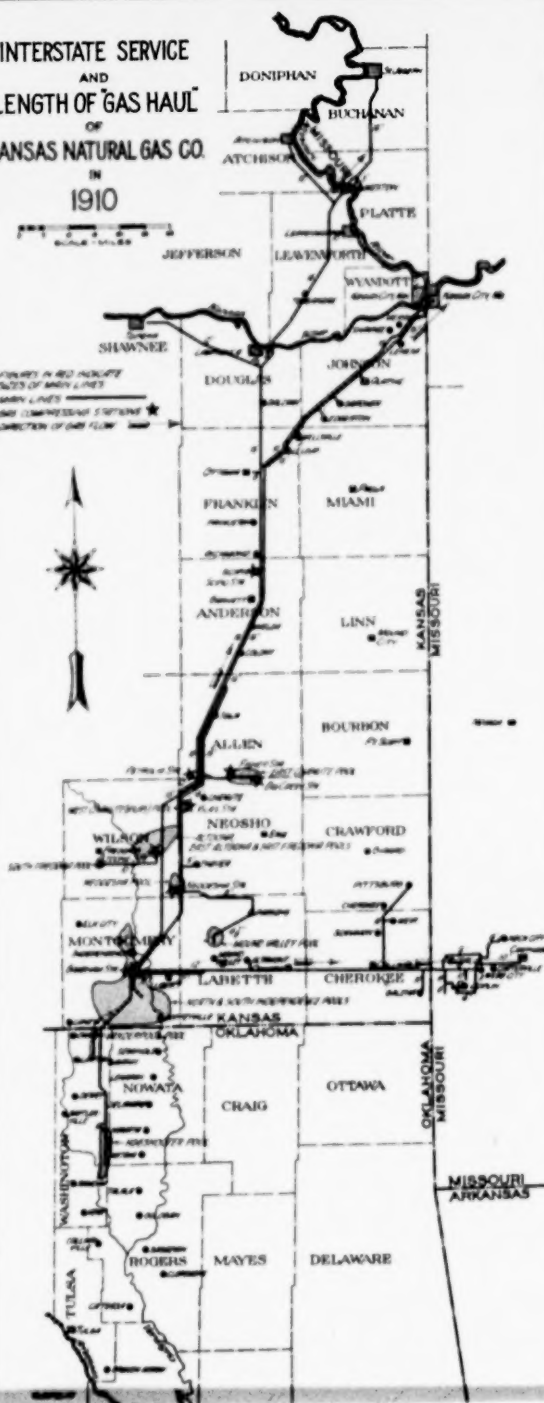
## INTERSTATE SERVICE AND LENGTH OF 'GAS HAUL' OF KANSAS NATURAL GAS CO. IN 1910



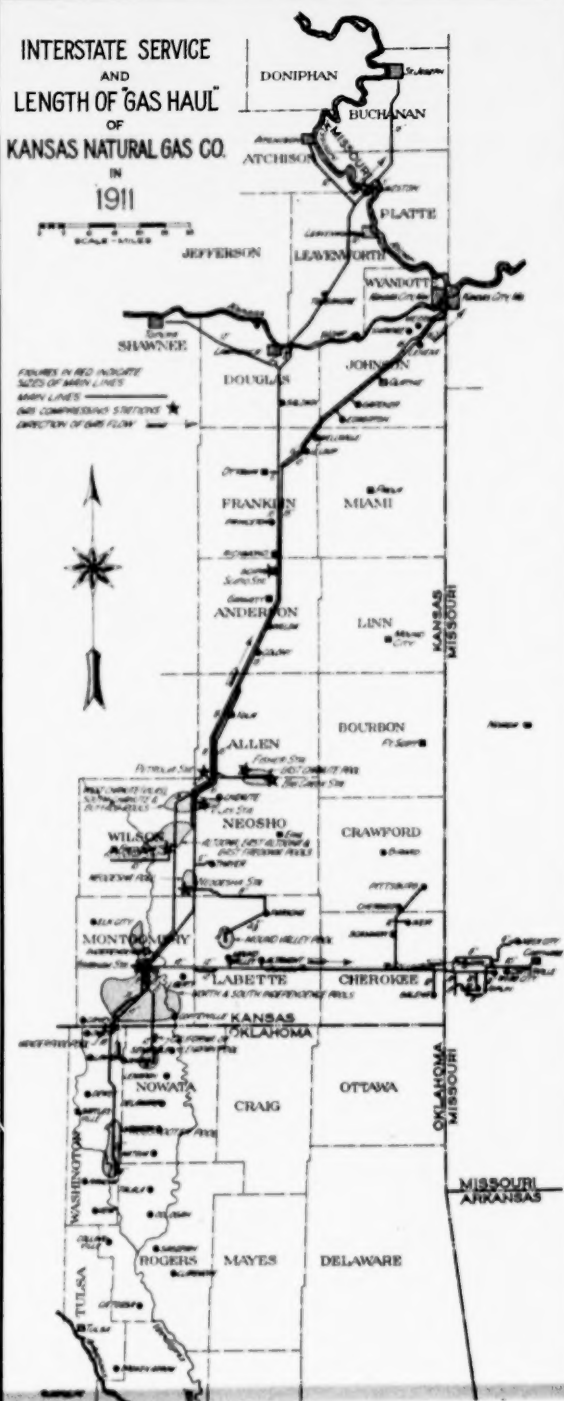
PICTURES IN RED INDICATE  
SIZES OF MAIN LINES  
AND COMPRESSOR STATIONS  
DIRECTION OF GAS FLOW



No. 817.  
KANSAS CITY  
v.  
LAUDON.



INTERSTATE SERVICE  
AND  
LENGTH OF GAS HAUL  
OF  
KANSAS NATURAL GAS CO.  
IN  
1911



No. 817.  
KANSAS CITY  
v.  
LAUDON.

p. 1722.

INTERSTATE SERVICE  
AND  
LENGTH OF GAS HAUL  
OF  
KANSAS NATURAL GAS CO

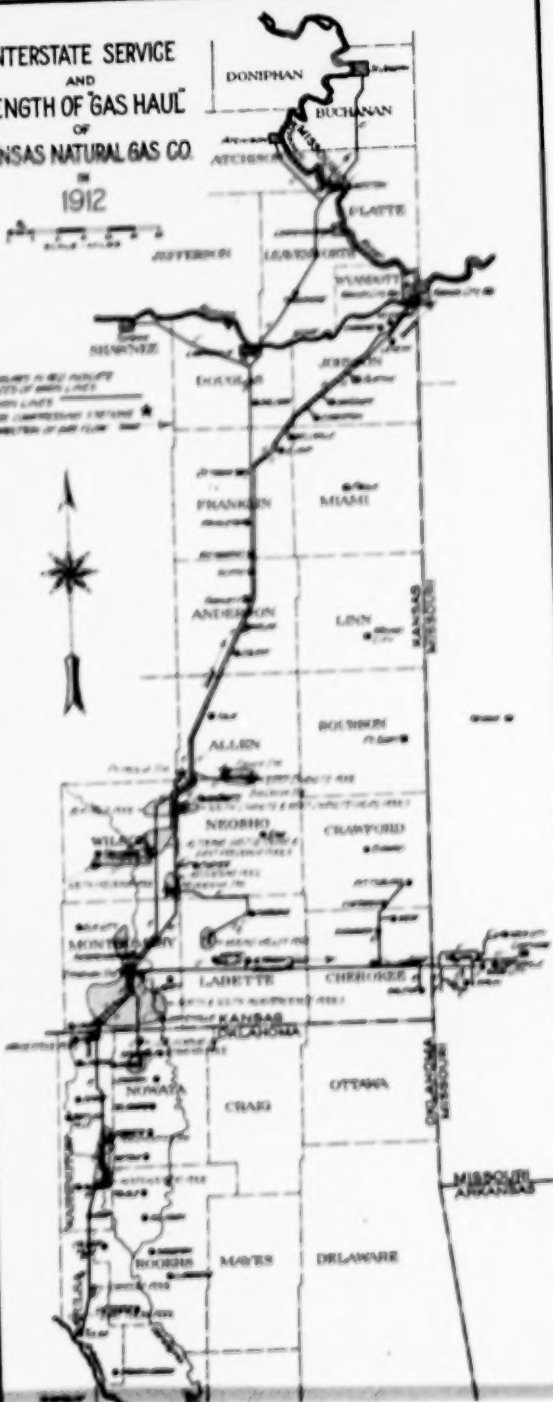
1912



1. **NAME OF THE PARTY**  
 2. **DATE OF BIRTH**  
 3. **SEX**  
 4. **EDUCATION**  
 5. **RELIGION**  
 6. **PROFESSION**  
 7. **RESIDENCE**  
 8. **CONTACT NO.**  
 9. **SIGNATURE**  
 10. **DATE**



No. 817.  
KANSAS CITY  
LAUREN.  
p. 1723.





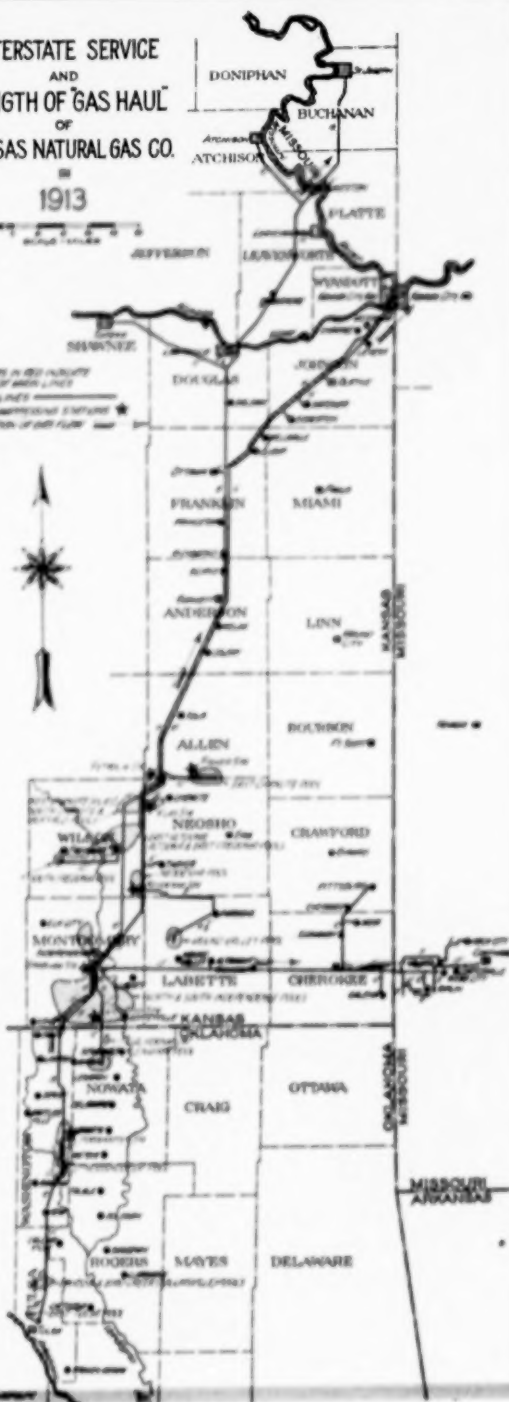
# EXHIBIT O

INTERSTATE SERVICE  
AND  
LENGTH OF GAS HAUL  
OF  
KANSAS NATURAL GAS CO.

1913



PIEDMONT IN RED INDICATES  
SIDES OF MAIN LINES  
AND COMPRESSOR STATIONS  
DIRECTION OF GAS FLOW



No. 817.  
KANSAS CITY  
v.  
LAUDON.  
p. 1724.

# EXHIBIT P

## INTERSTATE SERVICE AND LENGTH OF GAS HAUL OF KANSAS NATURAL GAS CO. IN 1914



POINTS AS HERE INDICATED  
NOTES OF MAPS & NOTES  
AND COMPASSIONATE SERVICE  
AND SERVICE OF GAS HAUL



No. 817.  
KANSAS CITY  
P. 1725.  
LAUDON.

# EXHIBIT Q

## INTERSTATE SERVICE AND LENGTH OF GAS HAUL OF KANSAS NATURAL GAS CO. IN 1915

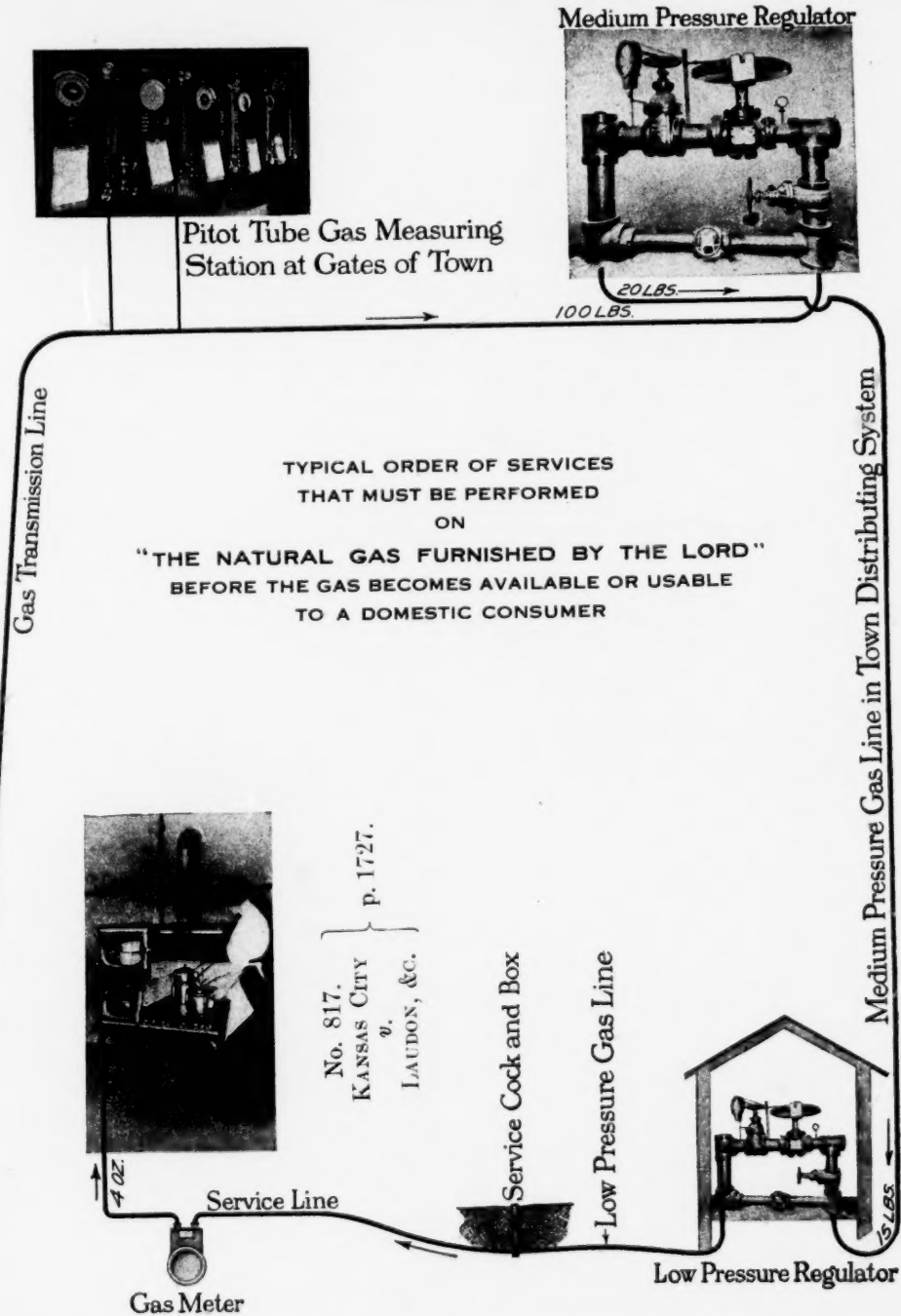
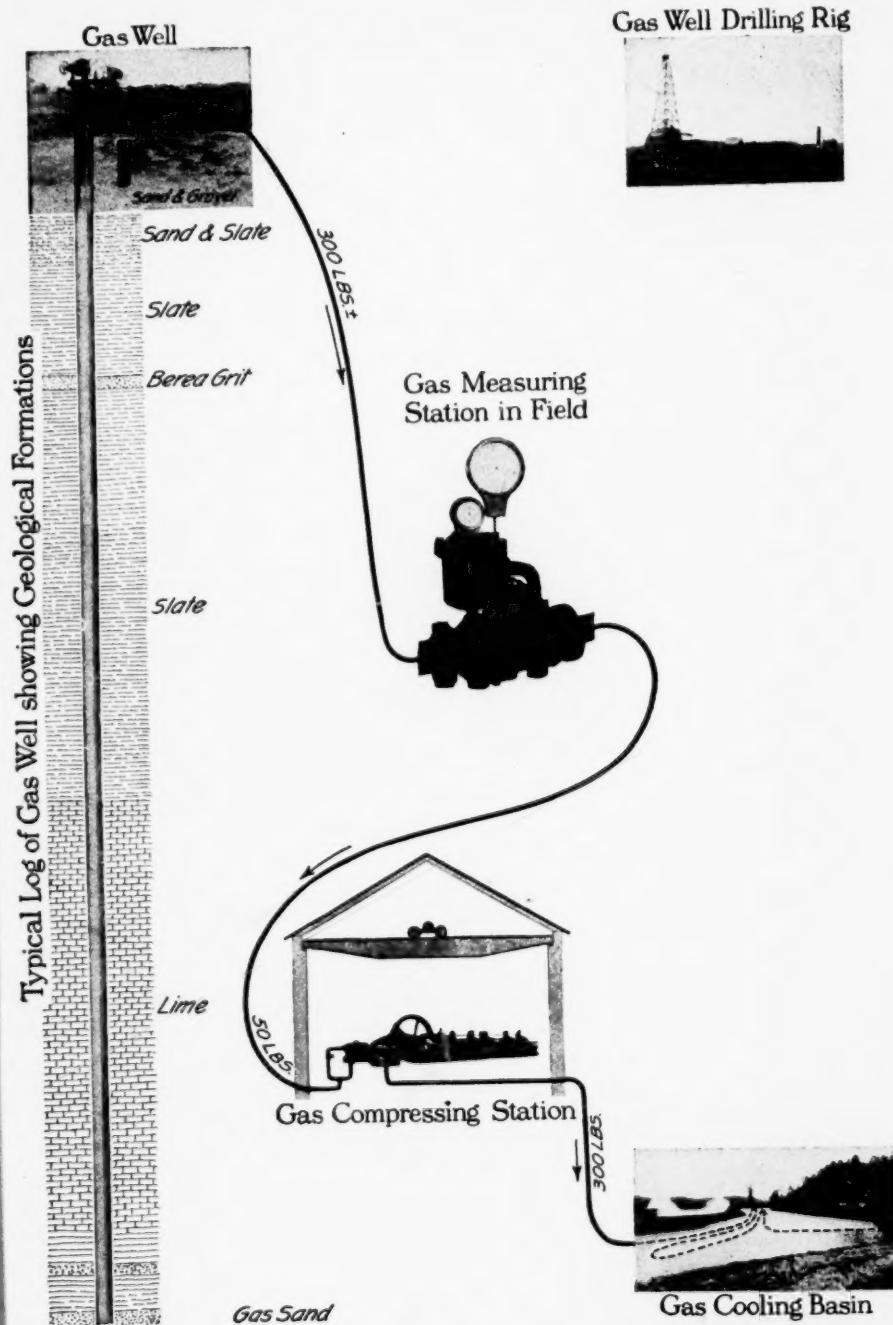


INDICATED BY RED LINES  
SOLID OR DASHED LINES  
AND LINES REPRESENTING  
AND COMBINATION THEREOF  
DIRECTION OF GAS FLOW



No. 817.  
Kansas City  
v.  
Laudon.  
p. 1726.

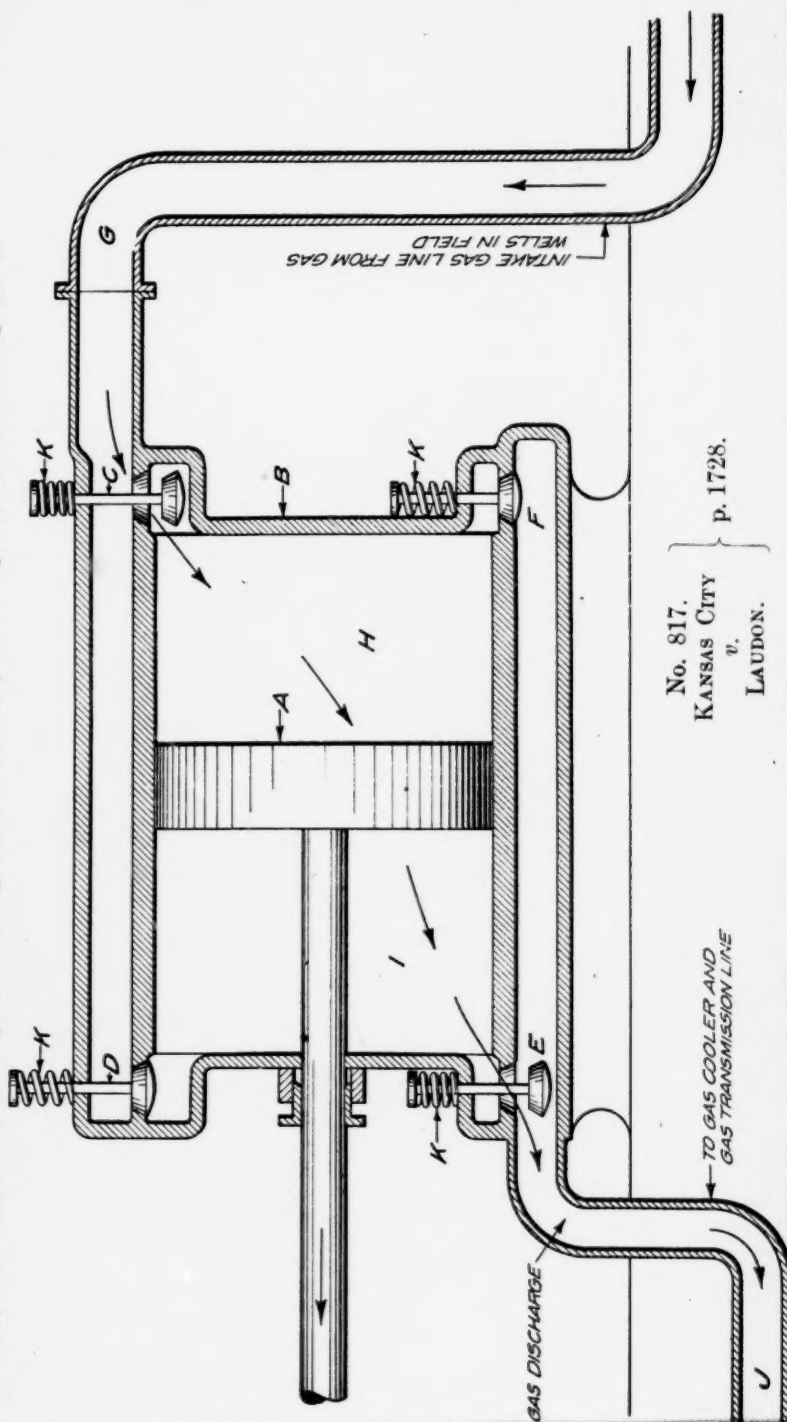
# EXHIBIT R





# ACTION OF GAS COMPRESSORS

This is illustrated in the diagram below, where A is a reciprocating piston working in cylinder K. All the gas wells are connected to the cylinder, and B and F are discharge valves to the cylinder. As the piston moves in the direction of the arrow the inlet valve C is opened by the higher pressure of the gas in the intake G, and the gas then rushes from G through C into the space H. As the piston moves toward the end of its stroke the gas in space I is forced out into the discharge line J through the discharge valve E. When the piston A reaches the end of its stroke the spring K closes the valve F and thereby drive the gas out into the discharge line J, until the pressure is great enough to open the discharge valve F and thereby drive the gas out into the discharge line J.



No. 817.  
Kansas City  
v.  
LAUDON.  
p. 1728.

# EXHIBIT I

## EFFECT OF PRESSURE ON GAS VOLUME

NOTE:-

THAT GAGE PRESSURE HAS BEEN INCREASED 1200 TIMES TO CONTRACT VOLUME 21.7 TIMES AND THAT TOTAL HEAT UNITS HAVE REMAINED THE SAME

1000 CU. FT.

No. 817.  
KANSAS CITY, Mo.  
LAUDON, Pa. 1729.

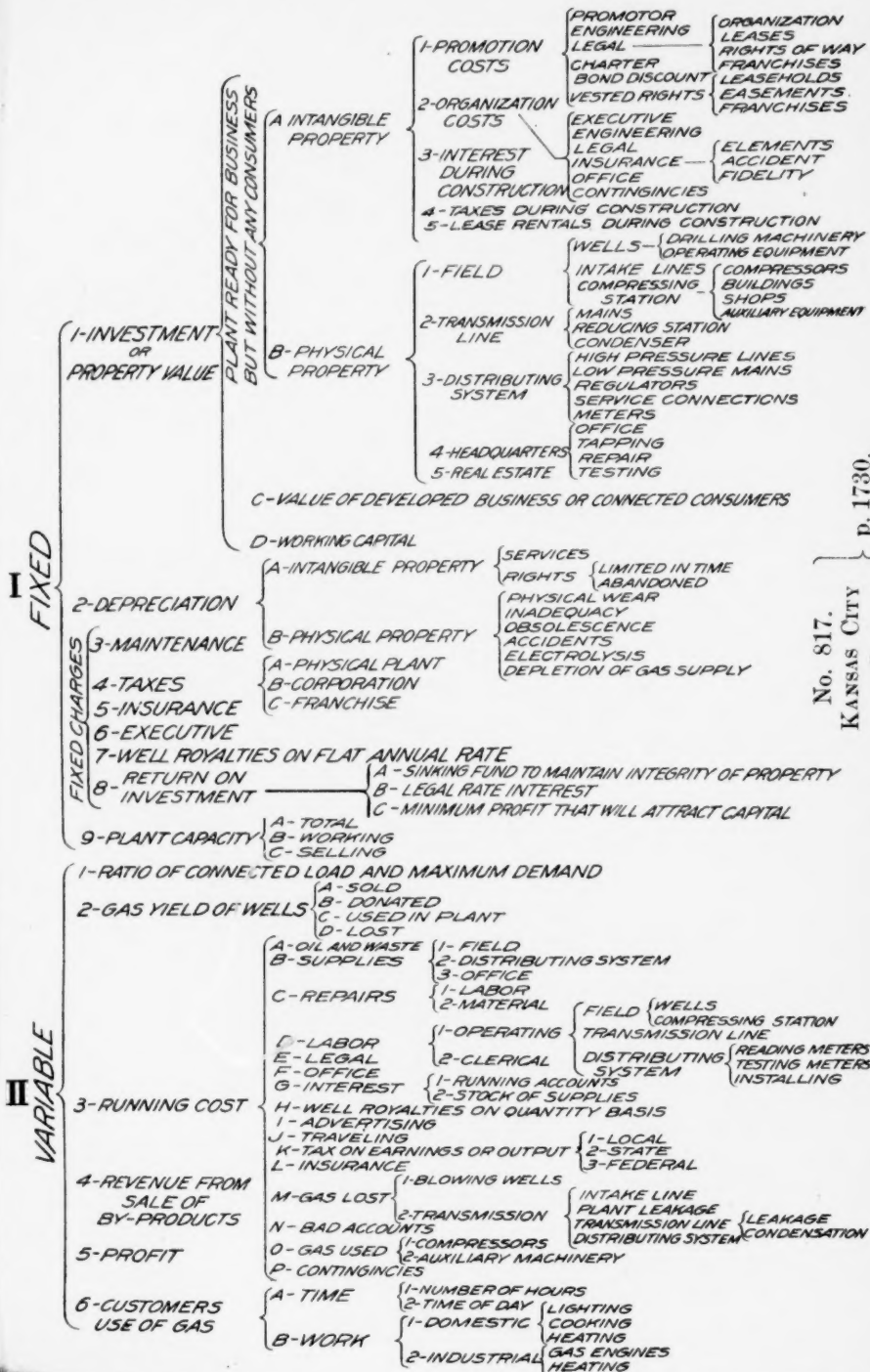
46 CU. FT.



GAGE PRESSURES - 4 OZ. ( $\frac{1}{4}$  LB.) PER SQ. IN. - 300 LBS. PER SQ. IN.  
HEAT UNITS - 1000 000 ----- 1000 000  
VOLUME - 1000 CU. FT. ----- 46 CU. FT.



# FACTORS DETERMINING COST OF NATURAL GAS SERVICE



*Gas Well Drilling Operations of Kansas Natural Gas Company in Kansas.*

	1906.	1907.	1908.	1909.	1910.	1911.	1912.	1913.	1914.	1915.	Total drilled.	Dry holes.
<i>Wilson County:</i>												
Wells Drilled .....	12	40	57	44	25	16	32	10	2	3	241	71
Dry Holes .....	3	10	11	11	10	9	11	5	1	..	..	..
<i>Allen County:</i>												
Wells Drilled .....	1	..	13	21	18	13	..	..	..	..	66	16
Dry Holes .....	..	..	3	7	3	3	..	..	..	..	..	..
<i>Labette County:</i>												
Wells Drilled .....	11	5	5	4	..	..	..	..	..	..	25	11
Dry Holes .....	4	1	3	3	..	..	..	..	..	..	..	..
<i>Chase County:</i>												
Wells Drilled .....	2	1	..	..	..	..	..	..	..	..	3	3
Dry Holes .....	2	1	..	..	..	..	..	..	..	..	..	..
<i>Montgomery County:</i>												
Wells Drilled .....	13	25	25	50	37	32	66	68	58	32	406	74
Dry Holes .....	..	1	6	9	4	4	13	17	12	8	..	..
<i>Neosho County:</i>												
Wells Drilled .....	..	..	9	11	1	2	1	..	..	..	24	9
Dry Holes .....	..	..	4	2	..	2	1	..	..	..	..	..
<i>Elk County:</i>												
Wells Drilled .....	..	..	..	..	..	..	..	1	..	..	1	1
Dry Holes .....	..	..	..	..	..	..	..	1	..	..	..	..
<i>Chautauqua County:</i>												
Wells Drilled .....	..	..	..	..	..	..	..	..	9	3	12	5
Dry Holes .....	..	..	..	..	..	..	..	..	5	..	..	..
Total Wells Drilled .....	39	71	109	130	81	63	99	79	69	38	778	190
Total Dry Holes .....	9	13	27	32	17	18	25	23	18	8	..	..

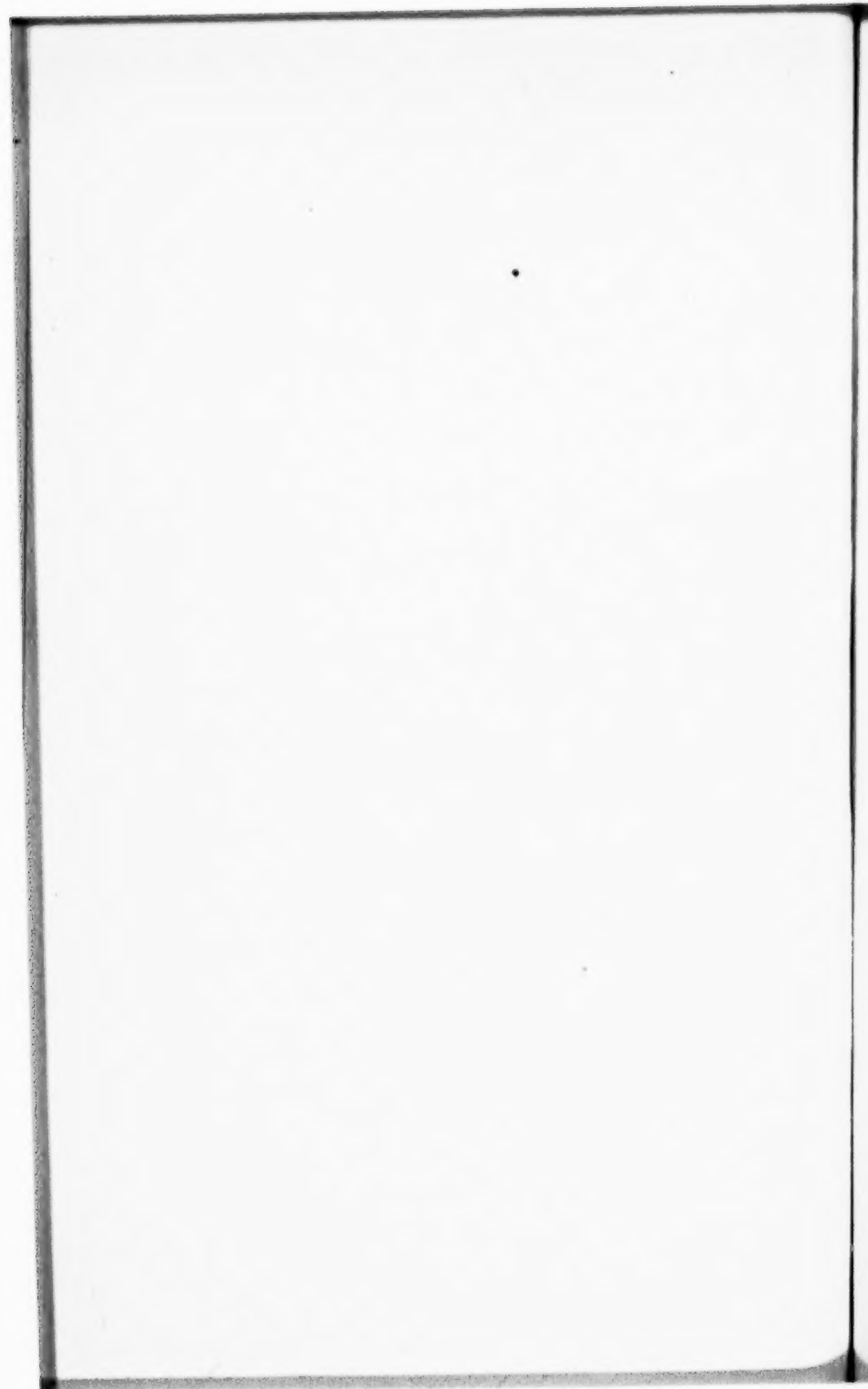
Dry Holes equal 24 per cent. of total.

*Gas Well Drilling Operations of Kansas Natural Gas Company in Oklahoma.*

K. C. GAS CO. ET AL. VS. KANSAS NAT. GAS CO. ET AL.

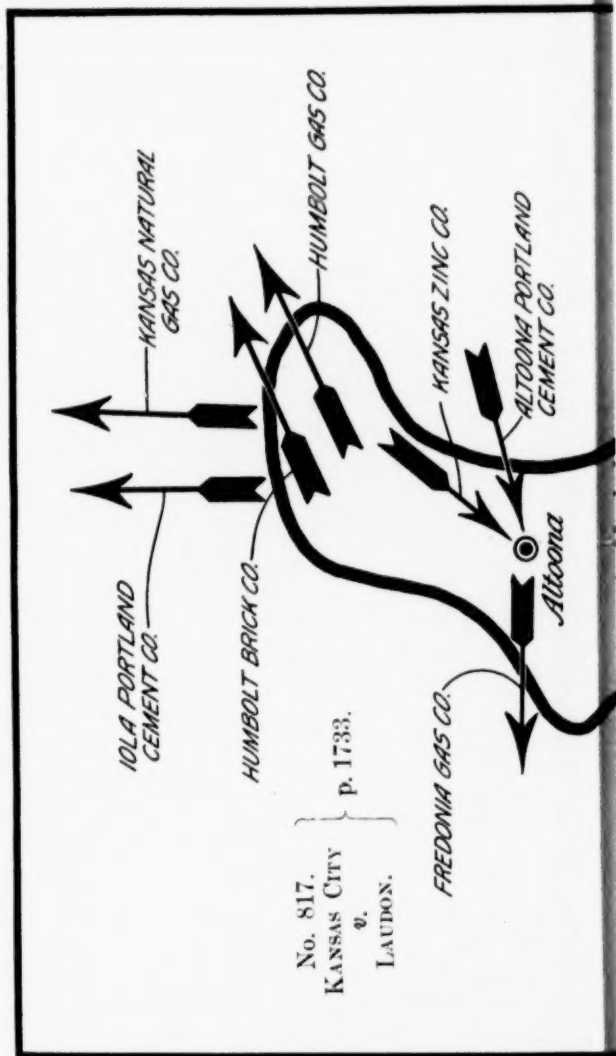
	1906.	1907.	1908.	1909.	1910.	1911.	1912.	1913.	1914.	1915.	Total drilled.	Dry holes.
<b>Washington County:</b>												
Wells Drilled .....	17	4	4	8	17	77	38	5	1	8	179	..
Dry Holes .....	2	..	1	..	2	11	9	2	1	1	..	29
<b>Nowata County:</b>												
Wells Drilled .....	..	..	..	..	1	18	15	7	4	7	52	..
Dry Holes .....	..	..	..	..	..	7	3	4	..	1	..	15
<b>Rogers County:</b>												
Wells Drilled .....	..	..	..	..	..	1	8	1	2	1	13	..
Dry Holes .....	..	..	..	..	..	1	7	..	2	1	..	11
<b>Tulsa County:</b>												
Wells Drilled .....	..	..	..	..	..	..	4	12	10	7	33	..
Dry Holes .....	..	..	..	..	..	..	1	3	2	4	..	10
<b>Wagoner County:</b>												
Wells Drilled .....	..	..	..	..	..	..	2	..	2	..	4	..
Dry Holes .....	..	..	..	..	..	..	1	..	2	..	..	3
<b>Total Wells Drilled.....</b>	<b>17</b>	<b>4</b>	<b>4</b>	<b>8</b>	<b>18</b>	<b>96</b>	<b>67</b>	<b>25</b>	<b>19</b>	<b>23</b>	<b>281</b>	<b>..</b>
<b>Total Dry Holes.....</b>	<b>2</b>	<b>..</b>	<b>1</b>	<b>...</b>	<b>2</b>	<b>19</b>	<b>21</b>	<b>9</b>	<b>7</b>	<b>7</b>	<b>...</b>	<b>68</b>

Dry Holes equal 24 per cent. of total.

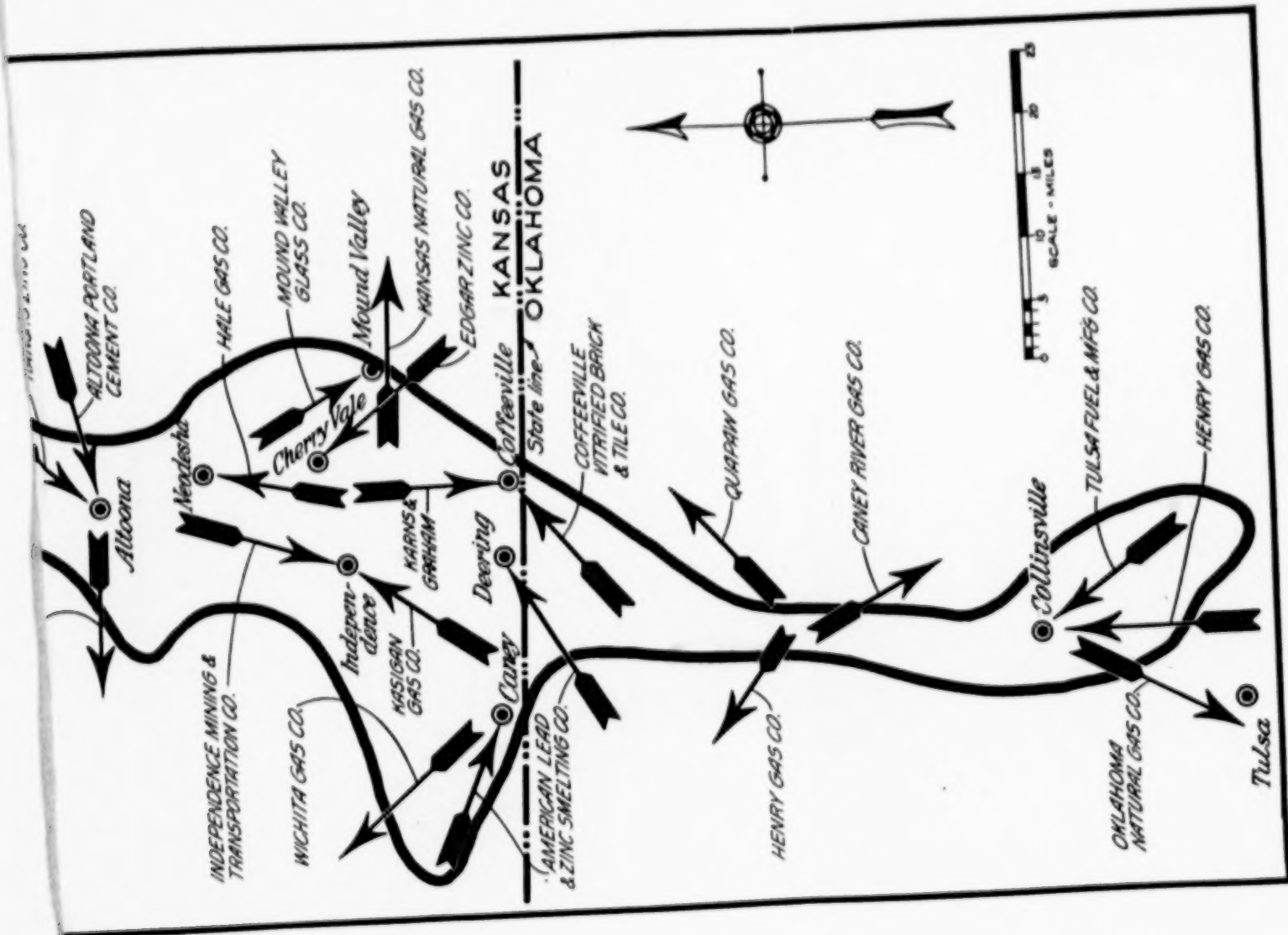


# MAP SHOWING INTENSE COMPETITIVE CONDITIONS IN THE NATURAL GAS TERRITORY FURNISHING GAS TO THE KANSAS NATURAL GAS COMPANY

THIS IS NOT A CONTINUOUS POOL. BUT IS MADE UP OF MANY LOCAL POOLS. AS SHOWN IN EXHIBITS G TO Q HEREIN



# EXHIBIT X







1734 In the District Court of the United States for the District of Kansas, First Division.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Affidavit of John M. Landon.*

STATE OF KANSAS,

*County of Montgomery, ss:*

John M. Landon, of lawful age, being by me first duly sworn, upon his oath deposes and says:

That I am a resident of Independence, Montgomery County, Kansas, and the Receiver for Kansas Natural Gas Company; that I was appointed, together with one R. S. Litchfield, as Receiver by an order of the District Court of Montgomery County, Kansas, made and entered on the 15th day of February, A. D. 1913, in a certain action therein pending, being case No. 13476 in said Court, wherein the State of Kansas was plaintiff and The Independence Gas Company a corporation, The Consolidated Gas, Oil & Manufacturing Company, a corporation, and Kansas Natural Gas Company, a corporation, were defendants. Said Receivers appointed by said State Court are hereinafter referred to as State Receivers. That I qualified as such Receiver on Feb. 15, 1913, by filing my oath and bond as such Receiver, which oath and bond was thereupon approved by the Court. That R. S. Litchfield, my co-receiver, died on or about March 20, 1916, and on March 25, 1916, affiant was appointed by said Court sole Receiver and qualified.

That on February 15, 1913, when affiant and R. S. Litchfield were appointed as Receivers, the property of Kansas Natural Gas Company was in possession and under the control of Geo. F. Sharitt, Conway F. Holmes and Eugene Mackey, as Receivers appointed by the United States District Court for the District of Kansas in a certain action therein pending wherein John L. McKinney was plaintiff and Kansas Natural Gas Co. was defendant, and are hereinafter referred to as Federal Receivers.

That to obtain the possession of the said property of Kansas Natural Gas Co., said State Receivers made application to the United States District Court for the District of Kansas for an order directing the receivers of said court to deliver and surrender the property in their possession belonging to Kansas Natural Gas Co. to the State Receivers; that said application came on for hearing before Hon.

John A. Marshall, Judge, and after due consideration an order was entered in said cause directing the receivers of said court to deliver the property in their possession located in the State of Kansas to the said State Receivers; that appeal was taken from said order of the court to the Circuit Court of Appeals for the Eighth Circuit, and upon a hearing thereon, the order and decree of the District Court was affirmed, and on Jan. 1, 1914, all the physical property of Kansas Natural Gas Co. located in the State of Kansas was delivered to the State Receivers, and also the actual possession of the physical property located in Oklahoma and Missouri; that afterwards, further application was made to the United States District Court for the District of Kansas to deliver and turn over to said State Receivers moneys in the hands of said Federal Receivers, and the property located in Oklahoma and Missouri, which application was partly allowed and partly denied, and from the order of the court denying said application appeal was taken to the Circuit Court of Appeals for the Eighth Circuit, and on hearing had on said appeal, the said order of said District Court was reversed, and the court ordered to turn over to the State Receivers for Kansas Natural Gas Co. all property of every kind and character in the States of Oklahoma, Missouri and Kansas, except \$50,000.00 in money retained by 1736 Geo. F. Sharritt, then the sole Federal Receiver, for further orders of said court; that on Sept. 22, 1914, said order and decree of the Circuit Court of Appeals and of the District Court of the United States for the District of Kansas was performed by delivering all of said property of Kansas Natural Gas Co. wherever situated, except the \$50,000.00 aforesaid, to the said State Receivers for Kansas Natural Gas Co. That since said Sept. 22, 1914, said State Receivers have been in the complete possession and control of the said property and business of Kansas Natural Gas Co.

Affiant further says that prior to the appointment of Receivers by the United States District Court for the District of Kansas for Kansas Natural Gas Co., said Kansas Natural Gas Co. was engaged in the business of producing, purchasing, transporting, distributing, and selling natural gas, and prosecuting and carrying on its said business and activities in the States of Oklahoma, Kansas and Missouri; that after the appointment of said receivers by the Federal Court, the said receivers continued to carry on and conduct the business in the same manner as the same had theretofore been conducted and carried on by Kansas Natural Gas Co., and after the said Federal Receivers had delivered the possession of said property to the State Receivers the said State Receivers continued to carry on and conduct said business theretofore carried on and conducted by the Federal Receivers and by Kansas Natural Gas Co.

That in carrying on said business, the said State Receivers do so by the use of instrumentalities commonly used in the natural gas business; that said pipe lines for the transportation of gas from the fields of production to the points of distribution extend from the counties of Rogers, Wagoner, Tulsa, in the State of Oklahoma, northerly through the counties of Washington and Nowata through the

State of Kansas, and into the State of Missouri, reaching connections with the distributing companies at Joplin, Oronogo, Neck City, Nevada, Kansas City, and St. Joseph, in the State of Missouri; that the said pipe lines extending through Kansas make connections with the distributing companies at the cities of Atchison, Leavenworth, Topeka, Galena, Pittsburg, and Kansas City, and points intermediate between the said named points in the State of Kansas and the Kansas-Oklahoma state line; that gas is taken from the wells where it is produced, in the States of Oklahoma and Kansas, and carried at

1737 its own natural pressure into pipe lines which transport it to the main pipe lines or trunk lines. When the natural or rock pressure in the wells decline by exhaustion of the wells to such an extent that the natural pressure will not force the gas through the pipe lines, such pressure is supplemented and augmented by small compressor stations, by which the gas is compelled to flow through the pipes to the principal compressor stations. At the principal compressor stations, it is compressed to a very high pressure and compelled to flow through the pipe lines until it reaches the points of consumption at the consumers' burners. The gas in the pipe lines under its natural pressure or under the compression of the compressor stations is made to travel at great velocity, sometimes approximating the speed of an express train, and is constantly in motion from the time it leaves the well until it reaches the consumers' burners. That each of the compressor stations employed by the Receiver is a part of the unit pipe line system of transportation, and are essential and necessary parts of such system. That said trunk pipe lines and compressor stations, and the feed and gathering lines constitute one complete system which cannot be operated separately or otherwise than as a unit, each part thereof being dependent upon its connection with every other part thereof; that no means of storage or suspension of transportation is provided or practicable; that compressor stations consist of a system of engine driven compressors, and pipe equipped with pistons which pick the gas up at a low pressure and slow movement and drive it to a high pressure and rapid movement; and at no time is the movement of gas in transportation stopped or suspended.

That when the Receiver takes the gas from the wells in Oklahoma and in Kansas, he does so with the intent and purpose that said gas shall be transported from said gas wells through said pipe line system and delivered to the consumers whose service pipes are attached to the pipe lines of the Company and of the distributing companies in the various cities, pursuant to contracts entered into between the distributing companies or the Receiver and the consumers; that the gas is taken from the wells in Oklahoma with the intent and purpose to be and is in fact delivered to consumers in Kansas and Missouri; that the gas is taken from the wells in Kansas with the intent and purpose to be and is in fact delivered to the consumers in the State of

Kansas and in Missouri; that the said Receiver sells to consumers in Kansas and Missouri, including his own consumption in his compressor stations, about eighteen billion cubic feet of gas per year, and purchases in Oklahoma about eighty-five

percentum of his purchases, the remainder of the gas being produced and purchased in Kansas; that the Receiver on January 1, 1916, was supplying 62,910 domestic consumers with gas in the State of Kansas, and 83,610 domestic consumers in the State of Missouri.

That gas is delivered to consumers in the several cities by and through distributing companies holding franchises in said cities, and gas is supplied to said distributing companies by the State Receiver in the same manner as theretofore furnished under contracts entered into between Kansas Natural Gas Co., and said distributing companies; that said contracts have never been adopted by the Receivers, but the manner and methods of distribution heretofore followed under said contracts, and which were in force at the time of the taking of possession of the property by the State Receivers, has been followed; that under the arrangements and methods of dealing existing between distributing companies and the State Receivers, the distributing companies receive a percentage of the proceeds of the sale of gas for their portion of the service, and the Receivers receive the remainder of the proceeds for their portion of the service. That of the total volume of natural gas sold and distributed by the Kansas Natural Gas Co., 85% is obtained in Oklahoma and the remainder in Kansas; that the gas obtained in Oklahoma is piped into the pipe lines and transported into and through Kansas and into Missouri, and the gas produced and purchased in Kansas is transported from the gas wells in Kansas and put into the same pipe lines through which gas is being transported from Oklahoma, and the gas from Kansas is co-mingled with the gas from Oklahoma in the process of transportation and while in movement in the course of transportation, and without stopping or suspending the transportation thereof, and is thereafter undistinguishable and inseparable from the gas in the process of transportation from Oklahoma, and said gas moves in an uninterrupted journey until it reaches the consumers in Kansas and Missouri; that of the volume of gas transported and sold by this Receiver, about 60% is sold in Missouri and about 40% is sold in Kansas.

That this affiant is familiar with the natural gas business, having spent twenty years in conducting said business before coming to Kansas, and having been engaged in said business for twelve years in the State of Kansas, and is familiar and acquainted with the gas fields of Kansas and Oklahoma, and in particular with the gas fields and gas territory occupied by and wherein the Receiver is producing and purchasing gas, and upon which he depends for his supply and future source of supply for gas in carrying on the business in which he is engaged, as aforesaid. Affiant knows that the natural gas business is a hazardous one; that the life of gas pools and gas wells is of great uncertainty, and no accurate or dependable estimate can be made of the life of untested gas lands nor of the volume of gas that may be produced from a gas well or a gas field during the life thereof; and that the investment in pipe lines, equipment and instrumentalities for transporting and distributing natural gas is of a hazardous character, for and on account of

the uncertainty of the nature of the business, as hereinbefore stated; that this is true even though the greatest prudence and care be exercised; that the Kansas and Oklahoma gas fields have been exceptionally uncertain and undependable, as shown by the following records of the Catoosa and Vera gas fields:

*Record of Decline in Rock Pressure of Catoosa Field.*

Connected up with pipe line—

June 1, 1915, Rock Pressure.....	350 pounds
July 1, 1915, Rock Pressure.....	275 pounds
Aug. 1, 1915, Rock Pressure.....	230 pounds
Sept. 1, 1915, Rock Pressure.....	205 pounds
Oct. 1, 1915, Rock Pressure.....	185 pounds
Nov. 1, 1915, Rock Pressure.....	170 pounds
Dec. 1, 1915, Rock Pressure.....	160 pounds
Jan. 1, 1916, Rock Pressure.....	150 pounds
Feb. 1, 1916, Rock Pressure.....	150 pounds
Mar. 1, 1916, Rock Pressure.....	140 pounds

NOTE.—The ratio of decline in the latter months is by reason of the inability of the low pressure to deliver any considerable quantity of gas into the high pressure pipe line.

*Record of Decline in Rock Pressure of Vera Field.*

Connected up with pipe line—

Jan. 1, 1916, Rock Pressure.....	375 pounds
Feb. 1, 1916, Rock Pressure.....	245 pounds
Mar. 1, 1916, Rock Pressure.....	155 pounds

1740 That any new fields discovered or developed in Kansas or Oklahoma will have the same character of uncertainty, and investments in pipe lines for reaching such new fields will possess the same elements of hazard. That experience in the Kansas natural gas fields show- that the fields are very short lived, and have proven a disappointment to the promoters of Kansas Natural Gas Co. and of all other gas companies operating therein, in many instances becoming exhausted before the capital invested in the instrumentalities for developing the business has been returned to the investor; and a like result has been experienced in the Oklahoma gas fields. Owing to the peculiarity of the formations wherein the gas is discovered, the tendency is and has been towards a rapid decline in rock pressure as the gas has been drawn from such fields; such decline in rock pressure in many instances being so great and the pressure reduced so low that it becomes necessary to install compressor stations to compress the gas to a pressure that will enable it to enter the trunk pipe lines through which gas must be transported to the consumers; that the investment in these smaller compressor stations has in many

**MULTIPLIERS TO BE USED FOR GAS MEASURED AT PRESSURES GREATER THAN TWO POUNDS**

Temperature.....60 Fah.

Barometer.....30"

Compiled by T. B. Wylie for the Equitable Meter Co.

[illegible]



instances proven an unprofitable one, the field becoming completely exhausted before the return of the investment in the compressor station. In the natural gas fields from which the receiver is now drawing gas, the wells are becoming rapidly exhausted, the fields depleted, and unless extensions are made to new fields a supply of gas will not be obtainable for a greater period than three years, and during much of that period the supply will be insufficient for the winter service.

Affiant further says that since the State Receivers took charge of the business of Kansas Natural Gas Co. they have purchased all gas adjacent or near their pipe lines which they could obtain, and which possessed a rock pressure sufficient to enable the same to be put in the pipe lines; that the said State Receiver employs scouts and field men whose duty and business it is to ascertain the result of all development and prospecting in the Oklahoma and Kansas gas fields, and said scouts and field men have no knowledge of any gas field or gas wells adjacent or near the pipe lines of said Receiver that can be purchased, used or utilized to furnish a supply of gas for transportation and sale by the Receivers. That by making reasonable extensions of gas lines, involving an expenditure of from \$500,000.00 to \$1,000,000.00 this year, and about \$200,000.00 each year thereafter, a supply of gas may be obtained that will insure the life of the business from five to six years from the present time, and if such investment is made, the entire cost thereof will of necessity have to be returned to the investors within that time.

Affiant further says that since taking possession of the property of Kansas Natural Gas Co. the said State Receivers have used every endeavor and resource available to them to obtain a supply of gas for the consumers dependent upon the Kansas Natural system; they have purchased gas in every locality from which they could purchase the same, and have produced gas from all lands and leases owned by them which appeared to be proven or likely gas territory; that the cost of purchasing or producing gas has, during the years 1914 and 1915, been approximately six cents per thousand cubic feet, on an average, at the wells, on a 2 lb. basis, and the price is constantly increasing; that great competition exists in the purchase of gas in Oklahoma and Kansas between the Receiver and the Oklahoma Natural Gas Co., operating lines to Oklahoma City, Muskogee, Tulsa, Guthrie, and numerous small towns in Oklahoma; the Quapaw Gas Co., supplying gas to consumers and industries at Baxter Springs, and in the lead and zinc mining districts of Oklahoma, Kansas and Missouri, and Carthage and Webb City in Missouri, and the Wichita Natural Gas Co., supplying Wichita, Hutchinson, Wellington, Arkansas City, and numerous towns in Kansas; that all of said companies own large trunk lines and furnish a large number of consumers with a large demand for gas and all draw from the same fields, thereby depleting the same; each bidding for the gas produced by individual producers engaged in the gas business or accidental producers who produce gas while prospecting for oil; that competition exists further in the purchase of gas by industrial and manufacturing concerns operating cement plants, brick plants, glass plants, smelters and kindred industries situated within the gas fields and consuming



in the aggregate gas far in excess of the gas transported by the gas companies above mentioned; that by reason of such competition the price of gas at the well, or delivered to the pipe line, has been greatly increased and the quantity available greatly reduced. That with each extension of pipe line and the reduction in the rock pressure at the well, the carrying capacity of the Kansas Natural Gas Co. system

1742 for carrying natural gas is greatly reduced, and the volume of gas delivered to the consumer much less than with the shorter pipe line and the higher rock pressure. That as the rock pressure decreases, there results a corresponding change in the density of the gas, at the intake of the compressor, and requires increased compressor capacity in order to compress and deliver the same amount of gas into the pipe line, as may be delivered with gas at a greater pressure. The following table shows the basis for reduction in volume, with the decline in pressure, recognized and accepted by engineers and others experienced in the natural gas business:

(Here follow pressure tables marked pages 1743-1744.)

That the cost of operation is constantly increased by each extension made to the pipe lines and by the construction of each compressor station, by reason of increased investment and cost of operating.

That the finding of the Public Utilities Commission of 1745 ~~Kansas that no extension of pipe lines was necessary in order to obtain a supply of gas is inaccurate, not based on any evidence, and at variance with the physical facts controlling the situation. Extensions of pipe lines must be made at the present time and must continually be made at future times in order to reach additional gas supply as rapidly as the new fields reached become exhausted; that this process of extensions of pipe lines must continue as long as the natural gas business is carried on by the Receiver, or his successor.~~

Affiant further says that the cost of making extensions of pipe lines has greatly increased during the last year owing to the rise in the price of steel pipe of the kind and sizes necessary to be used in gas pipe lines, and that the cost of 16 inch pipe per mile has been increased about \$2,300.00 during the last twelve months. The reason for the advance in the price of steel pipe being the European war and a great demand for materials of that character and the inability of the factories and mills to supply the same.

That affiant has examined the map marked Exhibit "L" attached to the Bill of Complaint herein, and finds that the conditions of the gas fields, the production of gas and the reduction in the productiveness of the fields, and the extending of the fields from where originally discovered, and the pipe lines from field to field to a distance 150 miles south of where originally discovered, as shown thereon, is substantially correct and accurate.

Affiant further says that at the time Kansas Natural Gas Co. commenced business, it purchased and acquired a large acreage of leases containing very valuable deposits of natural gas, consisting of approximately 171,437.67 acres, and said leases formed the basis for the promotion, financing and creation of the business of Kansas Natural Gas Co., and said leases at said time and for a long time thereafter, proved to be of very great value, and produced a very large quantity of natural gas, and gas is now being produced therefrom; that as the said gas leases became exhausted and the gas produced therefrom reduced in volume, Kansas Natural Gas Co. acquired numerous other leases at a large cost, and continued such method of acquiring additional gas supply until the appointment of Receivers, and the said Receivers have pursued substantially the same course. That owing to the close competition, as hereinbefore stated, many of the gas fields and gas wells which might have been available to Kansas

1746 Natural Gas Co. and the Receivers, were acquired by competitors, by their paying larger prices for leases and gas production than Kansas Natural Gas Co., or its Receivers, deemed advisable; that the gas territory now producing, adjacent to the pipe lines of Kansas Natural Gas Co., is fully occupied by Kansas Natural Gas Co. and its competitors.

The delay of the Kansas Commission in granting reasonable rates

and the prolonged litigation on Kansas Natural Gas Company affairs have embarrassed and tied the hands of the receivers and compelled them to sit idly by while gas leases were being procured by their competitors. The smelters have during the past year or more been able to pay extraordinary high prices for natural gas because of the extremely high price of their product, caused by the European war.

The receivers have been unable to build new fields because the revenue secured from the gas rates in effect have been insufficient to pay for the necessary extensions. The nearest and best new field is that in and about Blackwell, Oklahoma. To build to that field a pipe line connecting with the system under the control of this receiver will require an extension of about eighty-five miles, at a cost of not less than \$1,250,000. Such an extension can be made by this receiver provided compensatory rates are obtained for the natural gas sold by him.

Affiant further says, I was present and participated in the conference between the creditors of Kansas Natural Gas Co., the Attorney General of the State of Kansas, the State Receivers and the stockholders of Kansas Natural Gas Co., and signed said Creditors' Agreement, together with the creditors and the Attorney General, and agreed to the terms and conditions thereof, and accepted the trust thereby created; that since making of said Creditors' Agreement, a copy of which is attached to the Bill of Complaint herein, marked Exhibit "A," and is hereby referred to and made a part of this affidavit, affiant and his co-receiver endeavored to carry out and perform on behalf of said State Receivers all of the covenants and conditions, terms and requirements thereof, to the end that the trust thereby created, and the composition made with the creditors, might be fully performed and carried out. That in order to carry out the terms of said Creditors' Agreement, it is necessary that the business of Kansas Natural Gas Co., entrusted to the Receiver under his appointment and by virtue of said Creditors' Agreement.

1747 should be kept as a going business, and that an ample and sufficient supply of gas be furnished to the public, that to accomplish the same, it is necessary that an additional supply of gas be procured, and that extensions be made from time to time of pipe lines to reach such additional supply; and unless such extensions are made, and such additional supply of gas procured, the business of Kansas Natural Gas Co. in the hands of the State Receiver cannot be kept a going business, and a supply of gas cannot be furnished the public, and the revenue to carry out the terms and conditions of the Creditors' Agreement cannot be realized. That unless the terms of the Creditors' Agreement are performed and carried out, the same will become void, and the composition made with the creditors set aside and the creditors left in statu quo, and foreclosure of the mortgage, sale, disintegration, separation, and dissipation of the property will necessarily follow, and the public will be deprived of the service, and the investors and stockholders suffer a great and irreparable loss.

Affiant further says that an annual fund must be provided out of

the earning for the purpose of making extensions of mains in order to maintain a sufficient gas supply; that such extensions of mains cannot be treated as additional capital or betterment, but must be treated as an extraordinary maintenance or operating charge, and must be returned annually out of earnings in order to provide a fund for continuous extensions.

Affiant further says that at the time the State Receivers took possession of the property of Kansas Natural Gas Co. and began to operate the same, the rates in force and effect at which gas was being sold by them in the State of Kansas were as is shown in Exhibit "C" attached to the Bill of Complaint.

Affiant further says that the demand for gas and the number of consumers in the States of Kansas and Missouri is rapidly increasing; that the supply of gas is decreasing, and such increased demand can only be met and such decreased supply only be overcome by extensions of pipe lines to new fields; that at the rates now in force, the Receiver will not expend, nor will he be justified in expending, money for extensions of pipe lines; that the rates now in force do not produce a revenue sufficient to enable the Receiver to conduct said business, furnish a gas supply and meet the terms of the Creditors' Agreement, or afford a just and proper return upon 1748 the value of the property employed in performing the service.

Affiant further says that the rates fixed for the supplying of natural gas are not rates fixed merely for a commodity, but are rates fixed for a service. That the rates fixed for such service must be sufficient to cover the cost of the gas as a commodity at the wells, pay the cost of transportation from the wells to the consumers, the operating expense of the Receiver, a return of the investment during the life of the business, and the profit, if any, to the Receiver, and compensate the distributing company. That gas cannot be supplied at the same price when piped a great distance as when piped a shorter distance. That the cost of constructing a pipe line such as Kansas Natural trunk lines is substantially \$15,000.00 per mile. That the gas transported through a pipe line must pay a rate for transportation that will pay a return upon the investment therein, and upon each mile of pipe necessary to transport it to the point of delivery. That the finding of the Public Utilities Commission that gas should be sold at a uniform rate at all points in the State of Kansas, viz., at Thayer, thirty miles distance from Graham Station, and at Atchison, 240 miles from Graham Station, is contrary to and at variance with all business, engineering and economical experience, and contrary to the usual rule and custom in the natural gas business.

Affiant further says, I am familiar with the service supplied to St. Joseph, Missouri, by and through the St. Joseph Gas Co., and know about the cost of establishing and maintaining such service; that the present rate of 40¢ for gas at St. Joseph, Missouri, of which the St. Joseph Gas Co. receives 13 1-3 cents and the State Receiver 26 2-3 cents, is insufficient, inadequate and non-compensatory, and should be increased to cover the cost of delivery of gas at St. Joseph by affiant as Receiver and a proper return on the property of the St. Joseph Gas Co. used in distributing the gas. That the cost of de-

livering gas to the gate of the St. Joseph Gas Co.'s plant at St. Joseph, Mo., is about 39 cents per thousand cubic feet.

Affiant further says that this Receiver purchases and produces no gas in the State of Missouri; that all gas furnished and supplied by me to the cities of Missouri is produced and purchased in Oklahoma and Kansas, and transported into Missouri. That at the time I purchase or produce gas in Oklahoma and Kansas, I do so with the intent and purpose of transporting said gas into Missouri and furnishing the same to the consumers of natural gas whose service lines connect with the lines of the several distributing companies in the Missouri cities. That from the time I purchase or produce said gas in the States of Oklahoma and Kansas, and until it reaches the consumers' burners in the State of Missouri, said gas is in a continuous and uninterrupted movement in the process of transportation from the gas wells in Oklahoma and Kansas to the consumers' burners in Missouri. That the greater portion of gas sold by me in Kansas is purchased and produced in Oklahoma, and the remaining portion in Kansas. That when the gas is purchased or produced in Oklahoma, it is purchased or produced with the intent and purpose of transporting and selling same to the consumers in Kansas, whose service lines are connected with the lines of the distributing companies in the cities of Kansas, and said gas when so transported is in continuous and uninterrupted movement in the process of transportation from the gas wells of Oklahoma and Kansas to the consumers' burners in Kansas. That the Oklahoma gas and Kansas gas is co-mingled in the pipe lines and cannot be distinguished or separated.

Affiant further says that on or about April 9, 1915, the Receivers filed with the Public Utilities Commission of Kansas a schedule of rates and joint rates to be charged for natural gas in the several cities supplied by the Kansas Natural gas system, and after a hearing thereon on July 16, 1915, the Public Utilities Commission rendered a finding that said schedule was non-compensatory, but refused to fix another schedule; that afterwards, on a rehearing before said Commission, they made and entered an order fixing a flat rate over the State of Kansas, outside of Montgomery County, of 28 cents as a domestic rate for gas; that pursuant to said order of said Commission and in compliance therewith, and to avoid making a breach or violation thereof, the Receivers filed a schedule of rates under protest, a copy of which schedule is attached to the Bill of Complaint herein, marked Exhibit "M," and on Dec. 28, 1915, the said Public Utilities Commission approved said schedule so filed under protest, and since said time said Receivers have been charging and collecting for natural gas furnished to consumers in Kansas as provided in said schedule of rates. Affiant says that the schedule of rates so fixed by said

Public Utilities Commission is not sufficient to pay the Receiver the actual cost of producing the gas, transporting and selling it in the several cities to which said schedule applies, but that said schedule was put into force and effect and is being performed by the Receiver to avoid the penalties fixed by law for violation of an order of the Public Utilities Commission. That if affiant

as Receiver is compelled to continue to furnish gas at said rates fixed by the Public Utilities Commission, the estate of Kansas Natural Gas Co. in his hands as Receiver and trustee, will be wasted and become exhausted, and the owners thereof deprived of their property without compensation.

Further affiant saith not.

JOHN M. LANDON.

Subscribed and sworn to before me this — day of April, A. D. 1916.

[SEAL.]

WALTER S. SICKELS,  
*Notary Public.*

My commission expires Sept. 24, 1916.

1751 In the District Court of the United States for the District of Kansas, First Division.

Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Affidavit of V. A. Hays, Auditor for Plaintiff Receiver.*

STATE OF KANSAS.

*Montgomery County, ss:*

V. A. Hays, being first duly sworn, on his oath deposes and says:

That he is now and has been at all the times during which the plaintiffs in the above entitled cause have been in the actual possession and control of the property of the Kansas Natural Gas Company, The Marnet Mining Company and the Kansas City Pipe Line Company, and all of the other properties under lease to said three named companies, the Auditor for said Receivers and Plaintiffs. That as such Auditor he has had and does have control and custody of the books and accounts for the above mentioned Plaintiffs. That affiant occupied the same position with the same power and duties during all the time that the Federal Receivers named in the bill of complaint filed in this cause had the actual control and possession of the above named properties. That affiant occupied the same position in the Kansas Natural Gas Company with the same

1752 duties and powers from March, 1905, up to and including October 9, 1913. That affiant is now and has been at all times mentioned herein familiar with the methods in which the busi-

ness of the aforesaid companies and Receivers has been conducted.

That said business of producing, piping and transporting natural gas is now carried on and conducted and has for sometime past been carried on by the use of gas wells, pipe lines, compressor stations and other devices commonly used in the gas business. That said pipe lines extend from the Counties of Rogers, Wagoner and Tulsa in the State of Oklahoma, northerly through the State of Kansas and into the State of Missouri, reaching terminals at Joplin, Oronogo, Carl Junction, Neck City, Nevada, Kansas City and St. Joseph in the State of Missouri. That said pipe lines extend through Kansas reaching the cities of Atchison, Lawrence, Topeka, Galena, Pittsburg, and Kansas City, and points intermediate between the said last named points in the State of Kansas and the Kansas-Oklahoma State line.

That the gas is taken from the wells where it is produced in the States of Oklahoma and Kansas into pipe lines which transport it to the Main Pipe Line extending from Oklahoma through Kansas into Missouri. That said pipe lines constitute one complete system which could not be operated otherwise than as one unit. That said natural gas from the time it leaves the gas wells in Oklahoma and Kansas until it is delivered to consumers in the States of Kansas and Missouri is in continuous course of transportation and at no time is it stored or is its movement in transportation suspended. That said transportation is begun in Oklahoma with the intention and purpose that said natural gas shall be conducted, moved and transported without interruption until it is delivered to consumers in Kansas and Missouri; and the same is true of the natural gas transported from Kansas to consumers in Missouri. That none of the natural gas transported by plaintiffs is produced in Missouri; that 85% of all the gas delivered to consumers by the plaintiffs is produced in the state of Oklahoma. That a portion of the gas obtained from wells in Kansas is piped from said wells to the Main Pipe Line employed by the plaintiffs, and is there, and immediately upon entering the same, inextricably commingled with the gas from Oklahoma wells, and cannot thereafter be separated or distinguished from the same. That year by year the percentage which the gas produced in Oklahoma bears to all the gas transported by the plaintiffs, increases, while the percentage of gas produced in Kansas decreases. That the natural gas is delivered to consumers in the various cities by said plaintiffs through local distributing companies under contracts with said local distributing companies by which the amount collected from the consumers is divided between the local distributing companies and the plaintiffs on a basis of 66 2-3% to the plaintiffs and 33 1-3% to the local distributing company, except at the following points, where the following divisions prevail:

At Kansas City, Missouri, and Kansas City, Kansas, the plaintiffs receive 62½% of the collections and the distributing company 37½%.

At Nevada, Missouri, Fort Scott, Kansas, Moran, and Bronson,



Kansas, the plaintiffs receive 50% and the distributing company 50%.

At Thayer, Kansas, and Elk City, Kansas, the plaintiffs receive 65% and the distributing company 35%.

At one or two points the plaintiffs have possession of the local distributing system and at such points receive the entire amount of the collections.

That the distributing companies accept and retain said percentage in payment of the service rendered by them, and the plaintiffs accept and retain said percentage in payment of the services rendered by them, which amount includes the original cost of production, including cost of leaseholds, plus the cost of transportation, and profits, if there were any.

That the rates which were in effect in Kansas for the sale and delivery of natural gas to domestic and gas engine consumers on January 1, 1911, were those set out in Exhibit "C" attached to the bill of complaint filed in this cause. That affiant has read and examined the opinion of the Public Utilities Commission of the State of Kansas, dated December 10, 1915, (Exhibit "K" of the bill of Complaint) and has checked the records of the Receivers against said opinion and finds that said Commission in its Table No. 3, on page 13 of said Opinion (Bill of Complaint p. 339) in attempting to state the income derived from the production and transportation of natural gas, credited the Income account with the item "Gas Produced" (\$6,023,792.16), thereby producing an incorrect re-

1754 sult which indicates the total income prior to December 31, 1914, to be \$6,023,792.16 more than it actually was. That said Commission in said Table No. 3 of said Opinion, charged "Operating Expenses" with gas produced from the leaseholds owned by the Kansas Natural Gas Company in the sum of \$6,023,792.16, and thus made one charge offset the other, and in effect allowed the Kansas Natural Gas Company nothing whatever for gas produced from its own leaseholds. That this affiant is and was familiar with the value of gas produced from said leaseholds, owned by said Company, up to and including December 31, 1914, and that the value of the gas so produced was of the total sum of over \$7,000,000.00, at the wells.

That said gas so produced was obtained from the leases assigned to the Kansas Natural Gas Company at the time of its organization by Barnsdall and O'Neil, and R. M. Snyder and associates, and other leases subsequently acquired by the Kansas Natural Gas Company.

That said Table No. 3 should show under "Operating Expenses" the amount of depletion in the leases, due to the taking of gas therefrom, but no such item has been included by the Commission.

That the cost of production and cost of transportation have never been kept separately. That books for the property used both in production and transportation of natural gas have been kept throughout to date as a unit.

That it is impossible at this time by any method known to separate earnings of the property used in production from the property used

in transportation for the reason that no measurement was ever made of the gas produced by the Kansas Natural Gas Company.

That a separation at this time is impossible for the further reason that the cost of superintendence and what is generally known as "overhead expense" cannot be separated, as it was never kept separate and it is not known how much would have been applied to each.

That this affiant is familiar with the price now being paid for gas. That 4c per thousand cubic feet, as estimated by said Public Utilities

Commission in its opinion as aforesaid, is entirely too low. 1755 That plaintiff is now compelled to pay an average price of nearly 6c per thousand cubic feet for gas purchased by him and the average price is increasing year by year.

That the estimate of the said Public Utilities Commission as to the increased revenue obtainable by putting into effect the schedule prescribed by its order of December 10th, 1915, is too high. That instead of the increase being \$171,513.63, as found by the Commission, the net increase will not in fact be more than \$125,000.00, based on the same volume of business as for the preceding year.

That the true and correct amount of the operating expenses and taxes of plaintiff for the calendar year 1915, was the sum of \$814,205.91. That the operating expense and taxes for the calendar year 1916 will not be less than for the calendar year 1915. That in addition to the operating expenses and taxes above mentioned, the amount expended by the Receivers for gas purchased during the calendar year 1915, was the sum of \$1,114,175.80. That the total amount expended for gas purchased for the calendar year 1916 will probably exceed the amount expended in 1915. That said statement of operating expenses and taxes does not include any amount for depreciation or amortization of property, depletion of leases or necessary extension.

That the valuation of the properties under the control of this plaintiff, assessed by the State Tax Commission of the State of Oklahoma for the year 1915 as located within the boundaries of that state, is and was \$1,860,434.00. That the valuation of the property under the control of this plaintiff, assessed by the State Tax Commission of the State of Kansas for the year 1915, as located within the boundaries of that state, was and is \$8,003,699.00. That the valuation of the property under the control of said plaintiff, assessed by the taxing authorities of the State of Missouri, as located within the boundaries of the state for the year 1915, was and is \$145,610.00. That the total assessed valuation of the properties under the control of the said plaintiff in the States of Kansas, Missouri and Oklahoma, for the year 1915, is and was \$10,009,743.00. That the said sums are the valuations placed upon said properties by the taxing authorities of said three states.

That the following table shows the estimated average requirements for gas purchased, operating expenses, taxes, maintenance of supply, depreciation and a fair return on the value of the 1756 property employed in the business, during a period of five years, from January 1st, 1916, and the estimated average

revenue that will be received by the plaintiff in this case, based on the rates named in the order of December 10th, 1915, of the Public Utilities Commission of the State of Kansas, together with the revenue that will be received from the State of Missouri based on the present rates in effect.

The estimates for gas purchased and revenue are based on the assumption that the sales of 1915 will be maintained during the entire five year period.

1757 Table Showing Estimated Requirements During a Period of 5 Years Beginning January 1st, 1916, and Estimated Revenue During the Same Period on a Basis of No Diminution in 1915 Sales.

	1916.	1917.	1918.	1919.	1920.	Total.
Gas Purchased .....	\$1,200,000.00	\$1,200,000.00	\$1,200,000.00	\$1,200,000.00	\$1,200,000.00	\$6,000,000.00
Operating and Taxes .....	900,000.00	900,000.00	900,000.00	900,000.00	900,000.00	4,500,000.00
Maintenance of Supply* .....	400,000.00	400,000.00	400,000.00	400,000.00	400,000.00	2,000,000.00
Amortization† .....	900,000.00	900,000.00	900,000.00	900,000.00	900,000.00	4,500,000.00
Interest at 6% .....	432,000.00	432,000.00	432,000.00	432,000.00	432,000.00	2,160,000.00
	\$3,832,000.00	\$3,832,000.00	\$3,832,000.00	\$3,832,000.00	\$3,832,000.00	\$19,160,000.00
Revenues .....	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	15,000,000.00
Deficit .....	\$832,000.00	\$832,000.00	\$832,000.00	\$832,000.00	\$832,000.00	\$4,160,000.00

\*Includes extensions, and obtaining new leases. This is an average for 5 years.

†Amortization is on basis of ten year life of plant from Jan. 1, 1916, and net value amortized is \$9,000,000.

1758 That each increase of 1c per thousand cubic feet in the rate at which natural gas is sold to domestic consumers in Kansas and Missouri would produce additional revenue of about \$150,000.00 of which plaintiff receiver would obtain on an average as his percentage about .64%, or approximately \$95,000.00. That it will require approximately a 12c increase over 25 cent rate in effect in 1915 in the charge for gas sold to domestic consumers in both Kansas and Missouri in 1916 to make the revenue such to meet the requirements as shown by the foregoing table. That the revenue during the past years has at no time been sufficient to pay operating expenses, depreciation and a fair return on the property employed in the service. That the rate provided in the order of December 10, 1915, will not produce income sufficient to pay for operating expenses, taxes, maintenance of supply, depreciation and a fair return on the value of the property employed in the service.

That any charge less than 37c per thousand cubic feet for natural gas delivered to domestic consumers in the States of Kansas and Missouri will be insufficient to provide enough revenue to pay operating expenses, taxes, gas purchased, amortization (on 10 year basis from Jan. 1, 1916), cost of maintaining gas supply and a fair return on the property employed in the service.

That on January 1st, 1916, the Receivers furnished service to 62,910 domestic consumers in the state of Kansas. That on January 1st, 1916, the Receivers furnished gas to 83,610 domestic consumers in the State of Missouri.

That the number of consumers who are asking for natural gas is increasing year by year in both Kansas and Missouri.

That on the 13th day of September, 1915, a schedule of rates was filed by the local distributing companies with the Public Service Commission of the State of Missouri, prescribing a rate of 30c per thousand cubic feet of natural gas delivered to the domestic consumers in the cities of Oronogo and Carl Junction, Missouri. That on the 30th day of October, A. D. 1915, said Public Service Commission suspended such schedule of rates and such schedule of rates have never been permitted to be put in force.

That the St. Joseph Gas Company is the distributing company through which natural gas transported by plaintiff receiver is supplied to consumers within the City of St. Joseph. That the said St.

Joseph Gas Company on September 30th, 1914, filed with  
1759 the Public Service Commission of the State of Missouri a proposed schedule of rates effective November 1st, 1914, whereby the said company raised the rate of natural gas in the City of St. Joseph from 40c to 60c per thousand cubic feet delivered to domestic consumers.

That said schedule was suspended by the Public Service Commission of the State of Missouri before it became effective and such suspension was kept in force until November 27, 1915.

That on the last named date the said Public Service Commission made its order requiring said St. Joseph Gas Company to cancel said proposed schedule of 60c and maintain the rate of 40c.

That in the findings and opinion of said Public Service Commission made and delivered in said case the said Commission found the rate on the property employed by the said St. Joseph Gas Company in the distribution of gas as aforesaid was 2.42% and that said rate was unreasonably low and confiscatory. That the said Commission denied the increased schedule proposed on the ground that said St. Joseph Gas Company was paying to plaintiffs 26 2-3c per thousand cubic feet of natural gas as plaintiff's portion of the 40c rate charged domestic consumers in that city and that said sum of 26 2-3% was 10c more than plaintiffs received as their portion of the rate paid by consumers in the City of Atchison, Kansas. That said Public Service Commission of the State of Missouri also gave as one of its reasons for denying the proposed increase that the amount paid the plaintiffs as their portion of the rate charged domestic consumers in St. Joseph, Missouri, was higher than the amount paid plaintiffs in the border cities of Kansas, as their portion of the rate charged domestic consumers in the border cities of Kansas.

That in pursuance of said order the St. Joseph Gas Company has filed its intervening petition in the suit in which these plaintiffs were appointed receivers in the District Court of Montgomery County, Kansas, to cancel said contract and secure in lieu thereof a contract as outlined by said Commission of Missouri.

That said 17c was at said time within 1-3 cents per thousand cubic feet of that which the plaintiffs received as their proportion of the gas delivered to the domestic consumers in the border cities of Kansas.

1760 That in truth and in fact while the sum in cents paid the plaintiffs as their proportion of the rate charged the domestic consumers in St. Joseph is and was higher than the amount in cents paid for their proportion of the rate charged domestic consumers in the border cities of Kansas, yet the division was and is made on the same percentage, to-wit, 66 2-3% to plaintiffs and 33 1-3% to the St. Joseph Gas Company as the local distributing company.

That the service rendered in delivering gas to the domestic consumers in the city of St. Joseph was and is greater than the service rendered in delivering gas to the domestic consumers in the border cities of Kansas for the reason that the gas is conveyed a greater distance to supply the city of St. Joseph than in transporting natural gas to any of the border cities of Kansas.

That all these matters were presented to the District Court of Montgomery County, Kansas, on the hearing on the intervening petition of the said St. Joseph Gas Company and was determined by said court on the 10th day of February, A. D. 1916, a copy of the order and findings of the court in said matter is attached, to reply filed in this case.

That in truth and in fact the charge now made and which was made at said time for gas delivered to the domestic consumers in border cities of Kansas was and is unreasonably low and confiscatory and not sufficient to pay for the service rendered.

That any amount less than 26 2-3c per thousand cubic feet of natural gas will not be sufficient to compensate the plaintiffs for the service rendered in procuring and transporting gas to the City of St. Joseph, Missouri.

That plaintiffs are now in fact receiving 18 2-3c per thousand cubic feet as their proportion of the charge for natural gas delivered to domestic consumers in the border cities of Kansas. That said sum of 17c proposed by said Commission of Missouri as plaintiff's proportion of the rate charged at St. Joseph, Missouri, is unreasonably low and confiscatory, and if put into effect would cause plaintiffs to perform a greater service in delivering gas to St. Joseph, Missouri, at a less price than for delivering gas to the cities in Kansas.

That affiant is thoroughly familiar with and has personal knowledge of the facts relating to the securing of the franchise referred to in Exhibit "B" on pages 88 to 91, inclusive, of the Bill of Complaint filed herein, and of the other franchises obtained by 1761 the distributing companies for the purposes of supplying natural gas to consumers in various cities made parties defendant herein.

That at the time said franchises were secured there was no other system of pipe lines being constructed to said cities except those of the Kansas Natural Gas Company. That in securing such franchises the respective local distributing companies fully advised the respective city governments and the inhabitants of the respective cities in which said franchises were granted that the natural gas to be distributed thereunder was to be secured and procured from the Kansas Natural Gas Company or its predecessors. That at the time said franchises were obtained and entered into it was thought that an abundant supply of gas for cooking, lighting, heating, power and manufacturing purposes was available in and north of Montgomery County, Kansas. That said belief was in fact ill-founded and soon after the system of pipe lines mentioned herein was completed it became necessary to seek new fields south of said location and within a very short time it became necessary to obtain and carry gas from points far distant south of said fields in Kansas. That for a number of years prior hereto more than seventy-five per cent of all the gas transported through said distributing system and delivered to consumers in Kansas and Missouri was procured and produced in Oklahoma. That the Receivers and the Kansas Natural Gas Company has long been unable to furnish natural gas in sufficient quantities to sell the same for manufacturing, power and boiler purposes, except during the summer months, or even in quantities sufficient to supply the demand for extensive domestic heating in the winter time.

That said franchises and the agreements subsequently made in connection therewith, in so far as they provide a rate of less than thirty-seven cents per thousand cubic feet of natural gas delivered to consumers are improvident and have never been adopted by the plaintiff receiver. That the receivers have never adopted the con-



tracts with the local distributing companies whereby the transporting company is to receive for its service in procuring and transporting natural gas the percentages of the rates charged to consumers in the various cities as hereinbefore set out, but have been carrying on the business in the manner it was carried on by the Kansas Natural Gas Company. That owing to the litigation between the present

Receiver and the Federal Receivers and the litigation in regard to rates, which litigation has been continuous ever since the Federal Receivers were first appointed it has been impossible to change the method of doing business with the distributing companies and the whole matter of the relation between the Receiver and the distributing companies has been deferred by the Receiver and the court appointing them until the question of rates is finally determined and settled. That the order of this court of December 30, 1912 (Bill of Complaint p. 22) was in effect a repudiation of said contracts with the distributing companies in that it required the Receivers appointed by this court to charge for gas delivered at the gates of the respective cities, instead of a percentage of the gross receipts as provided in said contracts with the distributing companies.

Further affiant saith not:

V. A. HAYS.

Subscribed and sworn to before me this 17th day of April, 1916.

WALTER S. SICKELS,

[SEAL.]

Notary Public.

(My Commission expires Sept. 24, 1916.)

1763 In the District Court of the United States for the District of Kansas, First Division.

No. 136 N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Affidavits of V. A. Hayes, Exhibit 15; V. A. Hayes, Exhibit 16, and S. S. Weyer, Exhibit 18.*

Chester I. Long, John H. Atwood, Robert Stone, Attorneys for Plaintiff.

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## PLAINTIFF'S EXHIBIT 15.

*Supplemental Affidavit No. 1 of V. A. Hays, Auditor for Plaintiff Receiver.*

STATE OF KANSAS,

*Montgomery County, ss:*

V. A. Hays, being first duly sworn, on his oath, deposes and says:

That the attached statement marked Exhibit "A," and made a part hereof, is a true and correct Profit and Loss Statement, showing the operations of the Receivers for the three months ending March 31st, 1915; that the attached statement marked Exhibit "B," and made a part hereof, is a true and correct Profit and Loss Statement, showing the operations of the Receivers for the three months ending March 31st, 1916; that the attached statement marked Exhibit "C," and made a part hereof, is a true and correct Comparative Summary of the operations of the Receivers for the first three months of the years 1915 and 1916, showing the increase or decrease in each item of Income or Expenditure, also showing a decrease of over \$37,000.00 in Net Earnings for the year 1916, as compared with the same period in 1915, notwithstanding the fact that the sale price to consumers in the state of Kansas during the year 1916 period was 28c. per M cubic feet net as compared with 25c. net during the same period in 1915.

Further affiant saith not.

V. A. HAYS.

Subscribed and sworn to before me this 22d day of April, 1916.

BESSIE STENTZ,

*Notary Public.*

My commission expires Feb. 6, 1920.

(Here follow Exhibits "A," "B," and "C," marked pages 1765, 1766, and 1767.)

**EXHIBIT "A".**

**Profit and Loss Statement—For Three Months Ending March 31, 1915**

	January	February	March	Total
<b>GROSS INCOME—</b>				
Gas Sales—K.....	\$275,602.45	\$343,315.36	\$350,384.35	\$1,069,302.16
Oil Sales—K.....	104.76	114.57	153.39	372.72
Oil Sales—Oklahoma.....	1,037.36	285.46	853.35	2,176.17
Sundry Sales.....	2,994.79	4,911.01	1,839.81	9,745.61
<b>TOTAL INCOME.....</b>	<b>\$380,739.36</b>	<b>\$348,626.40</b>	<b>\$353,228.60</b>	<b>\$1,082,594.36</b>
<b>LESS—Operating Expense—</b>				
Gas Purchased—Kansas.....	\$ 2,486.80	\$ 7,310.88	\$ 7,939.81	\$ 17,737.49
Gas Purchased—Oklahoma.....	122,855.52	96,575.47	160,147.00	379,578.00
Gas Purchased—Quapaw.....	788.25	673.63	735.48	2,197.36
<b>TOTAL OPERATING EXPENSE.....</b>	<b>\$125,130.57</b>	<b>\$104,559.98</b>	<b>\$108,814.44</b>	<b>\$338,504.99</b>
<b>Gas Expense.....</b>	<b>\$127,617.32</b>	<b>\$113,886.35</b>	<b>\$116,781.29</b>	<b>\$358,284.96</b>
<b>Oil Expense—Kansas.....</b>	<b>\$75.34</b>	<b>\$336.92</b>	<b>\$399.43</b>	<b>\$755.69</b>
<b>Oil Expense—Oklahoma.....</b>	<b>\$1,789.62</b>	<b>\$1,538.80</b>	<b>\$2,332.93</b>	<b>\$5,661.35</b>
<b>Bad Accounts—Gas.....</b>	<b>\$ 1,874.86</b>	<b>\$ 2,398.43</b>	<b>\$ 2,921.45</b>	<b>\$ 7,194.74</b>
<b>Bad Accounts—Oil.....</b>	<b>\$ 2,156.92</b>	<b>\$ 2,294.91</b>	<b>\$ 3,191.80</b>	<b>\$ 7,643.63</b>
<b>LESS—Property Rentals—</b>				
K. C. P. Co. Property.....	\$297,644.59	\$175,510.41	\$172,533.16	\$645,688.16
Magnet Mining Co. Property.....	\$ 56,262.48	\$ 23,756.63	\$ 24,316.40	\$ 104,335.51
<b>TOTAL PROPERTY RENTALS.....</b>	<b>\$353,907.07</b>	<b>\$199,267.04</b>	<b>\$196,849.56</b>	<b>\$750,023.67</b>
<b>LESS—Interest and Premium—</b>				
Interest—1st Mtg. Bonds.....	\$ 4,918.00	\$ 6,294.00	\$ 2,972.00	\$ 14,184.00
Interest—2d Mtg. Bonds.....	5,872.21	6,581.25	8,491.34	20,944.80
Interest—Current Debt.....	17.31	28.87	17.34	63.52
<b>TOTAL CHARGES.....</b>	<b>\$10,807.52</b>	<b>\$12,904.12</b>	<b>\$11,480.68</b>	<b>\$35,196.32</b>
<b>NET EARNINGS.....</b>	<b>\$28,824.79</b>	<b>\$23,955.38</b>	<b>\$23,906.55</b>	<b>\$76,686.72</b>
<b>LESS—Depreciation—Leaseholds.....</b>	<b>\$107,325.20</b>	<b>\$110,937.44</b>	<b>\$104,494.43</b>	<b>\$322,757.07</b>
<b>Depreciation—Plant.....</b>	<b>\$8,990.00</b>	<b>\$8,990.00</b>	<b>\$8,990.00</b>	<b>\$26,970.00</b>
<b>PROFIT AND LOSS SURPLUS.....</b>	<b>\$ 24,777.39</b>	<b>\$ 5,028.94</b>	<b>\$ 10,422.12</b>	<b>\$ 40,228.45</b>

Figures in black face type appear in red on original statement.

**EXHIBIT "B".**

**Profit and Loss Statement—For Three Months Ending March 31, 1916.**

	January	February	March	Total
<b>GROSS INCOME—</b>				
Gas Sales.....	\$350,429.75	\$389,281.41	\$284,482.76	\$994,492.42
Oil Sales—Kansas.....	368.34	251.61	419.39	1,039.34
Oil Sales—Oklahoma.....	.....	.....	.....	.....
Oil Sales—Miscellaneous.....	1,902.05	1,916.60	1,294.21	5,012.86
<b>TOTAL INCOME.....</b>	<b>\$352,800.14</b>	<b>\$391,549.62</b>	<b>\$286,196.36</b>	<b>\$1,030,546.12</b>
<b>LESS—Operating Expense—</b>				
Gas Purchased—Kansas.....	\$ 24,894.21	\$ 36,791.69	\$ 32,132.28	\$ 93,818.17
Gas Purchased—Oklahoma.....	68,754.73	57,381.98	61,774.57	188,125.58
Gas Purchased—Quapaw.....	560.35	972.87	898.37	2,431.59
<b>Gas Expense—</b>	<b>\$ 94,211.19</b>	<b>\$ 95,275.45</b>	<b>\$ 94,805.22</b>	<b>\$ 284,291.86</b>
Oil Expense—Kansas.....	\$ 64,438.84	\$ 62,061.65	\$ 48,589.87	\$ 175,140.46
Oil Expense—Oklahoma.....	302.81	217.92	212.96	733.69
<b>Bad Accounts—Gas.....</b>	<b>\$ 302.81</b>	<b>\$ 217.92</b>	<b>\$ 212.96</b>	<b>\$ 733.69</b>
<b>Bad Accounts—Gas.....</b>	<b>\$ 3,022.49</b>	<b>\$ 2,117.56</b>	<b>\$ 1,899.35</b>	<b>\$ 6,039.40</b>
<b>LESS—Property Rental—</b>				
K. C. P. L. Co. Property.....	\$ 22,151.87	\$ 22,975.00	\$ 21,289.00	\$ 67,415.87
Magnet Mining Co. Property.....	12,643.99	15,643.00	14,648.00	42,934.99
<b>Interest and Premium—</b>				
Interest—1st Mtg. Bonds.....	\$ 35,794.87	\$ 36,630.00	\$ 34,036.00	\$ 106,460.87
Interest—2d Mtg. Bonds.....	.....	.....	.....	.....
Interest—Current Debt.....	.....	.....	.....	.....
<b>TOTAL CHARGES.....</b>	<b>\$ 11,812.91</b>	<b>\$ 11,894.48</b>	<b>\$ 10,694.72</b>	<b>\$ 34,601.11</b>
<b>NET EARNINGS.....</b>	<b>\$210,845.11</b>	<b>\$290,139.06</b>	<b>\$205,442.32</b>	<b>\$706,426.49</b>
<b>LESS—Depreciation—Leaseholds.....</b>	<b>\$141,962.43</b>	<b>\$111,350.56</b>	<b>\$ 80,755.04</b>	<b>\$334,068.03</b>
<b>Depreciation—Plant.....</b>	<b>\$ 97,598.90</b>	<b>\$ 22,250.40</b>	<b>\$ 62,253.28</b>	<b>\$182,102.58</b>
<b>PROFIT AND LOSS SURPLUS.....</b>	<b>\$ 5,563.17</b>	<b>\$ 16,538.10</b>	<b>\$ 14,434.00</b>	<b>\$ 36,535.27</b>

Figures in black face type appear in red on original statement.

**EXHIBIT "C",**  
**Comparative Profit and Loss Statement—Three Months Ending March 31.**

	1916	1915	Increase Decrease
<b>GROSS INCOME—</b>			
Gas Sales.....	\$944,402.42	\$1,056,701.96	\$124,299.5
Oil Sales—Kansas.....	1,187.24	477.82	659.5
Oil Sales—Oklahoma.....	.....	2,178.17	2,178.17
Sundry Sales.....	8,014.86	16,743.61	8,728.75
<b>TOTAL INCOME.....</b>	<b>\$953,595.52</b>	<b>\$1,082,101.56</b>	<b>\$128,506.04</b>
<b>LESS—Operating Expense—</b>			
Gas Purchased—Kansas.....	\$ 82,644.17	\$ 24,187.30	\$ 58,456.87
Gas Purchased—Oklahoma.....	186,125.28	317,196.00	131,070.72
Gas Purchased—Quapaw.....	2,732.49	2,128.50	603.99
<b>TOTAL INCOME.....</b>	<b>\$572,501.94</b>	<b>\$ 745,455.86</b>	<b>\$ 172,953.92</b>
<b>Gas Expense.....</b>	<b>\$192,140.46</b>	<b>\$ 187,144.70</b>	<b>\$ 4,995.76</b>
<b>Oil Expense—Kansas.....</b>	<b>.....</b>	<b>.....</b>	<b>.....</b>
<b>Oil Expense—Oklahoma.....</b>	<b>.....</b>	<b>.....</b>	<b>.....</b>
<b>Bad Accounts—Gas.....</b>	<b>\$ 6,129.60</b>	<b>\$ 8,183.82</b>	<b>\$ 2,054.22</b>
<b>LESS—Property Rentals—</b>			
K. C. P. L. Co. Property.....	\$ 47,516.67	\$ 72,229.02	\$ 24,712.35
Marzet Mining Co. Property.....	42,935.00	42,905.00	30.00
<b>TOTAL CHARGES.....</b>	<b>\$110,451.67</b>	<b>\$ 115,134.02</b>	<b>\$ 4,682.35</b>
<b>LESS—Interest and Premium—</b>			
Interest—1st Mtg. Bonds.....	\$ 8,682.00	\$ 13,592.00	\$ 4,910.00
Interest—2d Mtg. Bonds.....	25,502.78	26,502.78	.....
Interest—Current Debt.....	122.86	67.82	54.04
<b>TOTAL CHARGES.....</b>	<b>\$ 34,307.64</b>	<b>\$ 39,162.60</b>	<b>\$ 4,854.96</b>
<b>NET EARNINGS.....</b>	<b>\$616,487.49</b>	<b>\$ 710,473.66</b>	<b>\$ 93,986.17</b>
<b>LESS—Depreciation—Leaseholds.....</b>	<b>\$334,665.03</b>	<b>\$ 371,637.90</b>	<b>\$ 37,552.87</b>
<b>Depreciation—Plant.....</b>	<b>\$242,402.64</b>	<b>\$ 222,669.12</b>	<b>\$ 19,733.52</b>
<b>PROFIT AND LOSS SURPLUS.....</b>	<b>\$ 19,534.81</b>	<b>\$ 58,201.22</b>	<b>\$ 38,666.41</b>

Figures in black face type appear in red on original statement.

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## PLAINTIFF'S EXHIBIT 16.

*Supplemental Affidavit No. 2 of V. A. Hays, Auditor for Plaintiff Receivers.*

STATE OF KANSAS,  
Wyandotte County, ss:

V. A. Hays, being first duly sworn according to law, deposes and says:

That in addition to the statements made in his supplemental affidavit No. 1, affiant states that the reason the business of the plaintiff receiver shows a decrease of \$37,000 in net earnings during the first three months of 1916 over the same period of 1915, is that the receiver was unable to obtain the same amount of natural gas for the three months of 1916 that he was able to obtain during the same period of 1915; that the receiver was able to sell to consumers every foot of natural gas that he was able to produce and purchase during the period mentioned in 1916; that the receiver made diligent efforts to secure every foot of natural gas within the reach of the present pipe lines of the receiver.

That the temperature affects the consumption of natural gas—the lower temperature the greater the consumption of natural gas. That the mean temperature, as shown by the records of the United States Weather Bureau, was lower during the months of January and February, 1916, than the mean temperature during the same months of 1915.

That the mean temperature during the month of March, 1916, was higher than the mean temperature during the month of March, 1915.

That affiant has read the affidavit of M. A. Chambers, filed in this action by the Public Utilities Commission of the state of  
1769 Kansas, and has examined the tables and other data contained therein; that affiant is well acquainted with M. A. Chambers and knows when and where the investigation was made by said Chambers on which said tables and affidavit purport to be based; that said Chambers made his investigation of the books of the Receiver at Independence, Kansas, during the month of November, 1915, after the conclusion of the hearing before the Public Utilities Commission on the 27th day of October, 1915, and before the 10th day of December, 1915, when said Commission delivered its opinion and made its order on the application of the receivers for authority to increase the rates; that said Chambers spent about fifteen days in the investigation and examination of the books of the receiver during the said month of November, 1915; that affiant was present at all hearings before the Public Utilities Commission of Kansas on the application of the receivers for authority to increase the rates of the Kansas Natural Gas Company and that said Chambers did not testify as a witness at any of said hearings and that none of the tables and information contained in his affidavit were presented or considered at said hearings, or any of them.

That the plan suggested in said affidavit and included in the opinion of the Commission, separating the production of natural gas by the receiver from the transportation and distribution of natural gas, and the plan of allocating the property and expenses between the states of Kansas and Missouri contained in said affidavit and in the opinion of said Commission, were not suggested, mentioned or discussed at any of the hearings before said Public Utilities Commission. That no data, tables, information or evidence was presented to the said Commission at any of its hearings from which the separation of the production and transportation of the receiver could be made without obtaining additional evidence from that introduced at the hearings.

That separation of production business from the transportation and distribution business of said receiver is attempted in the opinion of the Commission and shown in Mr. Chambers' affidavit, involves questions of judgment and opinion as to the division of overhead, maintenance, and operation expenses, which are not mere matters of accounting. For example, on the books of the receiver the cost of production is included in the cost of operating the gathering lines from the wells to the trunk line of the receiver, while Mr. Chambers and the Commission in their separation of the production business from the transportation and distribution business have made an arbitrary separation at the wells and have included the gathering lines in the transportation and distribution business.

That the *affidavit* is also acquainted with T. J. Strickler, the Engineer of the Public Utilities Commission of Kansas, and has read said Strickler's affidavit filed in this cause. That on page 42 of said printed affidavit in which said Strickler sets out his report of November 24, 1915, to the Public Utilities Commission of Kansas, the said Strickler has included the item of \$56,379.53 for warehouse stock used in connection with wells, and \$119,267.32 for overhead expenses. That this division of valuation is new and is not contained in the report made by said Strickler of June 30, 1915, and was not contained in any evidence that was introduced before the Commission at any of the hearings. That including the said items in the valuation assigned to production involved matters of judgment and opinion, and is arbitrary and was based on information not introduced before said Commission at any of the hearings.

Subscribed and sworn to before me this 24th day of April, A. D. 1916,

\_\_\_\_\_  
Notary Public.

My commission expires —.



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## PLAINTIFF'S EXHIBIT 18.

*Affidavit of Samuel S. Wyer, Consulting Engineer, on the Cost of Gas at the Gates of the Various Towns Supplied by the Kansas Natural Gas Company and Estimated Cost to Domestic Consumers Without Providing for Extensions.*

STATE OF KANSAS,

County of Wyandotte:

Samuel S. Wyer, being duly sworn according to law, deposes and says:

1. That I am the Consulting Engineer, who on April 1st, 1916, made an 85-page affidavit on the present situation of the Kansas Natural Gas Company.

2. That the property of the Kansas Natural Gas Company is distributed substantially as follows:

	Percentage of total property value.
Field Inventory .....	45
Southern Trunk and Branch Lines, except Pittsburg.....	7
Southern Trunk Branch Line to Pittsburg.....	1
Northern Trunk and Branch Lines, except Parsons, Grabham to Ottawa .....	26.75
Northern Trunk Branch Lines to Parsons.....	1
Northern Trunk Main and Branch Lines, Ottawa to Kansas City .....	9
Northern Trunk Main Line, Ottawa to Topeka "Y".....	2
Northern Trunk Main Line, Topeka "Y" to Atchison "Y" ..	4
Northern Trunk Main Line, Atchison "Y" to St. Joseph..	2
Northern Trunk Branch Line, Topeka "Y" to Topeka....	1.5
Northern Trunk Branch Line, Atchison "Y" to Atchison..	.75
	100.00

1772 3. That, based on the domestic gas sold during the year 1915, the volume distribution in the various parts of the Kansas Natural Gas Company property is estimated as follows:

	M. cu. ft.	
Field Line .....	1,456,266	
Southern Trunk Line .....	2,832,121	
Southern Trunk Pittsburg Branch.....		480,000
Northern Trunk Line, Grabham to Ottawa .....	12,707,782	
Northern Trunk Ottawa to Kansas City....		8,060,356
Northern Trunk Ottawa to Topeka "Y"....		3,509,945
Northern Trunk Topeka "Y" to Topeka....		1,146,708
Northern Trunk Topeka "Y" to Atchison "Y" ..		2,419,897
Northern Trunk Atchison "Y" to St. Joseph ..		877,078
Northern Trunk Atchison "Y" to Atchison..		298,583
Northern Trunk Parsons Branch.....		575,000

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16,996,169

4. That the annual fixed charges for sinking fund to keep the investment intact, legal rate of interest and minimum profit that would attract capital into so hazardous an enterprise will be 15 per cent of the present fair value of the property, or—

15% of \$14,450,000.....	\$2,167,500
That the gas to be purchased will cost.....	1,200,000
That the other operating costs, excluding the two preceding items, will aggregate .....	850,000

Total Income Necessary .....	\$4,217,500
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This does not provide for extensions.

5. The preceding ~~total~~ annual expense of \$4,217,500 is to be prorated over the various parts of the property on the basis of the percentage of total property value, as given in Section 2.

6. The basic rate is taken as the cost of gas at the discharge side of the Grabham Compressing Station. The property value up to the discharge side of the Grabham Compressing Station, listed under Field Inventory in Section 2, embodies all of the field inventory, including leaseholds.

Prorated share of cost—

45% of \$4,217,500 .....	\$1,897,875
--------------------------	-------------

1773 Volume bearing this burden will be total output of 16,996,169 M cu. ft.

$$\text{Basic rate per M cu. ft.} = \frac{1,897,875}{16,996,169} = 11\text{¢}$$

7. That the differential rates to be added to the preceding calculated basic rate are as follows:

A. Southern Trunk and Branch Lines, except Pittsburg:

Prorated share of cost, 7% of \$4,217,500.....	\$295,225.00
Volume bearing this burden = 2,832,121 M cu. ft.	

$$\text{Differential rate per M ft.} = \frac{295,225}{2,832,121} = 10\text{¢}$$

B. Southern Trunk, Pittsburg Branch:

Prorated share of cost, 1% of \$4,217,500.....	\$42,175.00
Volume bearing this burden = 480,000 M cu. ft.	

$$\text{Differential rate per M cu. ft.} = \frac{42,175}{480,000} = 9\text{¢}$$

C. Northern Trunk and Branch Lines, Grabham to Ottawa:

Prorated share of cost, 26.75% of \$4,217,500 . . . \$1,128,181.00  
 Volume bearing this burden = 12,707,782 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{1,128,181}{12,707,782} = 9\text{¢}$$

D. Northern Trunk, Ottawa to Kansas City:

Prorated share of cost, 9% of \$4,217,500 . . . \$379,575.00  
 Volume bearing this burden = 8,060,356 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{379,575}{8,060,356} = 5\text{¢}$$

E. Northern Trunk, Ottawa to Topeka "Y":

Prorated share of cost, 2% of \$4,217,500 . . . \$84,350.00  
 Volume bearing this burden = 3,509,945 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{84,350}{3,509,945} = 2\text{¢}$$

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F. Northern Trunk Line, Topeka "Y" to Topeka:

Prorated share of cost, 1.5% of \$4,217,500 . . . \$63,262.00  
 Volume bearing this burden = 1,146,708 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{63,262}{1,146,708} = 6\text{¢}$$

G. Northern Trunk, Topeka "Y" to Atchison "Y":

Prorated share of cost, 4% of \$4,217,500 . . . \$168,700.00  
 Volume bearing this burden = 2,419,897 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{167,700}{2,419,897} = 7\text{¢}$$

H. Northern Trunk, Atchison "Y" to St. Joseph:

Prorated share of cost 2% of \$4,217,500 . . . \$84,350.00  
 Volume bearing this burden = 877,078 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{84,350}{877,078} = 10\text{¢}$$

## I. Northern Trunk, Atchison "Y" to Atchison:

Prorated share of cost, .75% of \$4,217,500... \$31,631.00  
 Volume bearing this burden = 298,583 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{31,631}{298,583} = 11\text{¢}$$

## J. Northern Trunk, Parsons Branch:

Prorated share of cost, 1% of \$4,217,500..... \$42,175.00  
 Volume bearing this burden = 575,000 M  
 cu. ft.

$$\text{Differential rate per M cu. ft.} = \frac{42,175}{575,000} = 7\text{¢}$$

1775 8. That the wholesale cost of gas in cents per M cu. ft. at the gates of the following towns, and the estimated cost to the domestic consumers, is as follows:

Field Trunk:	Basic rate.	Differential additions from preceding section.	Total net cost at gates of town.	Estimated cost to domestic consumers.
Independence City ....	11	...	11	18
Independence Field ...	11	...	11	18
Elk City .....	11	...	11	18
Mount Valley Field....	11	...	11	18
Caney .....	11	...	11	18
Coffeyville .....	11	...	11	18
Southern Trunk:				
Liberty .....	11	A .....	21	31
Altamont .....	11	A .....	21	31
Oswego .....	11	A .....	21	31
Columbus .....	11	A .....	21	31
Scammon .....	11	A+B .....	30	45
Weir .....	11	A+B .....	30	45
Cherokee .....	11	A+B .....	30	45
Pittsburg .....	11	A+B .....	30	45
Galena .....	11	A .....	21	31
Carl Junction .....	11	A .....	21	31
Oronogo .....	11	A .....	21	31
Joplin .....	11	A .....	21	31
Webb City .....	11	A .....	21	31

	Basic rate.	Differential additions from preced- ing section.	Total net cost at gates of town.	Estimated cost to domestic consumers.
Carterville .....	11	A .....	21	31
Carthage .....	11	A .....	21	31
Northern Trunk:				
Parsons .....	11	C+J .....	27	41
Thayer .....	11	C .....	20	30
Fort Scott Line* .....	11	C .....	20	*
Colony .....	11	C .....	20	30
Welda .....	11	C .....	20	30
Richmond .....	11	C .....	20	30
Princeton .....	11	C .....	20	30
Ottawa .....	11	C .....	20	30
1776				
Le Loup .....	11	C+D .....	25	38
Wellsville .....	11	C+D .....	25	38
Edgerton .....	11	C+D .....	25	38
Gardner .....	11	C+D .....	25	38
Olathe .....	11	C+D .....	25	38
Lenexa .....	11	C+D .....	25	38
Merriam .....	11	C+D .....	25	38
Kansas City, Missouri ..	11	C+D .....	25	38
Kansas City, Kansas. ...	11	C+D .....	25	38
Baldwin .....	11	C+E .....	22	33
Topeka .....	11	C+E+F ...	28	42
Lawrence .....	11	C+E+G ...	29	44
Tonganoxie .....	11	C+E+G ...	29	44
Leavenworth .....	11	C+E+G ...	29	44
Weston .....	11	C+E+G+H	39	59
St. Joseph .....	11	C+E+G+H	39	59
Atchison .....	11	C+E+G+I.	40	60

(Signed)

S. S. WYER.

\*NOTE.—This is measured at the trunk line; the cost through the Gunn Pipe line will be additional.

1777 In the District Court of the United States for the District of  
Kansas, First Division.

Equity.

No. 136-N.

JOHN M. LANDON and R. S. LITCHFIELD, as Receivers of the Kansas  
Natural Gas Company, Plaintiffs,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Supplemental Affidavit No. 3 of V. A. Hays, Auditor for Plaintiff  
Receivers.*

STATE OF KANSAS,  
Montgomery County, ss:

V. A. Hays, being first duly sworn, on his oath, deposes and says:

That the attached statement marked Exhibit "A," and made a  
part hereof, is a true and correct Profit and Loss Statement, showing  
the operations of the Receivers for the four months ending April  
30th, 1915; that the attached statement marked Exhibit "B," and  
made a part hereof, is a true and correct Profit and Loss Statement,  
showing the operations of the Receivers for the four months ending

April 30th, 1916; that the attached statement marked Ex-  
1778 hibit "C," and made a part hereof, is a true and correct Com-  
parative Summary of the operations of the Receivers for the  
first four months of the years 1915 and 1916, showing the increase  
or decrease in each item of Income or Expenditure, also showing a  
decrease of over \$71,774.45 in Net Earnings for the year 1916, as  
compared with the same period in 1915, notwithstanding the fact  
that the sale price to consumers in the state of Kansas during the  
year 1916 period was 28c per M cubic feet net as compared with 25c  
net during the same period in 1915.

That the actual experience of the first four months of 1916 and a  
careful estimate for the balance of the year show:

That the income for the entire year will be approximately \$2,-  
830,000.00. As shown by the table on page seven of my affidavit of  
April 17, 1916, we should have an income of \$3,832,000.00, showing  
a deficit of \$1,002,000.00 for the year.

Affiant further saith:

That the competition of the Oklahoma smelters has become so  
keen within the past thirty days that producers from whom we have  
been purchasing gas, have given notice that unless we increase the  
price to them, they will discontinue supplying us and sell to the  
smelters. As an example, one producer from whom we have been  
taking about twelve million cubic feet per day has demanded that the  
price paid him be increased from 3½c to 6c. The demands of these

# EXHIBIT "A".

## Profit and Loss Statement—For Four Months Ending April 30, 1915

	January	February	March	April	Total
<b>GROSS INCOME—</b>					
Gas Sales—Kansas.....	\$375,002.45	\$343,315.26	\$350,344.25	\$381,417.06	\$1,350,119.02
Oil Sales—Kansas.....	204.76	114.37	181.29	181.29	581.71
Oil Sales—Oklahoma.....	1,037.36	286.46	1,530.81	1,481.15	2,935.82
Miscellaneous.....	2,394.79	4,318.51	1,530.81	2,510.97	12,753.98
<b>TOTAL INCOME.....</b>	<b>\$380,239.36</b>	<b>\$348,033.40</b>	<b>\$353,228.80</b>	<b>\$384,309.28</b>	<b>\$1,366,410.84</b>
<b>LESS—Operating Expenses—</b>					
Gas Purchased—Kansas.....	\$ 8,462.80	\$ 7,710.69	\$ 7,919.81	\$ 7,004.56	\$ 31,113.86
Gas Purchased—Oklahoma.....	122,337.53	94,675.47	100,147.00	58,670.39	375,830.39
Gas Purchased—Quapaw.....	78.32	673.82	726.93	517.50	2,696.60
<b>TOTAL LESS—Operating Expenses.....</b>	<b>\$122,469.65</b>	<b>\$103,059.98</b>	<b>\$108,893.74</b>	<b>\$66,192.45</b>	<b>\$400,615.85</b>
<b>GAS EXPENSE—</b>					
Gas Expense.....	\$ 71,021.04	\$ 67,750.19	\$ 68,284.47	\$ 62,744.19	\$ 269,880.89
Oil Expense—Kansas.....	1,739.62	1,558.50	2,822.92	1,830.65	7,810.79
Oil Expense—Oklahoma.....	1,813.86	2,239.43	2,621.45	2,127.85	\$ 9,912.62
<b>BAD ACCOUNTS—Gas.....</b>	<b>\$ 3,186.02</b>	<b>\$ 2,286.01</b>	<b>\$ 3,101.80</b>	<b>\$ 2,262.57</b>	<b>\$ 10,846.40</b>
<b>LESS—Property Rentals—</b>					
K. C. P. L. Co. Property.....	\$207,644.50	\$175,510.41	\$172,921.16	\$123,237.69	\$ 679,403.76
Magnet Mining Co.....	26,232.48	22,756.03	22,210.50	22,774.72	\$ 97,603.74
<b>LESS—Interest and Premium—</b>					
Interest—1st Mtg. Bonds.....	15,866.40	15,335.00	14,310.00	12,385.00	\$ 57,896.40
Interest—2d Mtg. Bonds.....	38,623.49	39,091.03	37,520.50	36,109.72	\$ 151,344.74
Interest—Current Debt.....	4,016.00	2,804.00	2,372.00	2,273.00	\$ 13,465.00
<b>TOTAL CHARGES.....</b>	<b>\$258,801.46</b>	<b>\$229,439.96</b>	<b>\$222,232.25</b>	<b>\$171,244.17</b>	<b>\$ 881,717.83</b>
<b>NET INCOME.....</b>	<b>\$121,437.91</b>	<b>\$119,193.44</b>	<b>\$130,996.55</b>	<b>\$112,065.11</b>	<b>\$ 484,693.01</b>
<b>LESS—Depreciation—Leaseholds.....</b>	<b>\$197,226.20</b>	<b>\$110,937.44</b>	<b>\$104,496.48</b>	<b>\$ 97,017.28</b>	<b>\$ 419,686.40</b>
<b>Depreciation—Plant.....</b>	<b>\$ 20,797.20</b>	<b>\$ 30,744.00</b>	<b>\$ 27,490.83</b>	<b>\$ 16,432.17</b>	<b>\$ 74,743.80</b>
<b>PROFIT AND LOSS SURPLUS.....</b>	<b>\$ 2,914.51</b>	<b>\$ 78,511.99</b>	<b>\$ 99,009.22</b>	<b>\$ 98,547.64</b>	<b>\$ 279,083.36</b>

Figures in Black Type appear in red on original statement.



# EXHIBIT "H".

## Profit and Loss Statement—For Four Months Ending April 30, 1912.

	January	February	March	April	Total
<b>GROSS INCOME—</b>					
Gas Sales.....	\$250,439.25	\$109,221.41	\$264,482.76	\$283,166.55	\$1,227,759.97
Oil Sales—Kansas.....	365.24	351.61	419.29	441.71	1,581.95
Oil Sales—Oklahoma.....					
Miscellaneous.....	1,802.05	1,916.69	1,296.21	1,196.99	6,211.95
<b>TOTAL INCOME</b>	<b>\$252,607.54</b>	<b>\$211,549.62</b>	<b>\$266,198.26</b>	<b>\$285,008.25</b>	<b>\$1,235,563.77</b>
<b>LESS—Operating Expense—</b>					
Gas Purchased—Kansas.....	\$ 28,806.21	\$ 26,705.60	\$ 28,132.36	\$ 28,505.60	\$ 112,149.77
Gas Purchased—Oklahoma.....	66,724.78	57,559.98	61,774.57	70,524.73	256,459.06
Gas Purchased—Quapaw.....	569.25	972.87	598.27	661.37	3,203.86
<b>TOTAL</b>	<b>\$ 96,421.19</b>	<b>\$ 45,278.45</b>	<b>\$ 90,502.30</b>	<b>\$ 99,691.70</b>	<b>\$ 372,193.64</b>
<b>Gas Expense</b>	<b>\$ 64,988.84</b>	<b>\$ 62,061.65</b>	<b>\$ 65,589.27</b>	<b>\$ 59,403.68</b>	<b>\$ 251,544.14</b>
Expenses—Kansas.....	202.81	317.92	318.94	326.43	1,266.11
Oil Expense—Oklahoma.....					
<b>Had Accounts—Gas</b>	<b>\$ 302.81</b>	<b>\$ 317.92</b>	<b>\$ 318.94</b>	<b>\$ 326.43</b>	<b>\$ 1,266.11</b>
<b>LESS—Property Rentals—</b>					
K. C. P. L. Co. Property.....	\$ 2,922.49	\$ 2,317.56	\$ 1,999.55	\$ 1,989.62	\$ 9,239.22
Magnet Mining Co. Property.....	\$183,235.53	\$149,722.58	\$158,713.60	\$161,470.82	\$ 633,182.54
<b>TOTAL</b>	<b>\$ 216,158.02</b>	<b>\$ 152,040.14</b>	<b>\$ 160,713.15</b>	<b>\$ 163,460.44</b>	<b>\$ 633,182.54</b>
<b>LESS—Interest and Premium—</b>					
Interest—1st Mtg. Bonds.....	\$ 32,151.07	\$ 32,975.00	\$ 21,230.00	\$ 21,390.00	\$ 117,746.07
Interest—2d Mtg. Bonds.....	15,646.00	15,646.00	14,845.00	12,642.00	58,879.00
Interest—Current Debt.....	\$ 25,796.67	\$ 8,679.00	\$ 36,925.00	\$ 24,035.00	\$ 95,435.67
<b>TOTAL</b>	<b>\$ 73,593.74</b>	<b>\$ 57,290.00</b>	<b>\$ 72,900.00</b>	<b>\$ 58,067.00</b>	<b>\$ 261,850.74</b>
<b>TOTAL CHARGES</b>	<b>\$219,851.76</b>	<b>\$209,330.14</b>	<b>\$233,613.15</b>	<b>\$221,527.44</b>	<b>\$ 884,322.49</b>
<b>NET INCOME</b>	<b>\$33,755.78</b>	<b>\$102,219.48</b>	<b>\$33,485.11</b>	<b>\$63,480.81</b>	<b>\$ 233,940.28</b>
<b>LESS—Depreciation—Leaseholds.</b>					
Depreciation—Plant.....	\$ 97,498.56	\$ 32,350.40	\$ 62,353.25	\$ 54,944.88	\$ 247,146.09
<b>TOTAL</b>	<b>\$ 97,498.56</b>	<b>\$ 32,350.40</b>	<b>\$ 62,353.25</b>	<b>\$ 54,944.88</b>	<b>\$ 247,146.09</b>
<b>PROFIT AND LOSS SURPLUS</b>	<b>\$ 240,257.22</b>	<b>\$ 70,869.08</b>	<b>\$ 27,131.86</b>	<b>\$ 8,535.93</b>	<b>\$ 346,894.15</b>

Items in Black Face type appear in red in original statement.

**EXHIBIT "C"**  
**Comparative Profit and Loss Statement—Four Months Ended April 30th**

	1910	1915	Increase Decrease
<b>GROSS INCOME—</b>			
Gas Sales.....	\$1,227,769.97	\$1,850,319.02	\$622,549.05
Oil Sales—Kansas.....	1,681.95	511.52	970.43
Oil Sales—Oklahoma.....		2,324.82	2,324.82
Miscellaneous.....	6,211.85	12,752.98	6,541.13
<b>TOTAL INCOME.....</b>	<b>\$1,235,663.77</b>	<b>\$1,863,810.34</b>	<b>\$628,146.57</b>
<b>LESS—Operating Expense—</b>			
Gas Purchased—Kansas.....	\$ 112,149.77	\$ 31,141.86	\$ 81,007.91
Gas Purchased—Oklahoma.....	256,650.01	375,860.99	119,210.98
Gas Purchased—Quapaw.....	3,393.86	2,646.00	747.86
<b>Gas Expense.....</b>	<b>\$ 372,193.64</b>	<b>\$ 409,648.85</b>	<b>\$ 37,455.21</b>
<b>Oil Expense—Kansas.....</b>	<b>\$ 251,644.14</b>	<b>\$ 249,888.89</b>	<b>\$ 1,655.25</b>
<b>Oil Expense—Oklahoma.....</b>	<b>1,266.14</b>	<b>7,208.83</b>	<b>5,942.69</b>
<b>Had Accounts—Gas.....</b>	<b>\$ 1,266.14</b>	<b>\$ 9,019.62</b>	<b>\$ 7,753.48</b>
<b>LESS—Property Rentals—</b>			
K. C. P. Co. Property.....	\$ 88,906.87	\$ 97,002.74	\$ 8,095.87
Marnett Mining Co. Property.....	55,586.60	84,346.60	28,760.00
<b>LESS—Interest and Premium—</b>			
Interest—1st Mtg. Bonds.....	\$ 10,832.90	\$ 16,864.00	\$ 6,031.10
Interest—2d Mtg. Bonds.....	34,005.00	34,005.00	
Interest—Current Debt.....	189.00	101.33	87.67
<b>TOTAL CHARGES.....</b>	<b>\$ 45,025.00</b>	<b>\$ 50,970.33</b>	<b>\$ 5,945.33</b>
<b>NET EARNINGS.....</b>	<b>\$ 822,643.21</b>	<b>\$ 881,717.83</b>	<b>\$ 59,074.62</b>
<b>LESS—Depreciation—Leaseholds.....</b>	<b>\$ 412,918.55</b>	<b>\$ 484,693.01</b>	<b>\$ 71,774.45</b>
<b>Depreciation—Plant.....</b>	<b>\$ 308,247.52</b>	<b>\$ 419,686.40</b>	<b>\$ 111,438.88</b>
<b>PROFIT AND LOSS SURPLUS.....</b>	<b>\$ 101,477.14</b>	<b>\$ 137,638.42</b>	<b>\$ 36,161.28</b>

Figures in Black Face type appear in red on original statement.



producers must be complied with or we will lose the supply. This forced increase means that the amount that will actually be paid for gas purchased in 1916 will be considerably more than the estimated amount shown in the table above referred to.

Further affiant saith not.

V. A. HAYS.

Subscribed and sworn to before me this 17th day of May, 1916.

[SEAL.]

WALTER S. SICKELS,

*Notary Public.*

My commission expires Sept. 24, 1916.

(Here follow Exhibits A, B and C, marked pp. 1779, 1780, 1781, and 1782.)

1783    In the District Court of the United States for the District of  
         Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
         Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
         Defendants.

*Præcipe for Transcript of Record.*

To the Clerk :

You will please prepare the transcript of the record in the above  
entitled case to be filed in the office of the clerk of the Supreme  
Court of the United States under and pursuant to the joint appeal  
heretofore taken to said court in this case by the Kansas City Gas  
Company, The Wyandotte County Gas Company, Fidelity Trust  
Company and The Kansas City Pipe Line Company; and you will  
please include in said transcript of the record the following plead-  
ings, proceedings, evidence and papers on file in your office, to-wit :

1784	Subject.	Filed.
1.	Bill of Complaint, as amended . . . . .	12/29/15
	(Omitting all exhibits thereto except the follow- ing, which include, to-wit:)	
	Exhibit B—Rates provided by franchises in prin- cipal cities supplied by Kansas Natural Gas Com- pany and rates in effect prior to . . .	12/10/15
	Exhibit C—Schedule showing rates in effect in Kansas . . . . .	1/ 1/11
	Exhibit F—Schedule of rates filed with Public Utili- ties Commission of Kansas by Landon and Litch- field . . . . .	4/ 9/15
	Exhibit K—Opinion of Public Utilities Commission of Kansas on Landon's petition for rehearing in Landon, et al. v. Cities of Lawrence, et al., No. 1035, and "28-cent" order of Public Utilities Com- mission authorizing a schedule of rates, thereto attached, dated . . . . .	12/10/15
	Exhibit M—Schedule of rates filed by Landon & Litchfield and order of Public Utilities Commis- sion approving same, attached thereto, dated 12/28/15	

Subject.	Filed.
2. Answer of Kansas Natural Gas Company..... (Omitting exhibits.)	3/ 6/16
2-A. Second Answer of Kansas Natural Gas Company .....	
1785	
3. Subpoenas issued and service made on Kansas City Missouri, St. Joseph, Missouri, Joplin, Missouri, Public Service Commission of Missouri and its members and officers and the Attorney-General of Missouri, and Kansas City Gas Company of Missouri .....	
4. Answer of the Wyandotte County Gas Company... (Omitting exhibits.)	3/ 9/16
5. Answer of S. M. Brewster, Attorney-General of the State of Kansas .....	3/11/16
(Omitting exhibits.)	
6. Answer of the Public Utilities Commission of Kansas .....	
(Omitting exhibits.)	
7. Answer of the Fidelity Title & Trust Company....	4/ 4/16
8. Answer of George F. Sharitt, as receiver of the Kan- sas Natural Gas Company.....	4/ 4/16
1786	
9. Answer and Counter-claim of Kansas City Gas Com- pany .....	4/27/16
(Omitting exhibits.)	
10. Answer of Public Service Commission of Missouri, and John T. Barker, Attorney-General.....	5/26/16
Exhibit A—Order of Public Service Commission sus- pending schedule of Carl Junction Gas Company 10/29/15	
Exhibit B—Order of Public Service Commission dis- missing schedule of Carl Junction Gas Company 1/17/16	
Exhibit C—Order of Public Service Commission sus- pending schedule of Oronogo Gas Company.... 10/29/15	
Exhibit D—Order of Public Service Commission dis- missing schedule of Oronogo Gas Company..... 1/17/16	
11. Opinion and Temporary Injunction Order of En- larged Court .....	6/ 3/16

	Subject.	Filed.
12.	Reply of Plaintiff to Answer and Counter-claim of Kansas City Gas Company.....	10/11/16
1787		
13.	Petition to Dissolve Injunction and Supplemental Answer, Counter-claim and Cross-bill of the Wyandotte County Gas Company.....	10/11/16
	(Omitting exhibits.)	
14.	Supplemental Bill of Complaint.....	10/11/16
	(Omitting all exhibits thereto except the follow- ing, which include, to-wit:)	
	Exhibit 2—Schedule of rates and application for ap- proval thereof filed with Public Service Commis- sion of Missouri by Kansas City Gas Company...	8/10/16
	Exhibit 3—Order of Public Service Commission of Missouri approving schedule of Kansas City Gas Company .....	8/10/16
	Exhibit 4—Petition of Kansas City Gas Company filed in Circuit Court of Jackson County, Mo., in Kansas City Gas Company v. Kansas Natural Gas Co., John M. Landon, Receiver, and George F. Sharitt, Receiver, No. 104,443. ....	8/23/16
	Exhibit 5—Order of Public Service Commission of Missouri suspending schedule of rates in Weston, Missouri .....	9/20/16
	Exhibit 6—Complaint of City of Joplin filed with Public Service Commission of Missouri. 9/ 2/16	
	Exhibit 7—Order of Public Service Commission of Missouri suspending schedule of rates in Joplin, Missouri .....	9/ 8/16
1788		
	Exhibit 8—Notice of Public Service Commission of Missouri to Joplin, Mo. ....	9/19/16
	Exhibit 9—Order of Public Service Commission of Missouri suspending schedule of rates in Nevada, Mo. ....	9/22/16
	Exhibit 10—Additional Notice of Public Service Commission of Missouri to Carl Junction Gas Company .....	9/ 1/16
	Exhibit 11—Additional Notice of City Attorney of Carl Junction, Mo., to Carl Junction Gas Com- pany .....	9/19/16



	Subject.	Filed.
	Exhibit 14—Schedule of The Wyandotte County Gas Company filed with the Public Utilities Commission of Kansas.....	8/12/16
	Exhibit 16—Schedule filed with Public Utilities Commission of Kansas by Landon....	9/20/16
	Exhibit 17—Order of Public Utilities Commission of Kansas in re schedule filed by Landon.....	9/21/16
	Exhibit 23—Letter by City of Kansas City, Mo., by Mr. Harzfeld, in answer to circular received from Mr. Landon.....	6/27/16
	Exhibit 27—Motion of State of Kansas for discharge of Receiver and dismissal of case filed in the District Court of Montgomery County, Kansas.....	8/23/16
15.	Reply of Plaintiff to Petition to Dissolve Injunction and Supplemental Answer, Counter-claim and Cross-bill of the Wyandotte County Gas Company	10/11/16
	(Omitting exhibits.)	
1789		
16.	Intervening Petition of S. M. Brewster, Attorney-General of Kansas .....	10/11/16
	(Omitting exhibits.)	
17.	Second Amended Intervening Petition of The Kansas City Pipe Line Company .....	10/12/16
	(Omitting exhibits.)	
18.	Answer of Public Service Commission of Missouri and John T. Barker, Attorney-General, to Supplemental Bill of Complaint.....	10/18/16
	Exhibit 1—Complaint of Kansas City Gas Company filed with Public Service Commission of Missouri	8/10/16
	Exhibit 2—Notice of and order to answer or satisfy above complaint .....	8/10/16
	Exhibit 3—Order of Public Service Commission of Missouri suspending schedule of rates filed by Carl Junction Gas Company.....	8/17/16
1790		
19.	Amended Answer of Kansas City Gas Company to Bill of Complaint and Answer to Supplemental Bill of Complaint .....	10/18/16
	(Omitting all exhibits thereto except the following, which include, to-wit:)	

	Subject.	Filed.
	Exhibit A—Notice of John M. Landon of filing and presentation in the District Court of Montgomery County, Kansas, of his report and application for instructions . . . . .	6/12/16
	Exhibit B—Letter of Kansas City Gas Company, by Mr. Dana, in answer to circular from Mr. Landon . . . . .	6/27/16
	Exhibit C—Letter and schedule sent to Kansas City Gas Company by Mr. Landon . . . . .	8/ 4/16
	Exhibit D—Notice of John M. Landon to Kansas City Gas Company of 18 cent rate . . . . .	8/12/16
	Exhibit E—Letter from John M. Landon to Kansas City Gas Co. . . . .	8/12/16
	Exhibit F—Letter of Kansas City Gas Company, by Mr. Dana, in answer to letters from Mr. Landon of 8/4/16 and 8/12/16. . . . .	8/18/16
	Exhibit G—Letter of John M. Landon to Kansas City Gas Co., in answer to Kansas City Gas Co.'s letter of 8/18/16 . . . . .	8/22/16
	Exhibit H—Letter of Kansas City Gas Co., by Mr. Dana, in answer to letter from Mr. Landon of 8/22/16 . . . . .	8/26/16
	Exhibit I—Letter of Kansas City Gas Co., by Mr. Salathiel, answering letter by Kansas City Gas Co., of 8/26/16 . . . . .	9/11/16
	Exhibit J—Letter of Kansas City Gas Co., by Mr. Dana, to Kansas Natural Gas Co., answering letter written by Mr. Salathiel of 9/11/16. . . . .	9/20/16
1791		
20.	Answer of Kansas City Gas Company to Joint Bill of Complaint of "Separate Answer" of George F. Sharitt, Receiver . . . . .	10/18/16
21.	Answer of Kansas City Gas Company to Joint Bill of Complaint Designated "Separate Answer of the Kansas Natural Gas Company" . . . . .	10/18/16
22.	Amended Answer of the Wyandotte County Gas Company to Bill of Complaint and Answer to Supplemental Bill of Complaint . . . . .	10/18/16
	(Exhibits thereto are the same in form and substances as those attached to Amended Answer of Kansas City Gas Company to Bill of Complaint and Answer to Supplemental Bill of Complaint, and may be omitted.)	
23.	Answer of the Wyandotte County Gas Company to Joint Bill of Complaint or "Separate Answer" of George F. Sharitt, Receiver . . . . .	10/18/16

Subject.	Filed.
24. Answer of the Wyandotte County Gas Company to Joint Bill of Complaint Designated "Separate Answer of the Kansas Natural Gas Company" . . . . .	10/18/16
1792	
25. Report and Application of John M. Landon, Receiver, for Instructions with Reference to Supply-contracts . . . . .	10/18/16
Exhibit 1—Report and Application of the Receiver for Instructions in Reference to Supply-contracts, filed in the District Court of Montgomery County, Kansas . . . . .	10/16/16
Exhibit 2—Findings of Fact, Conclusions of Law and Order on the Validity and Adoption by the Receiver of the Supply-contracts between the Kansas Natural Gas Company and the Various Distributing Companies, entered in the District Court of Montgomery County, Kansas . . . . .	10/16/16
Exhibit A to Exhibit 2—Petition in State ex rel. v. Kansas Natural, No. 17,977, in the Supreme Court of Kansas . . . . .	12/12/11
Order of Supreme Court of Kansas in above case . . . . .	4/30/12
26. Motion to Dismiss and Dissolve Injunction as to the Public Utilities Commission of Kansas . . . . .	12/ 6/16
(Omitting exhibits.)	
27. Opinion and Decision against Kansas Defendants . . . . .	4/21/17
1793	
28. Decree against Kansas Defendants . . . . .	7/ 5/17
29. Assignment of Errors by Public Utilities Commission of Kansas, et al. . . . .	7/ 5/17
30. Appeal and Allowance of Public Utilities Commission of Kansas, et al. . . . .	7/ 5/17
31. Appeal Bond of Public Utilities Commission of Kansas, et al. . . . .	7/ 5/17
32. Citation on Behalf of Public Utilities Commission of Kansas, et al. . . . .	7/ 5/17
33. Supplemental Answer of Kansas City Gas Company . . . . .	7/11/17
34. Supplemental Answer of the Wyandotte County Gas Company . . . . .	7/11/17
35. Opinion and Decision against Missouri and Kansas Defendants . . . . .	8/13/17
1794	
36. Final Decree against Missouri and Kansas Defendants . . . . .	8/13/17

	Subject.	Filed.
37.	Answer of Kansas City, Missouri.....	
38.	Special Appearance and Motion of Kansas City, Missouri, to Quash Service of Subpoena.....	
39.	Motion of Kansas City, Missouri, to Dismiss Bill of Complaint as to it .....	
40.	Motion of Kansas City, Missouri, that its Defenses in Point of Law Be Separately Heard and Disposed of before the Trial, and to Dismiss the Bill of Com- plaint as to it .....	
41.	Answer of Kansas City, Missouri, to the Supple- mental Bill of Complaint .....	
1795		
42.	Answer of the City of Joplin, Missouri, to Bill of Complaint .....	
43.	Answer of the City of St. Joseph, Missouri, to Bill of Complaint .....	
44.	Assignment of Errors by Kansas City Gas Company	10/25/17
45.	Assignment of Errors by the Wyandotte County Gas Company .....	10/25/17
46.	Assignment of Errors by Fidelity Trust Company and the Kansas City Pipe Line Company.....	10/25/17
47.	Petition for Allowance of Appeal of Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company, and the Kansas City Pipe Line Company .....	10/25/17
1796		
48.	Motion for Severance by Kansas City Gas Com- pany, the Wyandotte County Gas Company, Fi- delity Trust Company, and the Kansas City Pipe Line Company .....	10/26/17
49.	Motion for Severance by Kansas City, Missouri....	10/31/17
50.	Notice by Kansas City, Missouri, to Defendants to Join in Appeal, and Affidavit on Proof of Service by Benj. M. Powers.....	10/31/17
51.	Notice by Missouri Defendants of Application for Order of Severance, and Affidavit on Proof of Service by Benj. M. Powers.....	10/31/17
52.	Order Continuing Hearing on Above.....	11/ 1/17
53.	Notice by Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company of Motion for Severance and Service Acknowledged....	11/ 3/17
	(Omit other similar papers.)	
1797		
54.	Affidavit on Proof of Service of Notice of Motion for Severance by J. W. Dana .....	11/ 5/17

	Subject.	Filed.
55.	Order of Severance.....	11/ 5/17
56.	Appeal and Allowance of Public Utilities Commission of Kansas, et al. ....	11/ 5/17
57.	Notice by Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company, of Application for Allowance of Appeal and Acknowledgments thereof .....	11/ 6/17
58.	Assignment of Errors of Kansas City, Joplin and St. Joseph, Missouri .....	11/ 8/17
59.	Assignment of Errors by Public Service Commission of Missouri and Attorney-General of Missouri...	11/ 8/17
1798		
60.	Appeal and Allowance of Public Service Commission of Missouri, Attorney-General of Missouri and Kansas City, St. Joseph, and Joplin, Missouri .....	11/ 8/17
61.	Citation on Behalf of Public Service Commission of Missouri, et al. ....	11/ 8/17
62.	Appeal Bond of Public Service Commission of Missouri, et al. ....	11/ 8/17
63.	Assignment of Errors by Public Utilities Commission of Kansas, et al. ....	11/ 9/17
64.	Appeal Bond of Public Utilities Commission of Kansas, et al. ....	11/ 9/17
65.	Order Allowing Joint Appeal to Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company.....	11/ 9/17
1799		
66.	Appeal Bond of Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company .....	11/ 9/17
67.	Citation on Behalf of Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company and acknowledgments thereof.....	11/ 9/17
	(Omit repetition of formal parts.)	
68.	Citation on Behalf of Public Utilities Commission of Kansas, et al. ....	11/15/17
69.	Order Making Transcript of H. H. Horn Part of Record .....	
70.	Order Enlarging Time to File Record .....	
1800		
71.	Statement of the Evidence on Behalf of All Appellants .....	

## Subject.

Filed.

Including all instruments, pleadings, documents, papers and exhibits, together with the endorsements thereon, referred to and described in paragraph 85 of said statement of the evidence; excepting and excluding therefrom the following:

1. Exhibit 10014C—Supply contract, K. C. P. L. Co. to McGowan, Small and Morgan, dated 11/17/06
2. Opinion of U. S. District Court, (Judge Marshall) recorded in 206 Fed., 772..... 6/ 5/13
3. Exhibit 1010—Schedule and Application of Kansas City Gas Company to Public Service Commission of Missouri ..... 8/10/16
- Exhibit 1011—Order of Public Service Commission approving schedule of Kansas City Gas Company ..... 8/10/16

For the reason that they are attached to the Supplemental Bill of Complaint, paragraph 14.

4. Correspondence between Kansas City Gas Company and The Wyandotte County Gas Company, by Mr. Dana, their counsel, and Kansas Natural Gas Company and Mr. Landon, Receiver, by Mr. Salathiel, their counsel, for the reason that same is called for in this praecipe as exhibits to Amended Answer of Kansas City Gas Company and Answer to Supplemental Bill of Complaint, paragraph 19.
5. Report and Application of John M. Landon, Receiver, for Instructions with Reference to Supply-contracts, the same being the pleading called for in this praecipe, paragraph 25.

1801

6. Affidavit of Samuel S. Wyer; affidavits of John M. Landon and V. A. Hays; plaintiff's Exhibits No. 15 and 16, containing supplemental affidavit of V. A. Hays; plaintiff's Exhibit No. 18, the affidavit of S. S. Wyer; plaintiff's Exhibit No. 23, containing supplemental affidavit No. 3 of V. A. Hays.
72. Praecipe Filed by Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company .....
73. Praecipe filed by Public Service Commission of Missouri, William G. Busby, Edwin J. Bean, David

E. Blair, Noah W. Simpson and Edward Flad,  
as the Public Service Commission of Missouri,  
Alex Z. Patterson, Attorney for Public Service  
Commission of Missouri, Frank W. McAllister,  
Attorney General of the State of Missouri, and  
Cities of Kansas City, Joplin, and St. Joseph,  
Missouri .....

(Omitting all parts thereof identical to the præcipe  
filed by Kansas City Gas Company, The Wyandotte  
County Gas Company, Fidelity Trust  
Company and The Kansas City Pipe Line Com-  
pany.)

1802

74. Præcipe Filed by Public Utilities Commission of  
Kansas, et al. ....

(Omitting all parts thereof identical to the præcipe  
filed by Kansas City Gas Company, The Wyandotte  
County Gas Company, Fidelity Trust  
Company and The Kansas City Pipe Line Com-  
pany.)

75. Notice of Lodgment of Statement of Evidence and  
Filing of Præcipe, Given by Kansas City Gas  
Company, The Wyandotte County Gas Company,  
Fidelity Trust Company and the Kansas City  
Pipe Line Company .....

76. Notice of Lodgment of Statement of Evidence and  
Filing of Præcipe, Given by Public Service Com-  
mission of Missouri, et al. ....

The intent and purpose hereof being to avoid a duplication of  
any matter attached to any pleading and introduced or embraced in  
the statement of the evidence. Said transcript to be prepared as re-  
quired by law and the rules of this court and the United States Su-  
preme Court and transmitted to the office of the clerk of the United  
States Supreme Court pursuant to the citation issued herein.

J. W. DANA,

*Solicitor for Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity  
Trust Company, and The Kansas City Pipe  
Line Company.*

Filed in the District Court on Dec. 1, 1917. Morton Albaugh,  
Clerk.



1803 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANSON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Præcipe of Defendants, The Public Service Commission of the State of Missouri, William G. Bushy, Edwin J. Bean, David E. Blair, Noah W. Simpson, and Edward Flad, as The Public Service Commission of the State of Missouri; Alex. Z. Patterson, as Attorney for The Public Service Commission of the State of Missouri; Frank W. McAllister, as Attorney General of the State of Missouri; the City of Kansas City, Missouri; the City of Joplin, Missouri, and the City of St. Joseph, Missouri.*

Come now the defendants and appellants, the Public Service Commission of the State of Missouri, William G. Bushy, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the City of Kansas City, Missouri, the City of Joplin, Missouri, and the City of St. Joseph, Missouri, and pursuant to Equity Rule 75 and Rule 8 of the Supreme Court of the United States, and for the purpose of enabling the clerk to prepare the record for the appeal herein from the decree of the District Court of the United States for the District of Kansas, First Division, to the Supreme Court of the United States, hereby request the clerk to incorporate into the transcript of the record on such appeal the portions of the record which are hereinafter indicated, to-wit:

1804

Subject.

Filed.

1. Bill of Complaint, as amended. . . . . 12/29/15

(Omitting all exhibits thereto except the following, which include, to-wit:)

Exhibit B—Rates provided by franchises in principal cities supplied by Kansas Natural Gas Company and rates in effect prior to. . . 12/10/15

## Subject.

\*Filed.

- Exhibit C—Schedule showing rates in effect in Kansas ..... 1/ 1/11
- Exhibit F—Schedule of rates filed with Public Utilities Commission of Kansas by Landon and Litchfield ..... 4/ 9/15
- Exhibit K—Opinion of Public Utilities Commission of Kansas on Landon's petition for rehearing in Landon, et al. v. Cities of Lawrence, et al., No. 1035, and "28-cent" order of Public Utilities Commission authorizing a schedule of rates, thereto attached, dated ..... 12/10/15
- Exhibit M—Schedule of rates filed by Landon & Litchfield and order of Public Utilities Commission approving same, attached thereto, dated 12/28/15
2. Answer of Kansas Natural Gas Company..... 3/ 6/16  
(Omitting exhibits.)
- 2A. Joint Bill of Complaint and Separate Answer of Kansas Natural Gas Company.....  
(None filed.)
- 2B. Joint Bill of Complaint and Separate Answer of George F. Sharritt, Receiver of Kansas Natural Gas Company .....  
(None filed.)
3. Subpoenas issued and service made on Kansas City Missouri, St. Joseph, Missouri, Joplin, Missouri, Public Service Commission of Missouri and its members and officers and the Attorney-General of Missouri .....  
(None filed.)
4. Answer of the Wyandotte County Gas Company... 3/ 9/16  
(Omitting exhibits.)
5. Answer of S. M. Brewster, Attorney-General of the State of Kansas ..... 3/11/16  
(Omitting exhibits.)
6. Answer of the Public Utilities Commission of Kansas .....  
(Omitting exhibits.)
- 1805
7. Answer of the Fidelity Title & Trust Company... 4/ 4/16
8. Answer of George F. Sharritt, as receiver of the Kansas Natural Gas Company..... 4/ 4/16

	Subject.	Filed.
9.	Answer and Counter-claim of Kansas City Gas Company ..... (Omitting exhibits.)	4/27/16
10.	Answer of Public Service Commission of Missouri, and John T. Barker, Attorney-General..... (Omitting all exhibits thereto except the following, which include, to-wit:)	5/26/16
	Exhibit A—Order of Public Service Commission suspending schedule of Carl Junction Gas Company .....	10/29/15
	Exhibit B—Order of Public Service Commission dismissing schedule of Carl Junction Gas Company .....	1/17/16
	Exhibit C—Order of Public Service Commission suspending schedule of Oronogo Gas Company.....	10/29/15
	Exhibit D—Order of Public Service Commission dismissing schedule of Oronogo Gas Company.....	1/17/16
11.	Opinion and Temporary Injunction Order of Enlarged Court .....	6/ 3/16
12.	Reply of Plaintiff to Answer and Counter-claim of Kansas City Gas Company.....	10/11/16
13.	Petition to Dissolve Injunction and Supplemental Answer, Counter-claim and Cross-bill of the Wyandotte County Gas Company..... (Omitting exhibits.)	10/11/16
14.	Supplemental Bill of Complaint..... (Omitting all exhibits thereto except the following, which include, to-wit:)	
	Exhibit 2—Schedule of rates and application for approval thereof filed with Public Service Commission of Missouri by Kansas City Gas Company...	8/10/16
	Exhibit 3—Order of Public Service Commission of Missouri approving schedule of Kansas City Gas Company .....	8/10/16
	Exhibit 4—Petition of Kansas City Gas Company filed in Circuit Court of Jackson County, Mo., in Kansas City Gas Company vs. Kansas Natural Gas Co., John M. Landon, Receiver, and George F. Sharitt, Receiver, No. 104,443.....	8/23/16

1806

## Subject.

Filed.

- Exhibit 5—Order of Public Service Commission of Missouri suspending schedule of rates in Weston, Missouri ..... 9/20/16
- Exhibit 6—Complaint of City of Joplin filed with Public Service Commission of Missouri ..... 9/ 2/16
- Exhibit 7—Order of Public Service Commission of Missouri suspending schedule of rates in Joplin, Missouri ..... 9/ 8/16
- Exhibit 8—Notice of Public Service Commission of Missouri to Joplin, Mo. .... 9/19/16
- Exhibit 9—Order of Public Service Commission of Missouri suspending schedule of rates in Nevada, Mo. .... 9/22/16
- Exhibit 10—Additional Notice of Public Service Commission of Missouri to Carl Junction Gas Company ..... 9/ 1/16
- Exhibit 11—Additional Notice of City Attorney of Carl Junction, Mo., to Carl Junction Gas Company ..... 9/19/16
- Exhibit 14—Schedule of The Wyandotte County Gas Company filed with the Public Utilities Commission of Kansas. .... 8/12/16
- Exhibit 16—Schedule filed with Public Utilities Commission of Kansas by Landon. .... 9/20/16
- Exhibit 17—Order of Public Utilities Commission of Kansas in re schedule filed by Landon. .... 9/21/16
- Exhibit 23—Letter by City of Kansas City, Mo., by Mr. Harzfeld, in answer to circular received from Mr. Landon. .... 6/27/16
- Exhibit 27—Motion of State of Kansas for discharge of Receiver and dismissal of case filed in the District Court of Montgomery County, Kansas. .... 8/23/16
15. Reply of Plaintiff to Petition to Dissolve Injunction and Supplemental Answer, Counter-claim and Cross-bill of the Wyandotte County Gas Company .....  
(Omitting exhibits.)
- 1807
16. Intervening Petition of S. M. Brewster, Attorney-General of Kansas ..... 10/11/16  
(Omitting exhibits.)  
(Motion to file overruled.)

	Subject.	Filed.
17.	Second Amended Intervening Petition of The Kansas City Pipe Line Company .....	10/12/16
	(Omitting exhibits.)	
	(Motion to file overruled.)	
18.	Answer of Public Service Commission of Missouri and John T. Barker, Attorney-General, to Supplemental Bill of Complaint. ....	10/18/16
	Exhibit 1—Complaint of Kansas City Gas Company filed with Public Service Commission of Missouri	8/10/16
	Exhibit 2—Notice of and order to answer or satisfy above complaint .....	8/10/16
	Exhibit 3—Order of Public Service Commission of Missouri suspending schedule of rates filed by Carl Junction Gas Company. ....	8/17/16
19.	Amended Answer of Kansas City Gas Company to Bill of Complaint and Answer to Supplemental Bill of Complaint .....	10/18/16
	(Omitting all exhibits thereto except the following, which include, to-wit:)	
	Exhibit A—Notice of John M. Landon of filing and presentation in the District Court of Montgomery County, Kansas, of his report and application for instructions .....	6/12/16
	Exhibit B—Letter of Kansas City Gas Company, by Mr. Dana, in answer to circular from Mr. Landon	6/27/16
	Exhibit C—Letter and schedule sent to Kansas City Gas Company by Mr. Landon. ....	8/ 4/16
	Exhibit D—Notice of John M. Landon to Kansas City Gas Company of 18 cent rate. . .	8/12/16
	Exhibit E—Letter from John M. Landon to Kansas City Gas Co. ....	8/12/16
	Exhibit F—Letter of Kansas City Gas Company, by Mr. Dana, in answer to letters from Mr. Landon of 8/4/16 and 8/12/16. ....	8/18/16
1808	Exhibit G—Letter of John M. Landon to Kansas City Gas Co., in answer to Kansas City Gas Co.'s letter of 8/18/16 .....	8/22/16
	Exhibit H—Letter of Kansas City Gas Co., by Mr. Dana, in answer to letter from Mr. Landon of 8/22/16 .....	8/26/16

Subject.	Filed.
Exhibit I—Letter of Kansas City Gas Co., by Mr. Salathiel, answering letter by Kansas City Gas Co., of 8/26/16 .....	9/11/16
Exhibit J—Letter of Kansas City Gas Co., by Mr. Dana, to Kansas Natural Gas Co., answering letter written by Mr. Salathiel of 9/11/16.....	9/20/16
20. Answer of Kansas City Gas Company to Joint Bill of Complaint of "Separate Answer" of George F. Sharritt, Receiver .....	10/18/16
21. Answer of Kansas City Gas Company to Joint Bill of Complaint Designated "Separate Answer of the Kansas Natural Gas Company" .....	10/18/16
22. Amended Answer of the Wyandotte County Gas Company to Bill of Complaint and Answer to Supplemental Bill of Complaint.....	
(Exhibits thereto are the same in form and substances as those attached to Amended Answer of Kansas City Gas Company to Bill of Complaint and Answer to Supplemental Bill of Complaint, and may be omitted.)	
23. Answer of the Wyandotte County Gas Company to Joint Bill of Complaint or "Separate Answer" of George F. Sharritt, Receiver .....	10/18/16
24. Answer of the Wyandotte County Gas Company to Joint Bill of Complaint Designated "Separate Answer of the Kansas Natural Gas Company".....	10/18/16
1809	
25. Report and Application of John M. Landon, Receiver, for Instructions with Reference to Supply-contracts .....	10/18/16
Exhibit 1—Report and Application of the Receiver for Instructions in Reference to Supply-contracts, filed in the District Court of Montgomery County, Kansas .....	10/16/16
Exhibit 2—Findings of Fact, Conclusions of Law and Order on the Validity and Adoption by the Receiver of the Supply-contracts between the Kansas Natural Gas Company and the Various Distributing Companies, entered in the District Court of Montgomery County, Kansas ...	10/16/16
Exhibit A to Exhibit 2—Petition in State ex rel. vs. Kansas Natural, No. 17,977, in the Supreme Court of Kansas .....	12/12/11
Order of Supreme Court of Kansas in above case...	4/30/12

26.	Motion to Dismiss and Dissolve Injunction as to the Public Utilities Commission of Kansas.....	12/ 6/16
	(Omitting exhibits.)	
27.	Opinion and Decision against Kansas Defendants..	4/21/17
28.	Decree against Kansas Defendants.....	7/ 5/17
29.	Assignment of Errors by Public Utilities Commission of Kansas, et al.....	7/ 5/17
30.	Appeal and Allowance of Public Utilities Commission of Kansas, et al. ....	7/ 5/17
31.	Appeal Bond of Public Utilities Commission of Kansas, et al. ....	7/ 5/17
32.	Citation on Behalf of Public Utilities Commission of Kansas, et al. ....	7/ 5/17
33.	Supplemental Answer of Kansas City Gas Company	7/11/17
34.	Supplemental Answer of the Wyandotte County Gas Company .....	7/11/17
35.	Opinion and Decision against Missouri and Kansas Defendants .....	8/13/17
1810		
36.	Final Decree against Missouri and Kansas Defendants .....	8/13/17
37.	Answer of Kansas City, Missouri.....	
38.	Special Appearance and Motion of Kansas City, Missouri, to Quash Service of Subpoena.....	
39.	Motion of Kansas City, Missouri, to Dismiss Bill of Complaint as to it .....	
	(None filed.)	
40.	Motion of Kansas City, Missouri, that its Defenses in Point of Law Be Separately Heard and Disposed of before the Trial, and to Dismiss the Bill of Complaint as to it .....	
41.	Answer of Kansas City, Missouri, to the Supplemental Bill of Complaint .....	
42.	Answer of the City of Joplin, Missouri, to Supplemental Bill of Complaint.....	
43.	Answer of the City of St. Joseph, Missouri, to Bill of Complaint .....	
44.	Assignment of Errors by Kansas City Gas Company	10/25/17
45.	Assignment of Errors by the Wyandotte County Gas Company .....	10/25/17
46.	Assignment of Errors by Fidelity Trust Company and the Kansas City Pipe Line Company.....	10/25/17
47.	Petition for Allowance of Appeal of Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company, and the Kansas City Pipe Line Co. ....	10/25/17



	Subject.	Filed.
48.	Motion for Severance by Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company, and the Kansas City Pipe Line Company .....	10/26/17
49.	Motion for Severance by Kansas City, Missouri. ....	10/31/17
1811		
50.	Notice by Kansas City, Missouri, to Defendants to Join in Appeal, and Affidavit on Proof of Service by Benj. M. Powers .....	10/31/17
51.	Notice by Missouri Defendants of Application for Order of Severance, and Affidavit on Proof of Service by Benj. M. Powers .....	10/31/17
52.	Order Continuing Hearing on Above .....	11/ 1/17
53.	Notice by Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company of Motion for Severance and Service acknowledged ....	11/ 3/17
(Omit other similar papers.)		
54.	Affidavit on Proof of Service of Notice of Motion for Severance by J. W. Dana .....	11/ 5/17
55.	Order of Severance .....	11/ 5/17
56.	Appeal and Allowance of Public Utilities Commission of Kansas, et al. ....	11/ 5/17
57.	Notice by Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company, of Application for Allowance of Appeal and Acknowledgments thereof .....	11/ 6/17
58.	Assignment of Errors of Kansas City, Joplin and St. Joseph, Missouri .....	11/ 8/17
59.	Assignment of Errors by Public Service Commission of Missouri and Attorney-General of Missouri and Amended Assignment of Errors .....	11/ 8/17
60.	Appeal and Allowance of Public Service Commission of Missouri, Attorney-General of Missouri and Kansas City, St. Joseph, and Joplin, Missouri .....	11/ 8/17
61.	Citation on Behalf of Public Service Commission of Missouri, et al. ....	11/ 8/17
62.	Appeal Bond of Public Service Commission of Missouri, et al. ....	11/ 8/17
1812		
63.	Assignment of Errors by Public Utilities Commission of Kansas, et al. ....	11/ 9/17
64.	Appeal Bond of Public Utilities Commission of Kansas, et al. ....	11/ 9/17

	Subject.	Filed.
65.	Order Allowing Joint Appeal to Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company.....	11/ 9/17
66.	Appeal Bond of Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company .....	11/ 9/17
67.	Citation on Behalf of Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and the Kansas City Pipe Line Company and acknowledgments thereof.....	11/ 9/17
	(Omit repetition of formal parts.)	
68.	Citation on Behalf of Public Utilities Commission of Kansas, et al. ....	11/15/17
69.	Order Making Transcript of H. H. Horn Part of Record .....	
70.	Order Enlarging Time to File Record .....	
71.	Statement of the Evidence on Behalf of All Appellants .....	

Including all instruments, pleadings, documents, papers and exhibits, together with the endorsements thereon, referred to and described in paragraph 84 of said statement of the evidence; excepting and excluding therefrom the following:

1. Exhibit 1001-C—Supply-contract, K. C. P. L. Co. to McGowan, Small and Morgan, dated 11/17/06
2. Opinion of U. S. District Court, (Judge Marshall) recorded in 206 Fed., 772..... 6/ 5/13

1813

3. Exhibit 1010—Schedule and Application of Kansas City Gas Company to Public Service Commission of Missouri ..... 8/10/16
- Exhibit 1011—Order of Public Service Commission approving schedule of Kansas City Gas Company ..... 8/10/16

For the reason that they are attached to the Supplemental Bill of Complaint, paragraph 14.

4. Correspondence between Kansas City Gas Company and The Wyandotte County Gas Company, by Mr. Dana, their counsel, and Kansas Natural Gas Company and Mr. Landon, Receiver, by Mr. Salathiel, their counsel, for the

## Subject.

Filed.

reason that same is called for in this præcipe as exhibits to Amended Answer of Kansas City Gas Company and Answer to Supplemental Bill of Complaint, paragraph 19.

5. Report and Application of John M. Landon, Receiver, for Instructions with Reference to Supply-contracts, the same being the pleading called for in this præcipe, paragraph 25.

1814

6. Affidavit of Samuel S. Wyer; affidavits of John M. Landon and V. A. Hays; plaintiff's Exhibits No. 15 and 16, containing supplemental affidavit of V. A. Hays; plaintiff's Exhibit No. 18, the affidavit of S. S. Wyer; plaintiff's Exhibit No. 23, containing supplemental affidavit No. 3 of V. A. Hays.

72. Præcipe Filed by Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company ..... 12 /1/17

(Omitting all parts thereof identical to the præcipe filed by the Public Service Commission of the State of Missouri, its members and attorneys and the Attorney General of the State of Missouri and the cities of Kansas City, Joplin and St. Joseph, Missouri.)

73. Præcipe Filed by the Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex. Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, the Cities of Kansas City, Joplin and St. Joseph, Missouri. . 12/ 1/17

74. Præcipe Filed by Public Utilities Commission of the State of Kansas et al. ....

(Omitting all parts thereof identical to the præcipe filed by the Public Service Commission of the State of Missouri, its members and attorney, and the Attorney General of the State of Missouri, and the cities of Kansas City, Joplin and St. Joseph, Missouri.)

(Not yet filed.)

75. Notice of Lodgment of Statement of Evidence and Filing of Præcipe by Kansas City Gas Company,

Subject.

Filed.

The Wyandotte County Gas Company, The Fidelity Trust Company and the Kansas City Pipe Line Company .....

1815

76. Notice of the Lodgment of the Statement of Evidence; Notice of Filing Praecipe by Appellants, the Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, Alex Z. Patterson as Attorney for the Public Service Commission of the State of Missouri, Frank W. McAllister, as Attorney General of the State of Missouri, The Cities of Kansas City, Joplin and St. Joseph, Missouri, and Notice of the Time When Approval of the Court Will Be Asked on said Statement of the Evidence.....

THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI AND  
WILLIAM G. BUSBY,  
EDWIN J. BEAN,  
DAVID E. BLAIR,  
NOAH W. SIMPSON, AND  
EDWARD FLAD,

*As the Public Service Commission  
of the State of Missouri, and*

ALEX Z. PATTERSON,

*As Attorney for the Public Service Com-  
mission of the State of Missouri, and*  
FRANK W. McALLISTER,

*As Attorney General of  
the State of Missouri,*

By ALEX Z. PATTERSON,

*Counsel for the Public Service Com-  
mission of the State of Missouri.*

JAMES D. LINDSAY, *Assistant Counsel.*

THE CITY OF KANSAS, MISSOURI,

By J. A. HARZFELD,

*City Counselor of Kansas City, Missouri.*

BENJ. M. POWERS,

*Assistant City Counselor.*

THE CITY OF JOPLIN, MISSOURI,

By R. H. DAVIS,

*City Attorney of Joplin, Missouri.*

THE CITY OF ST. JOSEPH, MIS-  
SOURI,

By CHARLES L. FAUST,

*City Attorney of St. Joseph, Missouri.*

Filed in the District Court on December 1, 1917. Morton Albaugh, Clerk.

1816 In the District Court of the United States for the District of Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

VS.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Notice.*

To Kansas Natural Gas Company, John M. Landon and George F. Sharitt, Receivers of Kansas Natural Gas Company, and Fidelity Title & Trust Company, Greetings:

You will please take notice, that the appellants have lodged their statement of the evidence in the Clerk's office for your examination and have filed their praecipe for a transcript of the record on appeal and that they will on the 15th day of December, 1917, at ten o'clock A. M., or as soon thereafter as convenient to the Court, at the courtroom of the United States District Court at Minneapolis, Minnesota, apply to the Court or the Honorable Wilbur F. Booth, Judge assigned to the above entitled cause, to approve said statement of the evidence and settle said record on appeal to the Supreme Court of the United States.

J. A. DANA,  
*Solicitor for Kansas City Gas Company, The  
Wyandotte County Gas Company, Fidelity  
Trust Company and The Kansas City Pipe  
Line Company.*

Service of the foregoing notice and receipt of a copy of the praecipe are acknowledged and accepted this 1st day of December, 1917.

CHAS. BLOOD SMITH,  
*Solicitor for George F. Sharitt,  
Receiver of Kansas Natural Gas Co.*

CHAS. BLOOD SMITH,  
*Solicitor for Fidelity Title & Tr. Co.*

CHESTER L. LONG,  
JOHN H. ATWOOD,  
ROBERT STONE,

*Solicitors for John M. Landon,  
Receiver of Kansas Natural Gas Co.*

1196      K. C. GAS CO. ET AL. VS. KANSAS NAT. GAS CO. ET AL.

1817      Service of the foregoing notice and receipt of a copy of  
the praeipe are acknowledged and accepted this 4th day of  
December, 1917.

T. S. SALATHIEL,  
R. A. BROWN,  
*Solicitor for Kansas Natural Gas Company.*

Filed in the District Court on December 4, 1917.

MORTON ALBAUGH, *Clerk.*

1818      In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Notice.*

To John M. Landon, Receiver of the Kansas Natural Gas Company,  
The Kansas Natural Gas Company, George F. Sharritt, Receiver  
of the Kansas Natural Gas Company:

Please take notice that the undersigned appellants have lodged  
in the office of the Clerk of the District Court of the United States  
for the District of Kansas, First Division, their statement of the evi-  
dence in the above entitled cause, prepared under Equity Rule 75,  
and said appellants will, on December 15, 1917, at the hour of ten  
A. M., or as soon thereafter as counsel may be heard, in the Court  
Room of the United States District Court, at Minneapolis, Minnesota,  
request Judge Wilbur F. Booth, United States District Judge, as-  
signed to this cause, to approve said statement of the evidence.

The undersigned appellants now serve upon you their praeipe,  
prepared under Equity Rule 75.

THE CITY OF KANSAS CITY, MIS-  
SOURI,

By J. A. HARZFELD,  
*City Counselor of Kansas City, Missouri.*  
BENJ. M. POWERS,  
*Assistant City Counselor.*

1819

THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI AND  
WILLIAM G. BUSBY,  
EDWIN J. BEAN,  
DAVID E. BLAIR,  
NOAH W. SIMPSON, AND  
EDWARD FLAD,

*As the Public Service Commission  
of the State of Missouri, and*

ALEX. Z. PATTERSON,  
*As Attorney for the Public Service Com-  
mission of the State of Missouri, and*  
FRANK W. McALLISTER,

*As Attorney General of  
the State of Missouri,*

By ALEX. Z. PATTERSON,  
*General Counsel of the Public Service Com-  
mission of the State of Missouri,*

JAMES D. LINDSAY, *Assistant Counsel,*  
THE CITY OF JOPLIN, MISSOURI,

By R. H. DAVIS,  
*City Attorney of Joplin, Missouri,*

THE CITY OF ST. JOSEPH, MISSOURI,

By CHARLES L. FAUST,  
*City Attorney of St. Joseph, Missouri,*

The undersigned respondents hereby acknowledge receipt and service this first day of December, 1917, of the above notice and the Praecipe of the above named appellants,

JOHN M. LANDON,  
*Receiver of the Kansas Natural Gas Company,*

By JOHN H. ATWOOD,  
CHESTER I. LONG,  
ROBERT STONE,

*His Attorneys of Record,*  
THE KANSAS NATURAL GAS COM-  
PANY,

By T. S. SALATHIEL AND  
ROBERT A. BROWN,

*Its Attorneys of Record,*  
GEORGE F. SHARRITT,  
*Receiver of the Kansas Natural Gas Company,*  
By JOHN J. JONES AND  
CHAS. BLOOD SMITH.

Dec. 4, 1917.

Filed in the District Court on Dec. 11, 1917.

MORTON ALBAUGH, *Clerk,*



1820

*Clerk's Certificate to Transcript.*

UNITED STATES OF AMERICA,

*District of Kansas, ss:*

I, Morton Albaugh, Clerk of the District Court of the United States of America, for the District of Kansas, do hereby certify the foregoing to be true, full and correct copies of so much of the record and proceedings in Case No. 136-N, entitled John M. Landon, as Receiver of the Kansas Natural Gas Company vs. The Public Utilities Commission of the State of Kansas, et al., as is called for by the praecipe filed herein.

I further certify that the original citations are attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said District of Kansas, this 22nd day of December, 1917.

[Seal] of District Court U. S., District of Kansas.]

MORTON ALBAUGH, *Clerk.*

Endorsed on cover: File No. 26284. Kansas D. C. U. S. Term No. 817. Kansas City Gas Company, The Wyandotte County Gas Company, et al., Appellants, vs. Kansas Natural Gas Company, John M. Landon and George F. Sharitt, Receivers, and Fidelity Title & Trust Company. Filed January 14th, 1918. File No. 26284.

1 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS;  
Joseph L. Bristow, C. F. Foley and John M. Kinkel, as the Public  
Utilities Commission of the State of Kansas; H. O. Caster, as At-  
torney for the Public Utilities Commission of the State of Kan-  
sas; S. M. Brewster, as Attorney-general of the State of Kansas;  
John T. Barker, as Attorney-general of the State of Missouri; Wil-  
liam G. Busby, as Counsel for the Public Service Commission of  
the State of Missouri; The Public Service Commission of the  
State of Missouri; John M. Atkinson, Edwin J. Bean, John  
Kenish, Howard B. Shaw and Eugene McQuillan, as the Public  
Service Commission of the State of Missouri; John F. Overfield,  
as Receiver of the Kansas City Pipe Line Company, Fidelity  
Title & Trust Company, a corporation; Fidelity Trust Com-  
pany, a corporation; Delaware Trust Company, a corporation;  
Kansas City Pipe Line Company, a corporation; George F. Sha-  
rritt, as Receiver of the Kansas Natural Gas Company; Kansas  
Natural Gas Company; St. Joseph Gas Company; The Union Gas  
and Traction Company; The Atchison Railway, Light & Power  
Company; The Leavenworth Light, Heat and Power Company;  
The Tonganoxie Gas and Electric Company; The Citizens Light,  
Heat and Power Company; L. G. Treleven, Receiver; The Con-  
sumers Light, Heat and Power Company; The Kansas City Gas  
Company; The Wyandotte County Gas Company; The Olathe  
Gas Company; The Ottawa Gas and Electric Company; O. A.  
Evans and Company; The Parsons Natural Gas Company; The  
Elk City Oil and Gas Company; The American Gas Company;  
The Home Light, Heat and Power Company; The Carl Junction  
Gas Company; The Oronogo Gas Company; The Joplin Gas Com-  
pany; The Weir Gas Company; The Cities of St. Joseph, Mis-  
souri; Weston, Missouri; Atchison, Kansas; Leavenworth, Kan-  
sas; Tonganoxie, Kansas; Topeka, Kansas; Lawrence, Kansas;  
Baldwin, Kansas; Ottawa, Kansas; Kansas City, Missouri; Kan-  
sas City, Kansas; Merriam, Kansas; Shawnee, Kansas; Lenexa,  
Kansas; Olathe, Kansas; Gardner, Kansas; Edgerton, Kansas;  
Wellsville, Kansas; Princeton, Kansas; Scipio, Kansas; Richmond,  
Kansas; Welda, Kansas; Colony, Kansas; Bronson, Kansas;

Moran, Kansas; Ft. Scott, Kansas; Deerfield, Missouri; Nevada, Missouri; Thayer, Kansas; Parsons, Kansas; Elk City, Kansas; Independence, Kansas; Coffeyville, Kansas; Liberty, Kansas; Altamont, Kansas; Oswego, Kansas; Columbus, Kansas; Scammon, Kansas; Weir City, Kansas; Cherokee, Kansas; Galena, Kansas; Pittsburg, Kansas; Carl Junction, Missouri; Oronogo, Missouri; Joplin, Missouri, Defendants.

2-3

*Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

To John M. Landon, as Receiver of the Kansas Natural Gas Company, The Kansas Natural Gas Company, George F. Sharitt, as Receiver of the Kansas Natural Gas Company, The Fidelity Title and Trust Company, and to each of the above named defendants, except The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of said Commission, and H. O. Caster, its Attorney:

You, and each of you, are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 15th day of December, nineteen hundred and seventeen, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the District of Kansas, First Division, wherein The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, its Attorney, and S. M. Brewster, Attorney General, are appellants, and John M. Landon, as Receiver of the Kansas Natural Gas Company, The Kansas Natural Gas Company, George F. Sharitt, as Receiver of The Kansas Natural Gas Company, and The Fidelity Title and Trust Company, are respondents, and the above named defendants not joining in this appeal, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Edward Douglass White, Chief Justice of the United States, this 15th day of Nov. in the year of our Lord one thousand nine hundred and seventeen.

JOHN C. POLLOCK, *Judge.*

Request Judge Booth.

[Endorsed:] 326. No. 136-N. Citation on Appeal on Behalf of Public Utilities Commission. Filed Dec. 17, 1917. Morton Albaugh, Clerk.

\* \* \* \* \*

4

I hereby accept service of the within citation.

THE PARSONS NATURAL GAS COMPANY,  
By S. F. BRADY, *Its Attorney.*

\* \* \* \* \*

5 I hereby accept service of the within citation, Nov. 19, 1917.

GEO. J. GRAYSTON,  
*Solicitor for Joplin Gas Co.,  
Joplin, Mo.*

\* \* \* \* \*

6 I hereby accept service of the within citation.  
C. K. LEINBACH, *Mayor,  
City of Parsons.*

\* \* \* \* \*

7 I hereby accept service of the within citation, November 17, 1917.

THE CITY OF ATCHISON, KANSAS,  
By E. W. CLAUSEN,  
*City Attorney.*

\* \* \* \* \*

8 I hereby accept service of the within citation, Nov. 19, 1917.

FLOYD E. HARPER,  
*Atty. for The Leavenworth Light,  
Heat & Power Co.*

\* \* \* \* \*

9 I hereby accept service of the within citation.  
CITY OF OTTAWA,  
By B. F. BOWERS.

\* \* \* \* \*

10 I hereby accept service of the within citation.  
E. H. HASKIN,  
*Mayor of Lenexa, Kansas.*

\* \* \* \* \*

11 I hereby accept service of the within citation, this Nov. 17, 1917.

C. S. POOLE,  
*Mayor City of Joplin.*

\* \* \* \* \*

12 I hereby accept service of the within citation.  
W. F. GUTHRIE,  
*Sol'r for Olathe Gas Co.*

\* \* \* \* \*

1202

K. C. GAS CO. ET AL. VS. KANSAS NAT. GAS CO. ET AL.

13

I hereby accept service of the within citation.

JAY E. HOUSE,  
*Mayor of Topeka.*

\* \* \* \* \*

14

I hereby accept service of the within citation.

FT. SCOTT, KAN.,  
By W. P. DILLARD, *Atty.*

\* \* \* \* \*

15

We hereby accept service of the within citation.

JOHN T. BARKER,  
*Atty. General.*  
FRANK W. McALLISTER,  
*Atty. General.*  
ALEX Z. PATTERSON,  
JOHN M. ATKINSON,  
DAVID E. BLAIR,  
NOAH W. SIMPSON,  
EDWARD FLADD,  
*Commissioners.*

WM. G. BUSBY,  
EDWIN J. BEAN,  
JOHN KENNISH,  
HOWARD B. SHAW,  
EUGENE McQUILLAN,  
*Commissioners.*

\* \* \* \* \*

16

I hereby accept service of the within citation.

OTTAWA GAS & ELECTRIC COMPANY,  
WILLIAM A. BOSS.

\* \* \* \* \*

17

I hereby accept service of the within citation.

CITY OF CARL JUNCTION,  
By C. B. RONEY, *Mayor.*

\* \* \* \* \*

18

I hereby accept service of the within citation, Nov. 15,  
1917.

J. L. PELLETT,  
*Mayor Olathe, Kansas.*

\* \* \* \* \*

19

I hereby accept service of the within citation.

THE ELK CITY GAS & OIL CO.,  
Per A. R. SLOCUM, *Secry.*

\* \* \* \* \*

- 20 I hereby accept service of the within citation.  
THE TONGANOXIE GAS & ELECTRIC CO.,  
By S. J. McNAUGHTON, *Secretary*.

\* \* \* \* \*

- 21 I hereby accept service of the within citation.  
AMERICUS GAS CO.,  
By EDWARD SAPP, *Atty*.

\* \* \* \* \*

- 22 I hereby accept service of the within citation.  
CITY OF NEVADA, MISSOURI,  
By E. A. DULIN, *Mayor*.

\* \* \* \* \*

- 23 JAMES C. DAVIS,  
*Mayor Leavenworth, Ks.*  
W. N. McNAUGHTON,  
*City Attorney and Attorney for Defendant*  
*The City of Leavenworth, Kansas.*

\* \* \* \* \*

- 24 I hereby accept service of the within citation.  
E. G. BUCHANAN,  
*Mayor Thayer, Kan.*

\* \* \* \* \*

- 25 I hereby accept service of the within citation.  
FRANK E. GEORGE,  
*Mayor of Altamont.*

\* \* \* \* \*

- 26 I hereby accept service of the within citation.  
EDWIN J. BEAN.

\* \* \* \* \*

- 27 I hereby accept service of the within citation.  
ST. JOSEPH GAS CO.,  
By J. L. ELBERT, *Gen. Mgr.*

\* \* \* \* \*

- 28 I hereby accept service of the within citation.  
ELLIOT MARSHALL,  
*Mayor of St. Joseph, Mo.*

\* \* \* \* \*

1204 K. C. GAS CO. ET AL. VS. KANSAS NAT. GAS CO. ET AL.

29 I hereby accept service of the within citation, Nov. 14, 1917.

THE ATCHISON RAILWAY, LIGHT &  
POWER CO.,  
By WAGGENER, CHALLIN, DE LACY &  
BROWN.

\* \* \* \* \*

30 I hereby accept service of the within citation, Nov. 14th, 1917.

THE CITY OF KANSAS CITY, KANSAS,  
By H. A. MENDENHALL, *Mayor*.

\* \* \* \* \*

31 I hereby accept service of the within citation.

FRED. NEFF,  
*Mayor of Oronogo, Mo.*

\* \* \* \* \*

32 I hereby accept service of the within citation.

R. H. MONTGOMERY,  
*Mayor City of Oswego, Kansas.*

\* \* \* \* \*

33 I hereby accept service of the within citation.

W. J. FRANCISCO,  
*City Mayor Lawrence, Kansas.*

\* \* \* \* \*

34 I hereby accept service of the within citation.

W. W. BELL,  
*Mayor Pittsburg, Kas.*

\* \* \* \* \*

35 I hereby accept service of the within citation.

W. J. HAMMEL,  
*Mayor Moran, Kansas.*

\* \* \* \* \*

36 I hereby accept service of the within citation.

WALTER L. M. NEY,  
*City Attorney of City of Independence, Kansas.*

\* \* \* \* \*



- 37 I hereby accept service of the within citation.  
T. S. SALATHIEL AND  
R. A. BROWN,  
*Attys. for Kansas Natural Gas Co.*

\* \* \* \* \*

- 38 I hereby accept service of the within Citation.  
FERRY, DORAN & COSGROVE,  
*Attys. for L. G. Treleven, Receiver of The  
Consumers' Light, Heat & Power Co.,  
Topeka, Kansas.*

\* \* \* \* \*

- 39 I hereby accept service of the within citation.  
THE CITY OF WELLSVILLE, KANS.,  
By A. L. CLINE, *Mayor.*

\* \* \* \* \*

- 40 I hereby accept service of the within citation.  
N. I. PAUL,  
*Mayor of Colony.*

\* \* \* \* \*

- 41 I hereby accept service of the within citation.  
J. W. DANA,  
*For Kansas City Pipeline Co., Wyandotte  
County Gas Co., Kansas City Gas Co., Fidel-  
ity Trust Co.*

\* \* \* \* \*

- 42 I hereby accept service of the within citation.  
KANSAS CITY, MISSOURI,  
By J. A. HARZFELD,  
*Its Attorney.*

\* \* \* \* \*

- 43 I hereby accept service of the within citation.  
JOHN THORN,  
*Mayor Weston, Mo.*

\* \* \* \* \*

- 44 I hereby accept service of the within citation.

[Seal City of Tonganoxie, Leavenworth Co., Kas.]

M. G. FARRELL,  
*Mayor of Tonganoxie.*

45 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Assignment of Errors*

On Behalf of the Public Utilities Commission for the State of Kansas,  
Joseph L. Bristow, John M. Kinkel and C. F. Foley, Members of  
the Public Utilities Commission for the State of Kansas, and H. O.  
Caster, Attorney for the Public Utilities Commission for the State  
of Kansas, and S. M. Brewster, Attorney General of the State of  
Kansas.

And now come Joseph L. Bristow, John M. Kinkel and C. F.  
Foley, Commissioners of the Public Utilities Commission for the  
State of Kansas, for the Public Utilities Commission for the State of  
Kansas, and H. O. Caster, Attorney for said Commission, and S. M.  
Brewster, Attorney General of the State of Kansas, appellants, and  
make and file this their assignment of errors in their appeal herein.

I.

The District Court of the United States for the District of Kansas  
erred in holding that the sale and distribution of gas in the manner  
in which the complainant receiver was engaged therein within the  
States of Kansas and Missouri constituted interstate commerce and  
the engagement therein by the complainant receiver in the trans-  
actions involved in said case, and that the acts and conduct of said  
receiver involved in the transportation and sale of said natural gas  
to his patrons in the towns and cities of the States of Kansas and  
Missouri, and in other places therein, constituted interstate  
46 business, and that the said business of transporting and sell-  
ing natural gas to his patrons in the States of Kansas and  
Missouri was not subject to the control of the Public Utilities Com-  
mission of the State of Kansas or the Public Service Commission of  
the State of Missouri within their respective states and under the  
local laws of the said states.

## II.

That the said United States District Court for the District of Kansas erred in the court below in holding that the contracts entered into between the various distributing companies located in Kansas were not binding upon the complainant receiver.

## III.

The United States District Court for the District of Kansas erred in the court below in enjoining the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as the Public Utilities Commission for the State of Kansas, and H. O. Caster as Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster as Attorney General of the State of Kansas, and the defendant cities in Kansas, from enforcing the aforesaid supply contracts or rates fixed or referred to therein against said complainant receiver and said distributing companies, and from interfering with the plaintiff or any of said defendant distributing companies in establishing and maintaining such rates as the said court had approved or might thereafter approve for consumers of natural gas in the state of Kansas.

## IV.

The United States District Court for the District of Kansas erred in the court below in enjoining the mayors and common council and governing officials, city attorneys, city counselors, or representatives of the defendant cities, and their successors in office from  
47      commencing, instituting, or prosecuting in any other court or tribunal any suit or proceeding to litigate any matters determined by the United States District Court for the District of Kansas without leave of said court first having been obtained.

F. S. JACKSON,  
H. O. CASTER,  
*Attorneys for Appellant.*

Filed in the District Court this 8th day of November, 1917. Morton Albaugh, Clerk.

48 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LONDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Petition of The Public Utilities Commission for the State of Kansas,  
Joseph L. Bristow, John M. Kinkel and C. F. Foley, Members of  
said Commission, and H. O. Caster, Attorney for the Public Util-  
ities Commission for the State of Kansas, and S. M. Brewster,  
Attorney-General for the State of Kansas, and the Defendant Cities  
in the State of Kansas.*

The above named defendants, The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-General for the State of Kansas, and the defendant Cities in the State of Kansas, conceiving themselves aggrieved by the order entered on August 13, 1917, in the above entitled proceeding, do hereby appeal from the said order to the Supreme Court of the United States, and they and each of them pray that this, their appeal, may be allowed and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

F. S. JACKSON,

H. O. CASTER,

*Solicitors for the Appellants, The Public Util-  
ities Commission for the State of Kansas,  
Joseph L. Bristow, John M. Kinkel and C.  
F. Foley, Members of said Commission, and  
H. O. Caster, Atty. for the Pub. Util. Com.  
for the State of Kansas, and S. M. Brewster,  
Atty.-Genl. for the State of Kansas, and the  
Deft. Cities in the State of Kansas.*

Filed in the District Court on November 8th, 1917. Morton Al-  
baugh, Clerk.

49 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order.*

This cause came on to be further heard on the 9th day of November, 1917, on the joint petition of The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-General for the State of Kansas, and the defendant Cities in the State of Kansas, for allowance of a joint appeal, and was argued by counsel, and on consideration thereof;

It Is Ordered That The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-General for the State of Kansas, and the defendant Cities in the State of Kansas be and they are hereby granted and allowed a joint appeal from the final judgment and decree entered in the above entitled cause on August 13, 1917, as prayed for; that their bond on appeal be and is hereby fixed in the sum of three thousand dollars (\$3,000), to be approved by the Clerk.

Signed at request of Judge Booth.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on November 9th, 1917. Morton Albaugh, Clerk.

50 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Bond of the Public Utilities Commission on Appeal.*

(Bond No. —.)

Know All Men By These Presents: That the Public Utilities Commission for the state of Kansas and the Fidelity and Casualty Company of New York is held and firmly bound unto John M. Landon, receiver of the Kansas Natural Gas Company, in the full and just sum of three thousand dollars to be paid to the said John M. Landon, his successors and assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally by these presents. Sealed with our seal and dated this 8th day of November, A. D. 1917.

Whereas, Lately, and on the 13th day of August, A. D. 1917, in the district court of the United States for the district of Kansas, first division, in a suit pending in such court between John M. Landon, receiver of the Kansas Natural Gas Company, vs. The Public Utilities Commission for the state of Kansas, and Joseph L. Bristow, John M. Kinkel, and C. F. Foley, members of said Commission, and H. O. Caster, its attorney, et al., judgment was rendered against the defendants, and the said defendants, The Public Utilities Commission

for the State of Kansas, Joseph L. Bristow, John M. Kinkel  
51 and C. F. Foley, members of said Commission, and H. O. Caster, its attorney, has obtained an order of the said court allowing an appeal from the decision of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John M. Landon, the Kansas Natural Gas Company, George F. Sharitt, receiver of the Kansas Natural Gas Company, and the Fidelity Title and Trust Company, citing and admonishing them to be and appear in the supreme court of the United States, at the city of Washington, sixty days from and after the date of said citation:

Now the condition of the above obligation is such, that if the said The Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of said Commission, and H. O. Caster, its attorney, shall prosecute said appeal

to effect, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and effect.

Signed and sealed by the Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as members of the said Commission.

THE PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS,

By H. O. CASTER, *Their Attorney.*

H. O. CASTER,

THE FIDELITY AND CASUALTY COMPANY OF  
NEW YORK,

By ROBERT STONE, *Its Agent—Its Attorney in Fact.*

Foregoing bond and surety thereon approved.

Signed request Judge Booth.

JOHN C. POLLOCK, *Judge.*

Filed in the District Court on December 17th, 1917. Morton  
McLaugh, Clerk.

52 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LAXON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Order of Severance.*

Now on this 5th day of November, 1917, this cause came on to be heard upon the joint motion of the Kansas City Gas Company, the Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company, and the motion of the City of Kansas City, Missouri, and the motion in open Court of the Public Service Commission of Missouri for an order of severance on appeal in the above entitled cause and was argued by counsel and thereupon, upon consideration thereof:

It is found by the Court that demand in writing has been duly made by the above named parties upon all their co-defendants to appeal or join in appeals from the final judgment and decree entered in the above entitled case to the Supreme Court of the United States, and that all said co-defendants have been duly notified in writing to appear and show cause why order of severance should not be made,



and have failed to appear, or have appeared and have refused to join in the appeals of the parties above named, and,

It is further found that the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company, The Kansas City Pipe Line Company, the City of Kansas City, Missouri, the Public Service Commission of the State of Missouri and its members, Frank W. McAllister, Attorney General of the State of Missouri, the City of St. Joseph, Missouri, the City of Joplin, Missouri, and the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, Commissioners, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney General for the State of Kansas, and the defendant cities in Kansas, have indicated their desire to appeal or join in appeals in this cause, and that they are entitled to a severance from their other co-defendants in this cause, therefore;

It is ordered that the above named defendants be and they are hereby granted a severance from all their co-defendants for the purpose of an appeal, or appeals, from the final judgment and decree entered in the above entitled cause to the Supreme Court of the United States.

53 It is further found and ordered that the rights of the Kansas City Gas Company, The Wyandotte County Gas Company, Fidelity Trust Company and The Kansas City Pipe Line Company are so separate from the rights of all their co-defendants that they are entitled to and are hereby granted a severance from all their co-defendants for the purposes of prosecuting a joint appeal from the final judgment and decree of this Court in this cause, entered on August 13th, 1917, to the Supreme Court of the United States.

It is further found and ordered that the rights of the City of Kansas City, Missouri, and the Public Service Commission of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Edward Flad and Noah W. Simpson, as the Public Service Commission of Missouri, and Alex. Z. Patterson, as attorney for said Public Service Commission, Frank W. McAllister as Attorney General of the State of Missouri, and the Cities of St. Joseph and Joplin, Missouri, are so separate from the rights of all their co-defendants that they are entitled to and are hereby granted a severance from their co-defendants for the purposes of prosecuting a joint appeal from the final judgment and decree of this Court entered on August 13th, 1917, to the Supreme Court of the United States.

It is further found and ordered that the rights of the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, Commissioners, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney General for the State of Kansas, and the defendant cities in Kansas, are so separate from the rights of all their co-defendants that they are entitled to and are hereby granted a severance from their co-defendants for the purposes of prosecuting a joint appeal from the final judgment and decree of this Court en-

tered on August 13th, 1917, to the Supreme Court of the United States.

JOHN C. POLLOCK,  
*District Judge.*

Dated: November 5th, 1917.

This Order signed by me at request Judge Booth, as per his request Nov. 1st, 1917.

POLLOCK.

Filed in the District Court on November 5th, 1917. Morton Al-  
Laugh, Clerk.

54 In the District Court of the United States for the District of  
Kansas, First Division.

In Equity.

No. 136-N.

JOHN M. LAXTON, as Receiver of the Kansas Natural Gas Company,  
Plaintiff,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS et al.,  
Defendants.

*Principle of the Appellants Filed under Rule 8 of the Supreme Court  
of the United States.*

Come now the appellants, The Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of the Public Utilities Commission for the State of Kansas, H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney General for the State of Kansas, and the defendant cities in Kansas, in pursuance to Rule 8 of the Supreme Court of the United States, and for the purpose of enabling the clerk to prepare the record for appeal herein from the decision of the District Court to the Supreme Court of the United States, hereby requests the clerk to incorporate the portions of the record into the transcript of the record on such appeal which are hereinafter indicated, and additional to the record already prepared in accordance with the precepts of other appellants, to-wit:

Assignment of Errors on behalf of the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of the Public Utilities Commission for the State of Kansas, and H. O. Caster, attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney General of the State of Kansas.

Appeal and Allowance of the Public Utilities Commission for the

State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, members of said Commission, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and  
55 S. M. Brewster, Attorney General for the State of Kansas, and the defendant cities in the State of Kansas.

Bond of the Public Utilities Commission on Appeal.

Citation on Appeal, with acknowledgment of service.

Order of Severance.

T. S. JACKSON,  
H. O. CASTER,  
*Attorneys for Appellants.*

Filed in the District Court on December 26th, 1917. Morton Albaugh, Clerk.

We hereby acknowledge service of the foregoing præcipe and notice of its filing this 24th day of December, 1917.

56 UNITED STATES OF AMERICA,  
*District of Kansas, ss:*

I, Morton Albaugh, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be true, full and complete copies of so much of the record and proceedings in Case No. 136-N, entitled, John M. Landon, as Receiver of the Kansas Natural Gas Company vs. The Public Utilities Commission of the State of Kansas et al., as is called for in the præcipe of Appellants, herein.

I further certify the original Citation is attached hereto and returned herewith.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Topeka, in said District of Kansas, this 3rd day of January, 1918.

[Seal of District Court, District of Kansas.]

MORTON ALBAUGH, *Clerk,*  
By F. L. CAMPBELL, *Dep. Clk.*

Endorsed on cover: File No. 26323. Kansas D. C. U. S. Term No. 856. The Public Utilities Commission for the State of Kansas et al., appellants, vs. John M. Landon, as receiver of the Kansas Natural Gas Company, et al.. Filed February 6th, 1918. File No. 26323.



IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1917.

---

THE PUBLIC UTILITIES COMMISSION  
FOR THE STATE OF KANSAS *et al.*,  
*Appellants*,

v.

No. 693

JOHN M. LANDON, as Receiver of Kansas  
Natural Gas Company *et al.*,  
*Appellees*.

---

KANSAS CITY, MISSOURI, *et al.*,  
*Appellants*,

v.

No. 816

JOHN M. LANDON, Receiver of Kansas  
Natural Gas Company *et al.*,  
*Appellees*.

---

KANSAS CITY GAS COMPANY *et al.*,  
*Appellants*,

v.

No. 817

KANSAS NATURAL GAS COMPANY *et al.*,  
*Appellees*.

---

THE PUBLIC UTILITIES COMMISSION  
FOR THE STATE OF KANSAS *et al.*,  
*Appellants*,

v.

No. 856

JOHN M. LANDON, as Receiver of Kansas  
Natural Gas Company *et al.*,  
*Appellees*.

---

**Stipulation for Printing Record.**

It is stipulated and agreed by and between the parties hereto as follows:

1. That the entire record in case No. 817, together with the items called for in paragraph No. 76 of the praecipe in case No. 816, together with the entire record in case No. 856, avoiding duplications, may be printed, considered, used and constitute the record for each and all of the above entitled cases. The filing of the statements of errors intended to be relied upon and parts of the record necessary for the consideration thereof with proofs of service provided for in Rule 10, are hereby waived.

2. That the cash deposit required by the clerk under Rule 10 for printing and supervision fees shall be advanced, one-fourth each by the Public Utilities Commission of Kansas, the Public Service Commission of Missouri, the City of Kansas City, Missouri, and the Kansas City Gas Company, and if said fees or any part thereof are finally taxed to and paid by appellees, the clerk shall refund the same to said parties in like proportion.

F. S. JACKSON,

H. O. CASTER,

Solicitors for Public Utilities Commission  
for the State of Kansas et al., Appel-  
lants in 693 and 856.

J. A. HARZFELD,

A. F. SMITH,

A. F. EVANS,

ALEX. Z. PATTERSON,

JAS. D. LINDSAY,

R. H. DAVIS,

CHAS. L. FAUST,

Solicitors for Kansas City, Missouri, Pub-  
lic Service Commission of Missouri,  
Joplin, Missouri, St. Joseph, Missouri,  
Attorney-General of Missouri et al.,  
Appellants in 816.

J. W. DANA,

Solicitor for Kansas City Gas Company et al., Appellants in 817.

J. W. DANA,

Solicitor for The Wyandotte County Gas Company, The Kansas City Pipe Line Company and Fidelity Trust Company, Appellees in 693 and 856.

JOHN H. ATWOOD,

CHESTER I. LONG,

ROBERT STONE,

Solicitors for John M. Landon, Receiver, et al., Appellees in 693, 816, 817 and 856.

T. S. SALATHIEL,

R. A. BROWN,

Solicitors for Kansas Natural Gas Company et al., Appellees in 693, 816, 817 and 856.

CHAS. BLOOD SMITH,

Solicitor for Fidelity Title & Trust Company, Appellee in 693, 816, 817 and 856.

JOHN J. JONES and

CHAS. BLOOD SMITH,

Solicitors for Geo. F. Sharitt, Receiver, et al., Appellees in 693, 816, 817 and 856.



THE PUBLIC UTILITY COMMISSION OF THE STATE OF KANSAS vs.

JOHN M. LAWRENCE, as Receiver of THE KANSAS NATURAL GAS COMPANY, et al.  
Filed January 10, 1922.

No. 222.  
KANSAS CITY, MISSOURI, THE PUBLIC UTILITY COMMISSION OF THE STATE OF MISSOURI, et al. *Appellants*.

vs.  
JOHN M. LAWRENCE, as Receiver of THE KANSAS NATURAL GAS COMPANY, et al.  
Filed January 10, 1922.

No. 223.  
KANSAS CITY GAS COMPANY, THE WYANDOTT COUNTY GAS COMPANY, et al. *Appellants*.

vs.  
KANSAS NATURAL GAS COMPANY, JOHN M. LAWRENCE and GEORGE F. BENTLEY, Receivers, and PUBLIC UTILITY TRUST AND TRUST COMPANY, et al.  
Filed January 14, 1922.

No. 224.  
THE PUBLIC UTILITY COMMISSION OF THE STATE OF KANSAS vs.

JOHN M. LAWRENCE, as Receiver of THE KANSAS NATURAL GAS COMPANY, et al.  
Filed January 14, 1922.

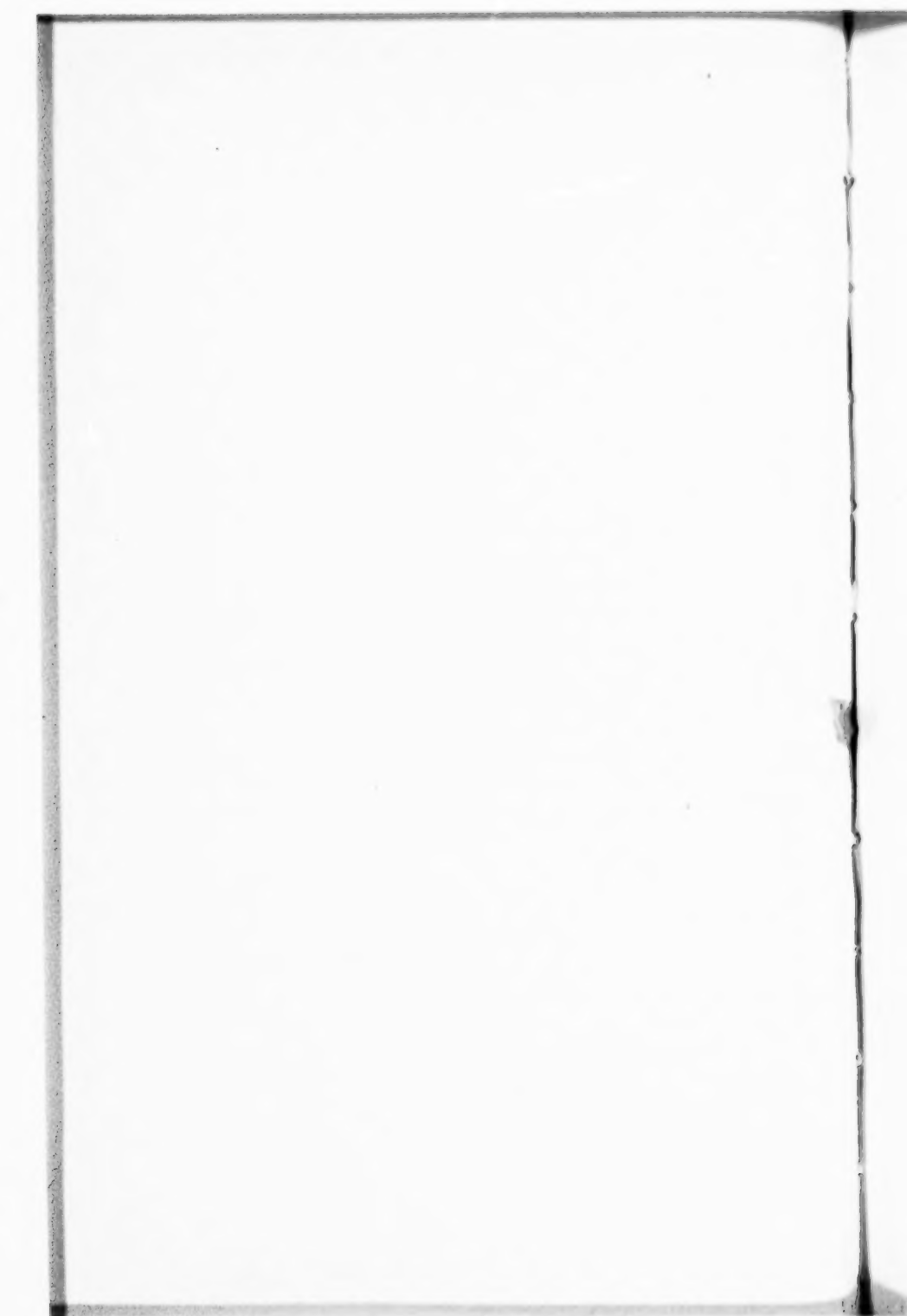
Appeal from the Circuit Court of the United States for the District of Kansas.

### APPELLANTS' BRIEF

ON BEHALF OF JOHN M. LAWRENCE, RECEIVER OF THE KANSAS NATURAL GAS COMPANY, et al., and GEORGE F. BENTLEY, Receiver, and PUBLIC UTILITY TRUST AND TRUST COMPANY, et al., Appellants, in the above entitled cause, your undersigned counsel respectfully submit the following:

CHARLES BLOOD SMITH,  
Attorney for Public Trust &  
Trust Company, Appellants.  
R. A. BROWN,  
T. S. SALATHIEL,  
Attorneys for Kansas Natural  
Gas Company, Appellants.

JOHN F. ATWOOD,  
ROBERT SWING,  
GEORGE T. McDERMOTT,  
ARTHUR M. COWAN,  
CHARLES J. LONG,  
Attorneys for John M. Lawrence,  
Managing Receiver of Kansas  
Natural Gas Company, Appellants.  
JOHN J. JONES,  
Attorney for Public Trust &  
Trust Company, Appellants.



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# Supreme Court of the United States

October Term, 1918.

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**No. 277.**

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS ET AL.,  
*Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed September 20, 1917.

---

**No. 329.**

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, ET AL., *Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed January 10, 1918.

---

**No. 330.**

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY, ET AL., *Appellants,*

vs.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND GEORGE F.  
SHARRITT, RECEIVERS, AND FIDELITY TITLE AND TRUST COMPANY.

Filed January 14, 1918.

---

**No. 353.**

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS ET AL.,  
*Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed February 6, 1918.

*Appeals from the District Court of the United States for the  
District of Kansas.*

---

## SUPPLEMENTAL BRIEF

ON BEHALF OF JOHN M. LANDON, MANAGING RECEIVER  
OF KANSAS NATURAL GAS COMPANY, FIDELITY TITLE  
& TRUST COMPANY, KANSAS NATURAL GAS COM-  
PANY, AND GEORGE F. SHARRITT, RECEIVER OF  
KANSAS NATURAL GAS COMPANY, APPELLEES, IN AN-  
SWER TO BRIEFS OF APPELLANTS.

---

## STATEMENT.

Owing to the late date at which appellants filed  
their brief, the number of appellants and the range  
of the law points involved, appellees were obliged

to prepare their brief on the main questions without seeing opposing counsels' brief.

As the different appellants have presented various and diversified arguments in their briefs, the appellees have felt it necessary to present a supplemental brief answering the more important arguments in appellants' briefs, some of which are not covered by our first brief.

THE ORDER OF THE PUBLIC UTILITIES COMMISSION OF KANSAS OF DECEMBER, 1915, FIXES RATES THAT ARE UNJUST, UNREASONABLE, NON-COMPENSATORY, CONFISCATORY, AND TAKE THE PROPERTY IN PLAINTIFF'S POSSESSION WITHOUT DUE PROCESS OF LAW.

In view of the convincing and indisputable evidence submitted to the trial court and the statement of evidence prepared by the appellants themselves we did not anticipate any serious argument against this proposition. However, the brief of the Kansas Commission and the brief of the Kansas City Gas Company raise the issue.

Mr. Dana for the Kansas City Gas Company says (Brief 101-102): "The fatal weakness of the plaintiff's case remains, to-wit, that he has offered no evidence showing either the operating costs or the reasonable value of the local companies used and useful in the joint service of furnishing natural gas to the public."

There are at least two answers to this statement. The first is that such evidence was offered and the second is that the rate enjoined was so low that the valuation of the distributing companies became immaterial. The first we will discuss now; the second will appear from our later discussion of the rate itself.

This suit is not one to fix a rate, but to enjoin a rate fixed by a commission. To fix a rate would involve a careful valuation of all property used and useful and a determination of the reasonable cost of operation, etc., but to enjoin a rate, if it be shown that the rate will not yield more than the

cost of operation, the valuation of the property becomes unnecessary.

In this case the Kansas Commission fixed a 28c rate to the ultimate consumer, out of which in Kansas <sup>City</sup> the receiver got 62½% and the distributing company got 37½%, while on the balance of the system the receiver got 66 2/3% and the distributing companies got 33 1/3%. The inquiry is not whether the 28c rate is confiscatory as to the distributing companies, but only as to the receiver.

The rate being to the ultimate consumer includes compensation for service to the distributing company, as well as by the receiver. The distributing companies are the agents of the receiver and as pay for the services receive a percentage of the amount collected from the consumer. The gas belongs to the receiver until delivered to the consumer.

**(a) Valuation of distributing plants and experience under 28c rate.**

There was not made a scientific valuation of all of the distributing plants. Several of the larger plants, however, were valued by expert engineers and their evidence was introduced. Among these were the distributing plants at Topeka, Atchison and Leavenworth, and we are astounded at Mr. Dana's statement that no evidence was introduced either as to the valuation or operating revenue and expenses of the distributing plants in view of the fact that Mr. Brundrett, the president of the Kansas City Gas Company and of the Wyandotte

County Gas Company was on the stand and testified that both those companies were operating at a loss, the Kansas City Gas Company under  $37\frac{1}{2}\%$  of a 30c rate and the Wyandotte County Gas Company under  $37\frac{1}{2}\%$  of a 28c rate. Where the distributing companies operated at a loss the valuation of the plants, of course, became immaterial.

We are still more astounded at Mr. Dana's statement that the plaintiff "has offered no evidence showing either the operating cost or the reasonable value of the local companies, used and useful in the joint service to furnish natural gas to the public," because in the statement of the evidence prepared and filed by the appellants themselves, beginning on page 1103 of the record, there is a statement that the 28c rate was a joint rate to the ultimate consumer, covering compensation to the receiver and the distributing companies, on the same division provided for in the supply contracts, which contracts, however, never had been adopted by the receiver. That at the hearing before the Utilities Commission it was assumed that the same division would be followed. That this same assumption was made at the hearing before the enlarged court, but that on the final hearing the ratio division was brought into question and that the question then arose as to whether the receiver might realize a larger percentage of the 28c rate. The statement then continues as follows:

"In the absence of an assumption that two-thirds was all that could be obtained, evidence was required as a basis for a finding with regard to the matter. *Accordingly, considerable*

*evidence was introduced touching the financial status of the various distributing companies, the valuation of their plants, the character and extent of their business, their operating expenses and other allied matters. This evidence was introduced, not for the purpose of ascertaining with accuracy what would be a just and fair rate to be charged by the various distributing companies, but solely for the purpose of ascertaining whether there was any reasonable grounds for holding that the receiver could obtain more than two-thirds of the 28-cent joint rate. This evidence was taken and the inquiry made on the basis of laying aside temporarily the contracts between the Kansas Natural Gas Company and the distributing company, and without undertaking to pass upon the validity of those contracts as between the original parties." (R., p. 1104.)*

The evidence thus epitomized was incorporated in Judge Booth's opinion and findings. (R., pp. 577-8.)

Mr. Dana certainly is mistaken in saying that there is a fatal weakness in plaintiff's proof and that no evidence was offered showing either the operating costs or the reasonable value of the local companies. There was absolutely no evidence offered to the contrary, and Judge Booth's finding therefore cannot be questioned.

**(b) Recent admissions by appellants, Wyandotte County Gas Company and Kansas City Gas Company as to inadequacy of rates.**

Moreover, as disclosed by the motion to dismiss filed herein, the Kansas City Gas Company, Mr.



Dana's client, has recently filed its application, verified by the same Mr. Brundrett, signed by Mr. Dana as solicitor, before Judge Booth, alleging that under a 60-cent rate, of which it receives 42½ per cent, which has been in force for ten months, it has sustained a loss of \$492,417.73, which for a year would be at least \$600,000. It also states that the reasonable present value of its property is \$8,500,000 at normal prices.

A similar application for the Wyandotte Company alleges a loss of \$106,665 in ten months, under the 60-cent rate, equal to an annual loss of \$125,000.

Counsel's statement in his brief is beyond our understanding.

So much for valuation of the distributing plants—or rather, the question of whether or not the receiver could be reasonably expected to realize more than two-thirds of the 28-cent rate. He could not.

**(c) The receiver's portion of 28c rate is confiscatory.**

Is the 28-cent rate, of which the receiver realizes two-thirds, an unreasonable or confiscatory rate as to him?

The trial court and the three judges did not decide that the method adopted by the Kansas Commission was correct, but for the sake of the argument adopted the theory of the Commission and separated the production end of the receiver's business from the transportation end, and on that basis found the rate to be confiscatory. Again they did not find that the Commission's valuation

was correct, but for the sake of the argument assumed it to be correct, and on that basis found the rate to be confiscatory.

If the findings of the three judges and of the trial court as to the adequacy of the 28-cent rate are to be questioned, it is only fair to those judges, as well as to the plaintiff, that the starting point shall be the evidence introduced and not a point of advantage conceded to the defendant purely as a matter of argument.

A summary of the history of the Kansas Natural Gas Company is given by Judge Booth in his opinion in this case and found on page 564 of the printed record. We do not reprint it here, but ask the court to read it carefully.

**(d) The receding gas fields require costly extensions each year without increasing capacity of plant.**

When organized in 1903 the Kansas Natural got its supply of gas in Wilson county, Kansas, only 127 miles from Kansas City, its principal market; today its supply comes from near Tulsa, Oklahoma, more than 250 miles from Kansas City. Gas fields once thought to be inexhaustible have been rapidly depleted. Each year has demanded a search for and extensions to new fields. As a part of Wyer's affidavit (R., p. 1116, l. c. 1142) there are maps and charts which show the rapid decline in rock pressure, the lengthening pipe lines and the endless search for new pools of gas. There is no regeneration in gas wells. (R., p. 1123.) Once depleted, the pool is gone. The life of the best pool is scarcely three years. The cost

of extensions to new pools is very great, involving the purchase and laying of gathering lines from the wells, and large main or trunk lines, all underground, the building of large compressor or pumping stations, and frequently of smaller or booster stations in the fields. Much of the cost of these extensions is the cost of labor, and when the pool is exhausted all that portion of the expense is lost unless, perchance, the next extension is on beyond in that same direction. The added investment to reach new pools does not increase the capacity of the plant, as in other utilities, but does well if it maintains the former efficiency.

All available pools now in use will probably be exhausted within six years (from 1916). (R., p. 1135.)

The invested capital, therefore, is constantly increasing and large amounts must every year be charged off for depreciation because of depleted fields, or else the extensions to new fields must be charged to operating expenses. It makes little difference which is done if the depreciation be equal to the difference between the cost of the extension and the salvage when the pipe and equipment are taken up.

**(e) Valuation of the receiver's property.**

The Commission found that the total value of the company's property as of January 1, 1915, was \$8,994,811.03. (Rec., p. 58.) This is exactly the amount found by the engineer of the Commission, and his testimony shows that he allowed nothing

whatever for the cost of attaching the business or for what is known as "going value." In other words, this valuation of \$8,994,811.03 is the value of the physical plant plus overhead charges during construction, including engineering, taxes and interest during construction. The Commission's engineer arrived at this amount by ascertaining the reproduction cost new less accrued depreciation and adding overhead charges during construction only. No valuation of a lower figure was presented to the Commission in any of the hearings, and there is no evidence on which a lower valuation can be based by the Commission than that of its engineer. The Commission in its opinion asserts that it took into consideration in fixing this valuation the fact that the property was a going business. It says (Rec., p. 57):

"That the plant, with the business attached, is worth much more than it would be without such business connections, may be freely conceded. Without its existing business, its distributing contracts, its customers, its established sources of supply, it would constitute, practically, only an accumulation of junk. The present value of the plant has been ascertained and determined as an entirety, taking into consideration the fact that it is a going concern in actual and successful operation. In fixing this value we have taken into account the fact that the plant is in operation, with more customers than it can properly serve."

This argument has already been passed upon by the Court of Appeals of New York in the case of

*People v. Willcox*, 104 N. E. 911, 51 L. R. A. n. s. 1, where Mr. Justice Miller said:

"Thus, the first question certified requires us to decide whether going value is to be appraised as a distinct item, or whether it is sufficient to regard it as something vague and indefinable to be given some consideration, but not enough to be estimated. The valuation of the physical property was determined by ascertaining the cost of reproduction less accrued depreciation. Preliminary and development expenses prior to operation were included, but no allowance was made for the cost of developing the business. By that method the plant was valued in a sense as a 'going concern.' In other words, 'scrap' values were not taken; but to say that that sufficiently allows for going value is the same as to say that going value is not to be taken into account. The problem is to determine what is fair to the public and the company. The public is entitled to be served at reasonable rates, and the company is entitled to a fair return on its investment, on the value of the property used by it in the public service. \* \* \* It would have been entitled to a return on the valuation adopted by the commission, if it had no customers, but was just ready to begin business, whereas it had a plant in operation with an established business, which everyone knows takes time, labor and money to build up."

\* \* \* \* \*

"If going value is capable of ascertainment, it will not do for the Commission vaguely to consider it in fixing the fair rate of return. \* \* \* The difficulty of determining the going value will not justify the disregarding of it.

Rate making is difficult, but that will not justify confiscation."

\* \* \* \* \*

"I define 'going value' for rate purposes as involved in this case, to be the amount equal to the deficiency of net earnings below a fair return on the actual investment, due solely to the time and expenditures reasonably necessary and proper to the development of the business and property to its present stage, and not comprised in the valuation of the physical property.

\* \* \* \* \*

"It remains to consider how going value is to be appraised.

\* \* \* \* \*

"Obviously, the most satisfactory method is to show the actual experience of the company, the original investment, its earnings from the start, the time actually required and expenses incurred in building up the business, all expenditures not reflected by the present condition of the physical property, the extent to which bad management or other causes prevented or depleted earnings, and any other facts bearing on the question, keeping in mind that the ultimate fact to be determined is not the amount of the expenditures, but the deficiency in the fair return to the investors due to the causes under consideration."

This Court, in the case of *Des Moines Gas Company v. Des Moines*, 238 U. S. 153, 35 Sup. Ct. Rep. 812, has stated the matter in this way:

"'Going value,' or 'going concern value,' i. e., the value which inheres in a plant where its business is established, as distinguished

from one which has yet to establish its business, has been the subject of much discussion in rate-making cases before the courts and commissions. Many of those cases are collected in Whitten on 'Valuation of Public Service Corporations,' Secs. 550-569, and the supplement to the same work, Secs. 1350-1385. That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned, although dedicated to public use. Each case must be controlled by its own circumstances, and the actual question here is: In view of the facts found, and the method of valuation used by him, did the master sufficiently include this element in determining the value of the property of this company for rate-making purposes?

"Included in going value as usually reckoned is the investment necessary to organizing and establishing the business which is not embraced in the value of its actual physical property."

The item of "going concern value" has been recognized by the Supreme Court of Kansas in the case of *Water Company v. Galena*, 74 Kan. 644, where it stated:

"We think the District Court erred in excluding from its estimate of the 'fair and equitable' value of the waterworks system the sum of \$15,214.73, that being the amount found by the referee to be the value of the



plant as a going concern, including the franchise. A system of waterworks in a city, without the right to operate there, or without being connected with water takers, and not in running condition, would be comparatively worthless. The water company was the owner of these important elements of value, and it seems reasonable that they should not be taken without compensation."

In the case of *National Waterworks Company v. Kansas City*, 62 Fed. 853, 10 C. C. A. 653, an elaborate and exhaustive opinion was delivered by Mr. Justice Brewer, in which these question were clearly and fully discussed. He said:

"The original cost of the construction cannot control, for 'original cost' and 'present value' are not equivalent terms. Nor would the mere cost of reproducing the waterworks plant be a fair test, because that does not take into account the value which flows from the established connections between the pipes and buildings of the city. It is obvious that the mere cost of purchasing the land, constructing the buildings, putting in the machinery, and laying the pipes in the streets—in other words, the cost of reproduction—does not give the value of the property as it is today. A completed system of waterworks, such as the company has, without a single connection between the pipes and the streets and the buildings of the city, would be a property of much less value than that system connected, as it is, with so many buildings, and earning, in consequence thereof, the money which it does earn. The fact that it is a system in operation, not only with a capacity to supply the city, but actually supplying many

buildings in the city—not only with a capacity to earn, but actually earning—makes it true that the ‘fair and equitable value’ is something in excess of the cost of reproduction. The fact that the company does not own connections between the pipes in the streets and the buildings—such connections being the property of the individual property owners—does not militate against the proposition last stated, for who would care to buy, or at least give a large price for, a waterworks system without a single connection between the pipes in the streets and the buildings adjacent? Such a system would be a dead structure, rather than a living and going business. The additional value created by the fact of many connections with buildings, with actual supply and actual earnings, is not represented by the mere cost of making such connections. Such connections are not compulsory, but depend upon the will of the property owners, and are secured only by the efforts on the part of the owners of the waterworks, and inducements held out therefor. The city, by this purchase, steps into possession of a waterworks plant—not merely a completed system for bringing water to the city and distributing it through pipes placed in the streets, but a system already earning a large income by virtue of having secured connections between the pipes in the streets and a multitude of private buildings. It steps into possession of a property which not only has the ability to earn, but is in fact earning. It should pay therefor not merely the value of the system which might be made to earn, but that of a system which does earn.”

A similar decision was reached in the case of *Public Service Gas Company v. Board of Public Utilities Commissioners*, 87 Atl. 651, 84 N. J. L. 476, 95 Atl. 127, 92 Atl. 606, 94 Atl. 634.

The engineer of the Public Utilities Commission testified that he had fixed the value at \$8,994,811.03 by ascertaining the reproduction cost, less depreciation, and adding overhead charges during construction, including engineering, taxes and interest during construction; that he had allowed nothing for cost of attaching the business or for going value or going concern value. In other words, his valuation was a completed plant ready to do business, unattached and without customers, and this was the valuation the Commission adopted. The statement of the Commission above quoted might indicate that when it allowed a valuation as a complete plant, and not as an accumulation of junk, it had allowed all elements of value. As we have seen, this is erroneous.

The affidavit of Mr. Samuel S. Wyer filed in this case (Rec., pp. 1088, 1141) shows the "going value" or worth of connected consumers to be \$2,000,000.00. The failure to include this item alone shows that the 28 cent rate is not compensatory.

But the Public Utilities Commission of Kansas did not allow a return on the \$8,994,811.03 which it found to be the total valuation of the company's property, but deducted from this the value of all property possessed by the plaintiff and used in the production of gas. (Rec., p. 58.) The Com-

mission made a total deduction of \$1,911,205.39 from the total valuation. We submit that as this property is used in the production of natural gas, and does produce natural gas, that the plaintiff should be allowed a return thereon.

**(f) Separation between transportation and production.**

The Kansas Commission has bitterly assailed the managers of the properties of the Kansas Natural because they failed to acquire a large acreage of gas producing property and has charged that because of this failure the Kansas Natural is not capable of rendering public service and its property is thereby subject to confiscation. The Wichita Natural, with a large acreage back of its transportation system, has been pointed out as the ideal gas utility.

The Commission recognizes the need of a large gas producing reserve, and, in the opinion accompanying the order attacked, we find, in that portion devoted to scolding the courts and attorneys, the following paragraph:

“In the meantime, while the receivers were engaged in this litigation and wasting the revenues of the company, its leaseholds were exhausted, and they neglected to make proper effort to obtain an additional supply of gas necessary to meet the demands of the company's markets. Leases that were available for them were obtained by other companies operating in the same field. Now these receivers find themselves with an insufficient quantity of gas to supply the demands of their

- lines. They have large facilities for marketing gas, but not a sufficient supply of gas." (Rec., p. 80.)

The plaintiff concedes, as did every witness who testified, the great desirability of a gas transporting company owning large producing properties. The managers of the Kansas Natural realized this years ago. The evidence shows that a great transporting company, with a large body of gas producing property, should hold such production in reserve, conserving its own supply to meet the extraordinary demands of the winter days or to defend itself against exorbitant prices charged by sellers of gas in the field. Such producing properties are insurance against extortion by sellers of gas who otherwise might take advantage of the extremities of a transporting company without production and demand exorbitant prices for their gas. Such producing properties are a buffer to resist the shock of the extraordinary demands of the peak-load days. The greatest service to which such production property may be put is to hold it in reserve. This is the evidence, and this is the fact.

Such production properties have great value, and such value is properly dedicated to the public use. In fact, the attorneys for the Commission have said that without such producing properties a transporting company cannot render a service which is necessary to protect its transporting properties from confiscation. *Yet by its scheme of separation it refuses to allow a return upon the*

*value of such producing property.* It asks this Court to compel the plaintiff to own such property and hold it in reserve and to take his return in the purchase price of gas used from such production property. *The great value of production property is not in using the gas therefrom any faster than necessary, but in conserving it.* But conserving it would deprive the plaintiff of revenue from it; for in the defendant's plan he gets no revenue from conservation. *His revenue comes only when the reserves are drawn upon, resulting in a policy of paying a premium on waste and levying a penalty on conservation.*

If it is to the public good that a transporting gas company should have back of it a large amount of productive property; that this productive property should be conserved for use against the winter demands and as a weapon of defense against extortion, then such production property is properly dedicated to the public use and the plaintiff is entitled to a return upon its value and cannot be relegated to the principle that the only return is the market price of gas actually used.

**(g) Ex post facto amortization.**

The Commission's engineer finds that the value of the leaseholds and wells of the plaintiff is \$1,911,205.39. (Rec., p. 58.) We wish to comment on this valuation later, but sufficient it is here to say that this item is absolutely disregarded in all of the figures compiled by defendant. It disregards this acknowledged item of value for two reasons:

First. It says that it is production property and cannot be used or useful for a public purpose. This point we have treated.

Second. It says the original investment in these leases was \$4,113,563.46. It will be observed that this item is simply cash invested by the company in leases and wells after its organization and disregards the original properties embarked in the enterprise. The valuation is found in the Commission's opinion (Rec., p. 61) and is referred to in defendant's brief in these words:

"That the Kansas Natural thereafter (i. e., after the organization) acquired other leases, all of which said leases cost the Kansas Natural Gas Company not to exceed \$4,100,000, and said sum included the value of all materials used in the wells."

Then its accountant argues that this cash expenditure has been amortized in the past ten years and should be therefore disregarded in fixing a rate today. This argument is unsound for two reasons:

1. The inquiry is as to the value of the property at the time the rate is fixed or the decision thereon rendered. *If value is there at that time, a rate must be allowed on that value.* It cannot be disregarded because at some time in the past, before the rate-making power existed, it has been profitable enough to pay for itself. In the table used by the Commission this cash investment is amortized by crediting it with 11.70 per cent depletion item over the period from July 1, 1905, to



December 31, 1914. The argument is this: during that ten-year period these leases earned enough to pay for themselves. Therefore they are not properly entitled to a return now. Whatever value there is to them, defendant argues, is "velvet." "The plaintiff has eaten its cake and has it

The Utilities Law was passed in 1911. At that time a successful telephone plant had been in operation ten years, and had earned enough during that time to amortize itself. It therefore does not own the property, and the public is entitled to its use without return. Before the passage of the law the plant belonged to the owners and was worth a million dollars. After the passage of the law it belonged to the public and the owner has no interest in it. This is precisely defendant's argument. *Because these leases made money before the passage of the law and the fixing of the rate, their present value cannot be considered in fixing a rate, but will be appropriated by the public.* The law, it argues, reaches back seven years before its passage, determines a fair rate during those seven years and appropriates the balance to public use. Of course, its figures are erroneous, but even if correct, it is met with the unanswerable argument that the law gave it the right to fix rates in the future and not in the past, and gave the Commission no power to appropriate to the public profits earned before the passage of the law.

This fallacy is firmly embedded in the order of the Commission and the minds of its attorneys. They argue that we should consider the history of the plant from 1905 in arriving at this rate,

stretching the arm of the law, at the time of its enactment, six years into the past. When a law is passed it must act on the situation as it exists; it cannot correct evils of the past; the past must bury its dead.

2. The only theory by which defendants may appropriate these past profits, and may amortize the cash value of the leases by allowing a fair return upon them, is on the theory that they were dedicated to the public use. In other words, if the law had been passed in 1904, and the Commission had acted in 1904, their appropriation of these leases by allowing a fair return upon them is upon the theory that they are used in a public purpose. But the Commission is proceeding upon the theory that productive property cannot be dedicated to a public use, and therefore separate it as production property and allow no return upon it. If this is good law for the future it is good law for the past. But perhaps there is a reason:

The facts show that the company sold, during this ten-year period, \$30,629,066.07 worth of gas. They bought, during the same period, \$3,438,596.90 worth of gas. (Rec., p. 65.) From these leases of the company, then, there was derived a gross revenue of over twenty-seven million dollars in the ten years. The net revenue was over eighteen million. (Commission's table, Rec., p. 65.) At the present time the leases are not producing as much gas as they have in the past. Moreover, conservation has taken the place of wastage. The company is conserving its own production. Therefore, the Commission says, when your leases were producing largely, we will con-

sider them dedicated to the public use and appropriate the profits by allowing a 6 per cent return on the cash investment. When they commence to run down, and it is policy to conserve them, we will no longer consider them public property, but compel you to hold them as private property, allow you no return thereon except the wholesale price of the gas which you may use from them in emergency. When the leases actually earn more than 6 per cent we will consider them public property; when they fall below that by reason of a sound policy of conservation, we will consider them private property.

**(h) Original investment disregarded.**

For the double purpose of showing that there is no going value to the plant, and to justify the appropriation of something over four million dollars actually expended in production property, the Commission has compiled a table (Rec., p. 67) showing that the company earned 11.32 per cent during its existence. This was interesting news to the stockholders and managers of the property, who received no such return. The Commission would have placed the stockholders under lasting obligation if it had gone ahead and pointed out where this large return had vanished. It is undisputed that it never reached the owners of the property. One or two serious errors will be sufficient to show that the entire table should be disregarded and fact substituted for fiction.

1. This table (Rec., p. 67) figures a return upon an annual investment of \$9,270,900.50. In arriv-

ing at this figure the only values ever credited to the company, outside of its transportation system, is the item of \$4,113,563.46, which we have seen was actually expended after the organization of the company on production property, and this was treated as having been amortized.

The original value of the leases turned over is not of particular interest in figuring a rate today. But it becomes a vital factor in determining whether the company has made money in the past. Were the properties turned to the company in return for the original twelve million of stock of any value during the first ten years of the company's operation? Should they be considered in arriving at the question of whether the company made money during the same period? The Commission says not. Let us examine:

(a) During that ten-year period these leases, together with those afterward purchased, produced gas which was sold for over twenty-seven million dollars, excluding leakage. The net return after deducting operating expense was over eighteen million.

(b) At the time the company was organized the following property was exchanged for stock:

95,000 acres of leases on which there were 67 gas wells with a production of 400,000,000 cubic feet per day; and 24 oil wells producing \$10,000 worth of oil per month.

1,264 acres of land in fee.

Pipe lines, franchises, tanks, derricks, engines, pumps, horses, wagons and tools.

This property was subject to an incumbrance of \$550,000, and an expenditure for development of about \$350,000, which the Kansas Natural assumed.

In addition, the following:

90,000 acres of leases, with 38 producing wells, fully equipped. This was clear. (Rec., p. 1075.)

(c) After full investigation Judge Flannelly found these leases and property to be worth, at that time, \$8,000,000. (Bill, p. 182.) There was other evidence to the same effect.

They are alleged in the verified bill which was offered in evidence to have had a value of at least \$60,000,000 at the time the company was organized. (Rec., p. 25.)

Was there value there during the ten-year period? We say there was. If there was, then a table which ignores that value figures a fictitious profit that never existed in fact, and is not a safe guide.

The error in the separation of the production from the transportation runs through every compilation of the Commission. To correct its tables, with such an error present, presents the difficulty attendant upon the unscrambling of eggs.

The other errors may be eliminated by simply adding to the necessary needs of the plaintiff an amount to compensate such errors.

If we have been correct in our argument upon these points, it was the duty of the Commission

to take into consideration the present value of the leases and wells—the production property—of the plaintiff. This value is estimated by the Commission's engineer at \$1,911,205.39. (Rec., p. 58.) This is a very low estimate. Mr. Wyer's estimate is over two million. If it is two million dollars, this error alone would figure as follows:

8% interest as a fair return.....	\$160,000.00
Amortize in six years.....	333,333.00
	<hr/>
	\$493,333.00

From this item should be deducted the allowance made by the Commission for gas purchased at 4 cents a thousand feet. From the various exhibits it has appeared in evidence that the estimated production for 1916 (which was in excess of the year preceding) was about seven billion cubic feet, which at 4 cents a thousand amounts to \$280,000. Subtracting this, leaves a net loss to the plaintiff by reason of this error of \$213,333.00 or about two and a half cents per thousand cubic feet sold.

The settlement between the distributing companies and the receiver is on the basis of gas delivered to and paid for by the ultimate consumer. This results in the receiver standing the loss for all gas that leaks out of the whole system and the bad accounts with consumers.

The Commission allowed 20 per cent for leakage and in many of the distributing plants it is actually much more than that. This requires the receiver to buy at least 25 per cent more gas than he sells. This item cannot be ignored in fixing an adequate rate, for it means that if the receiver

would market 18,000,000,000 feet of gas in a year he must purchase about 25,000,000,000 feet of gas.

The receiver insisted that leakage in the distributing plants should be limited to 10 per cent.

**(i) Findings of the enlarged court of three judges.**

The enlarged court which heard the application for the temporary injunction reviewed some of the evidence, as follows:

"The crucial question for decision upon this application for an injunction by the court constituted under Section 266 is whether or not the 28-cent rate is confiscatory or unreasonably low. Ten days have been devoted to the reception of evidence and the hearing of arguments. Time has been taken for examination of evidence and briefs for deliberation and consultation.

One of the bases of the conclusion and order of the Commission is the following table, which is copied from its opinion:

TABLE NO. 5.

KANSAS NATURAL GAS COMPANY.

Statement of estimated revenue and requirements for the ensuing year based on 1914 figures, revised, as previously explained, for the state of Kansas.

Requirements.	Transportation.	Kansas.
25,671,445 M. cubic feet gas at 4c.....	\$1,026,857.80	\$ 514,045.01
Operating expenses and taxes assigned to transportation.....	510,536.14	223,245.11
Receivership expenses.....	32,228.00	14,093.30
Uncollectible gas accounts.....	12,555.07	6,359.14
Taxes, Kansas City Pipe Line.....	32,288.27	16,860.51



Taxes, Marnet Mining Company.....	10,497.35	5,316.91
Maintaining organization, Marnet Mining Company.....	690.20	349.59
Total.....	\$1,626,652.83	\$ 780,269.57
*Present value of transportation property, \$7,083,605.64; depreciation on basis of twelve years.....	590,300.00	268,468.44
Requirements exclusive of a return on property investment.....	\$2,216,952.83	\$1,048,738.01
*Return on present value... \$7,083,605.64		
Add for working capital... 200,000.00		
Total.....	\$7,283,605.64	
at 6%	437,016.35	198,755.00
	\$2,653,969.18	\$1,247,493.01

## ESTIMATED REVENUE.

Gas sales, 1914.....	\$1,192,089.82
†Gas used in compressor station (on basis of use).....	31,737.70
Total.....	\$1,223,827.52
Estimated revenue from proposed increased rates.....	171,513.63
Total estimated revenue from Kansas.....	\$1,395,341.15
Deduct requirements as above.....	1,048,738.01
Estimated net revenue.....	\$ 346,503.14
Which is equal to a return of 10.46% on the present value, \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,605.64, or	
Total estimated revenue for Kansas.....	\$1,395,341.15
Less requirements, including a 6% return.....	1,247,493.01
Surplus.....	147,848.14

\*The division of these items between Kansas and Missouri has been made on the basis of the use of the property as shown in Table 1.

†This item is placed here to balance an equal sum included in the expenditures. It is a bookkeeping entry solely.

The Commission found the reproduction value of the property of the gas company less depreciation for age and use to be \$7,083,605.64, the prob-

able life of the going concern to be twelve years, amortized the \$7,083,605.64 by the allowance of one-twelfth thereof \$590,300.00 as a yearly requirement for its operation and allocated all the requirements between Kansas and Missouri on the basis of 45.48 per cent to Kansas and 54.52 per cent to Missouri. The evidence before the Commission, a great volume of evidence which was not before the Commission, including a disclosure of the actual results of the operation of the property during the first four months of the year 1915 under the 25-cent rate which existed before the Commission established a 28-cent rate, and the results of its operation during the first four months of the year 1916 under the 28-cent rate, evidence of the exhaustion of gas fields, of the increase of the cost of gas, of the value of the property of the company, and of every other conceivable issue relative to the general question has been presented to this court. Upon nearly every issue this evidence is conflicting and the determination of some of these issues is difficult. 'And yet,' as the Supreme Court said in *Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins*, 176 U. S. 167, 172, 'this difficulty affords no excuse for a failure to examine and solve the questions involved.' Bearing this caution in mind and conceding the present value of the property of the company to be \$7,083,605.64 as the Commission found it, a deliberate consideration of the entire case has forced our minds to these findings and conclusions which in our view are determinative of the real question to be decided.

A supply of gas adequate to the reasonable needs of the customers of the natural gas company for domestic lighting, cooking and heating is the real desideratum in this case. Without it no rate will be compensatory. The company now has no such supply; it cannot get such a supply with-

out adequate extensions to its pipe lines. It can make such extensions by the expenditure of a reasonable amount of money. It cannot make such extensions without such money, and it cannot get the money to make them without compensatory rates for the gas it procures and sells. Any rate which will not compensate it for making the necessary extensions to secure such a supply, for paying its other necessary expenses of operation and a reasonable income on the value of its property is unavoidably confiscatory, because without these extensions it must lose its customers, cease its operation, and the value of its property must greatly decrease.

In the earlier days of its operation the natural gas company produced most of its gas from its leaseholds in Kansas, but the fields so leased have been gradually exhausted until it is able to produce therefrom only about  $7\frac{1}{2}$  per cent of the gas it transports and sells. In order to get gas it has already extended its pipes far into the state of Oklahoma, where it purchases and transports to the cities of Kansas and Missouri  $92\frac{1}{2}$  per cent of its gas. It is conceded that the business of the company is temporary, that the exhaustion of the fields which it can reach with permissible extensions must eventually come, and that the time when it can no longer reach fields from which it can obtain gas cannot be delayed many years. The creditors' agreement of December, 1914, which provided for the payment of the bonded debts of the company within six years and for the expenditure of \$1,500,000.00 for extensions and additional gas supply, indicates that they estimated the life of the company as a going concern at six years from that date. The opinion of the Kansas Commission based upon this creditors' agreement provided for the payment of the

bonded debts of the company except the principal of the second mortgage bonds within the six years 1915, 1916, 1917, 1918, 1919 and 1920, and for the expenditure by the receiver for extensions and additional gas supplies of \$1,500,000.00. The life of the company as a going concern is necessarily unknown and unknowable, a matter of opinion, and yet the court must determine what it probably is, and a consideration of the evidence, of the history of the gas fields in Kansas and Oklahoma, of the testimony of witnesses familiar with that history, with the fields and with the production, purchase, transportation and sale of gas has brought the minds of all the members of the court to the conclusion that the probable life of the natural gas company as a going concern is approximately six years from this date, June 3, 1916.

The creditors by their agreement provided for an expenditure of \$1,500,000.00 within six years from December, 1914, for the extensions of the pipes of the company and an additional supply of gas. The Kansas Commission in its opinion, founded upon that creditors' agreement, made a like allowance. The extensions contemplated have not been made and the exhaustion of the available gas fields has proceeded for seventeen months since the creditors' agreement and for about eleven months since the opinion and finding of the Commission founded upon it. In order to procure and maintain a reasonably adequate supply of gas for the coming winter it is necessary for the receiver to extend the pipe lines fifty or sixty miles and to construct compressors at an aggregate expense of at least \$750,000.00 to \$900,000.00 during the first year after the filing of this opinion. And it is the opinion of the court that in order to procure and maintain such a supply of gas during the six years of the probable life of the company as a going concern it will be necessary for the receiver to

expend for extensions and compressors at least \$750,000.00 the first year and \$200,000.00 in each of the five years thereafter, amounting in all to \$1,750,000.00. As the life of the company as a going concern is six years the salvage value of the pipes and other materials at the end of the six years when they will be no longer useful in their places in the ground is estimated to be \$262,500.00, and deducting this from the \$1,750,000.00 leaves \$1,487,500.00 which must be returned within the six years. The Commission in its finding and estimates made no allowance for these extensions.

The Commission allowed \$1,026,857.80 yearly for the purchase of 25,671,445 M cubic feet of gas at 4 cents per cubic foot. Gas is constantly becoming more difficult to procure, the cost of it in the fields has increased and is increasing as the fields one after another are exhausted, and the evidence that has been produced before this court has convinced us that the gas requisite reasonably to supply the customers of the natural gas company will cost at least 2 cents per M cubic feet, and that on this account there should be allowed as a part of the requirements of the receiver and the company 2 cents more per M cubic feet yearly than the amount which was allowed by the Commission, that is to say \$513,428.90.

The Commission allowed for interest 6 per cent annually on \$7,283,605.64, or \$437,016.64. The business of and the investment in the property of this gas company is of the most precarious and hazardous nature. Seven per cent per annum is deemed a just and reasonable allowance on investments in railroads and in the property of water, artificial gas and lighting companies of a permanent nature, and at least 8 per cent per annum should be allowed in this case, or an in-

crease of the amount allowed by the Commission of 2 per cent on \$7,283,605.64, or \$145,672.10.

The Commission allowed \$590,300.00, which is one-twelfth of \$7,083,605.64, for future depreciation of the property of the company, on the basis that the life of the company as a going concern would be twelve years. As the evidence has convinced that its life will not exceed six years there should have been allowed \$590,300.00 more each year during the six years than was allowed by the Commission.

Turning now to the table of the Commission quoted above, the result is that, laying aside other considerations and conceding the substantial correctness of the Commission's other findings for the purpose of the decision of this application for injunction, its estimates of the requirements of the company and of the receiver for the first and the succeeding five years of the life of the gas company as a going concern were too low by the following amounts:

On account of estimating twelve years instead of six years as the life of the going concern by . . . . .	\$ 590,300.00
On account of lack of allowance for extensions by . . . . .	247,916.00
On account of estimate of cost of gas at 4 cents per M cubic feet instead of 6 cents per M cubic feet by . . . . .	513,428.90
On account of allowance of 6 per cent instead of 8 per cent interest	145,672.10
Total . . . . .	\$1,497,317.00

The Commission assigned to the Kansas property 45.48 per cent of its estimated revenue and requirements; 45.48 per cent of \$1,497,317.00 is \$680,979.00. The Commission estimated that upon the basis stated in its table a surplus of

\$147,848.14 would be produced. Deducting this estimated surplus from the \$680,979.00, it appears that its estimated revenue falls short by \$533,131.10 of producing an amount sufficient to pay the necessary expenses of the maintenance and operation of the property and business of the natural gas company and a reasonable interest upon the present value of its property.

The experience of the future may, and it is hoped that it will, teach that the necessary requirements of the receiver and the company will be less than those which the evidence convinces the court will be indispensable to provide and maintain an adequate supply of gas for its customers, to operate the business of the company and to return a fair income upon the value of its property. The opinion of the court can rest only on the evidence before it, and upon that evidence it is its opinion that a less rate than 32 cents per M cubic feet will be found insufficient to accomplish this result. But even if there are errors in some of the conclusions to which the court has arrived, and even if they are so great as to reduce the necessary increase of the requirements fixed by the Commission by one-half, still moneys must be provided for the extensions of the pipes of the company, for which the Commission allowed nothing; the amount it allowed for the cost of gas and the interest rate which it fixed were largely too low, twelve years was too high an estimate for the life of the plant, and in the opinion of the court there is no escape from the conclusions that the 28-cent rate is not and will not be compensatory; that on the other hand it is unreasonably low, confiscatory and violative of the Constitution of the United States, and that the complainant is entitled to the interlocutory injunction of this court to prevent its enforcement pending the hearing of this cause upon its merits."



Judge Booth in passing upon the case resolved all doubtful questions against the plaintiff. He eliminated the leaseholds, segregated the transportation from the production, allowed no going value and adopted the very lowest valuation put upon the property, but he found that the probable life of the field was six years instead of twelve, as decided by the Commission, and that therefore the property should be amortized in six years; that the gas would cost the receiver 6 cents in the field instead of 4 cents, as found by the Commission (in fact, it is now costing much more than 6 cents); that the rate of return on the investment should be 8 per cent instead of 6 per cent as allowed by the Commission and that the Commission did not allow enough for annual extensions.

These four items of error in the calculations of the Commission aggregate \$1,497,317, and change the 28-cent rate from one of alleged profit to one of real confiscation.

Judge Booth in his opinion (R., pp. 564, 568) sets out the tables of revenue and expenses prepared by the Commission (R., p. 579) and by its attorneys (R., p. 582), and then summarizes his own conclusions (foot of table, R., p. 583) by his own revised and corrected table (R., p. 584); in which he shows that the 28-cent rate falls short of producing 8 per cent on even the lowest valuation of the Commission by \$258,051 and short of producing 6 per cent by \$174,638, and this without allowing anything for going value or for leaseholds.

The actual experience for 1916 will be of great interest. It follows:

**(j) Experience of receiver under the 28c rate.**

Judge Booth shows that during the eight months ending August 31, 1916, while the 28-cent rate was in effect, the average price of gas per cubic foot realized by the receiver was 18.27 cents per M feet. During the entire year 1916 the receiver sold for domestic purposes over whole system, including Independence and Coffeyville, 14,170,592,000 feet of gas. Employing the average rate received by the receiver for gas during the period the Commission's rates were in force, to-wit, 18.27 cents per M feet, and the actual experience on other classes of gas, we have the following result (Rec., p. 587):

Sales of domestic gas for year 1916,	
14,170,592,000 at 18.27c per M...	\$2,608,824.28
Boiler, gas engine and street lights.	523,700.02

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Total income 1916 based on Commission rates . . . . .	\$3,132,523.00
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Employing the actual operating experience of the company for the year 1916, and the basis used by this court in its opinion of June 3, we obtain the following result:

Operating expenses, 1916.....	\$ 910,030.92
Gas purchased, 1916.....	1,203,547.76
Amortize \$7,083,605.64 in six years,	
as per opinion June 3, 1916.....	1,180,600.94
8% return on investment of \$7,283,-	
605.64 . . . . .	582,688.45

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Total necessary revenue.....	\$3,876,868.07
Total income (as above).....	3,132,523.30

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Deficit resulting from application of Commission's rate to 1916 busi- ness . . . . .	\$ 744,344.77
Increase of price for domestic gas over 28c rate to afford proper rev- enue . . . . .	7c per M feet

It will be observed from the foregoing table that instead of the fabulous income which would have resulted to the receiver had he collected the Commission's rate in the cities of Independence and Coffeyville the income would fall \$744,344.77 short of making the return on the property which the enlarged court found was necessary for the receiver to obtain in order to operate its plant upon a reasonably profitable basis.

Under the order of this court, and under the bond given by the receiver, the plaintiff has expended \$695,938.50 in extensions that are properly chargeable to capital, but upon which a return and proper allowance for amortization should be made.

Return, at 8%, is . . . . .	\$ 55,675.08
Amortize in six years, is . . . . .	115,989.65
Total . . . . .	<u>\$171,664.83</u>

Summarizing these three errors, and taking as a basis the court's order of June 3, 1916, we have the following:

Error by reason of omitting leases . .	\$213,333.00
Error by reason of omitting going value . . . . .	493,333.00
Change of conditions by reason of ex- penditure of \$695,938.50 . . . . .	<u>171,664.83</u>
Total necessary additions to revenue to correct errors . . . . .	<u>\$878,330.83</u>

One cent additional in the price of gas to the consumer means \$85,000 additional to the receiver, approximately. These added demands make it clear that the receiver is entitled to 10 cents a thousand in addition to the rate suggested by the court in its opinion of June 3d.

Suppose now we take the actual experience shown by the preceding table for the year 1916, which requires a 7-cent increased rate. Eliminate errors above indicated, and the result is that the actual experience of 1916, with fundamental errors eliminated as shown above, an increased requirement of 17 cents per thousand feet, above the 28-cent rate, is necessary to compensate the receiver.

Judge Booth refers to this experience under the 28-cent rate (R., p. 587), and finds an actual deficit after all allowances of \$444,344.

Judge Booth's opinion, found at page 564 *et seq.* of the record, is a full and clear discussion of the inadequacy of the 28-cent rate. It is so succinct that quotations are impossible. The whole opinion will be of absorbing interest to this Court.

### **The Binding Force of the Supply Contracts on the Receiver.**

There are four reasons why these supply contracts are not binding on the receiver, *viz.*:

(a) They have never been adopted by the receiver.

(b) They are void because of the exclusive features and provisions, making them violative of public policy and the Federal and Missouri Anti-Trust Acts.

(c) Changed conditions have terminated all obligations of the supply contracts.

All these propositions are set forth in the findings of fact and order made by Judge Flannelly on October 16, 1916 (Rec., p. 548) and approved on appeal from said decision by the Supreme Court of Kansas, 102 Kan. 712, 1. c. 717.

(d) The bases of the supply contracts (the rate provisions of the franchise ordinances) are void for want of power in the cities and inoperative because violated and disregarded by the cities. Therefore, the supply contracts so far as rates are concerned do not bind anyone.

#### **(a) They have never been adopted by the receiver.**

Judge Flannelly, after making certain findings of fact, announced the following conclusions of law, and made the following order:

"1. That neither the receiver of this court, nor the receivers of the United States Court, have by their acts or otherwise adopted any of the supply contracts with the various distributing companies.

2. That the supply contracts with the dis-

tributing companies, whose plants are located within the state of Kansas, are invalid, illegal and void, being in violation of the laws of this state and of the United States, and are not binding on the receiver.

3. That the supply contracts with the distributing companies, whose plants are located in the state of Missouri, are invalid, illegal and void, being in violation of the laws of the state of Missouri and of the United States, and are not binding on the receiver.

4. That the conditions mentioned in the various supply contracts upon the happening of which the contracts were to become inoperative and void have long since occurred, and the receiver is unable to furnish the distributing companies with gas under the terms of said supply contracts.

5. That the said supply contracts are improvident, wasteful and destructive of the estate of the Kansas Natural Gas Company and should be disavowed.

#### ORDER.

It is therefore considered, adjudged and decreed that none of the distributing contracts aforesaid are binding upon, or effective against, said receiver, and that he should not, and is hereby forbidden to, deliver natural gas to any of said distributing companies under the distributing contracts formerly existing between the Kansas Natural Gas Company and said distributing companies, respectively; and he is hereby ordered to deliver natural gas to such of said distributing companies as will receive the same at the rates and prices, and on the terms named in the schedule of rates and prices heretofore promulgated by said receiver to said distributing companies, respectively; and the acts of said

receiver in promulgating said schedules are hereby approved.

And this court, recognizing that its power does not extend beyond the state of Kansas, hereby directs said receiver to present to the United States District Court for the District of Kansas, First Division, the foregoing findings of fact and conclusions of law and this order, and to pray said Federal Court for such orders as will effectuate the law applicable to the Kansas Natural property in Missouri and Oklahoma, and thus bring the same in operative harmony with the Kansas Natural property in Kansas, to the end that the public may be served and said property preserved."

We invite the Court's special attention to the very full findings of fact upon which Judge Flannelly based the above conclusions and order. (Rec., p. 548.) These findings contain references to and quotations from the distributing contracts and city ordinances pertinent to this controversy.

This order of Judge Flannelly was adopted by the lower court in its order of June 5, 1917, adopting all the administrative orders of the District Court of Montgomery County, Kansas.

Judge Booth held these supply contracts were not binding on the Receiver. (Rec., pp. 619, 623.)

The contention of defendants that these contracts have been adopted by the course of business followed by the Receiver is no different from the contention of the Kansas City Pipe Line Company made and decided on appeal in 217 Fed. 187, l. c. 195. The Court of Appeals held that this Receiver



by his method of conducting the business had not adopted the lease contract of the Kansas Natural with the pipe line company, and if he did not adopt that contract by his course of business he did not adopt these supply contracts by his course of business in reference to them. The argument in both cases is presented by the same counsel. In the opinion of the Circuit Court of Appeals Judge Hook specially mentioned the order of October 9, 1912, appointing receivers, and said that in the face of such order the Receiver would not be held to have adopted such contract by his course of business. The language of that court is as follows:

"We turn to the claim of the pipe line company and its mortgage trustee. In appointing its receivers the court below reserved to itself the power to approve or disapprove leases and contracts and none were to be taken as adopted without its express order. No such order had been made as to the lease in question. The pipe line company has never formally asked the court below to adopt or disaffirm the lease. It relies for adoption upon administrative acts of the federal receivers, but they are not sufficient in this case. It has no lien, as claimed, upon the entire estate by the Kansas Natural Gas Company or the income from the receivers' operation."

On December 30, 1912, the United States District Court of Kansas fixed a schedule of rates for the sale of natural gas by its receivers higher than the supply contract rates. (Rec., p. 21.) Not only did the court below thus disavow the supply contracts, but it also in addition provided for the

collection of charges as measured by meters placed at the points where the systems of the distributing companies connected with the mains in charge of the receivers. Thus was the method of doing business changed entirely. Instead of the distributing companies receiving a percentage of the gross cash receipts and sustaining no part of the loss by leakage and bad bills they became directly responsible for all bad accounts and the entire leakage within their distributing systems. It is true this order was never enforced in its entirety, but it is a complete answer to the contention of the Wyandotte County Gas Company and the Kansas City Gas Company (see their brief, p. 73) that the supply contracts have never been disavowed by the court below. This action of the court below completely disavowing the supply contracts not only with the two companies named, but also with all other distributing companies, is set forth in the bill of complaint herein. (Rec., p. 21.)

**(b) The exclusive features of the supply contracts.**

The supply contracts are void because of exclusive purchase and sale provisions contained in them. The Wyandotte County Gas Company and the Kansas City Gas Company's contracts are almost identical in these provisions. The provisions of the Wyandotte County Gas Company's contract are set out in full. (Rec., p. 551.) The Kansas City Gas Company's contract was introduced at the hearing, and the exclusive provisions are found. (Rec., p. 846.) These two contracts are illustrative of all the supply contracts and the exclusive

provisions are violative of the statutes of Missouri and the Sherman Anti-Trust Act. The Supreme Court of Kansas held that these provisions invalidated contracts in Kansas, in the case of *State v. Kansas Natural Gas Co.*, 17977. (Rec. 559.)

In *Montague & Company v. Lowery*, 193 U. S. 38, an association was formed in California by manufacturers and dealers in tiles, mantels and grates. The dealers agreed:

"Sec. 7. No dealer and active member of this association shall purchase, directly or indirectly, any tile or fireplace fixtures from any manufacturer or resident or traveling agent of any manufacturer not a member of this association; neither shall they sell or dispose of, directly or indirectly, any unset tile for less than list prices to any person or persons not a member of this association, under penalty of expulsion from the association.

Sec. 8. Manufacturers of tile or fireplace fixtures or resident or traveling agents or manufacturers selling or disposing, directly or indirectly, their products or wares to any person or persons not members of the Tile, Mantel and Grate Association of California shall forfeit their membership in the association."

Suit was brought under the Federal Anti-Trust Act for three-fold damage to business by reason of violation of the Act. The question was whether the agreement was in violation of the Anti-Trust Law. Justice Peckham, speaking for the court, said that by reason of this agreement the market for tiles was narrowed and the prices charged to non-members was more than double, and that the

whole agreement became part of a purpose which when carried out amounted to a contract or combination in restraint of interstate commerce.

"The plaintiffs, however, could not, by virtue of any agreement contained in such association, be legally put under obligation to become members in order to enable them to transact their business as they had theretofore done and to purchase tiles as they had been accustomed to do before the association was formed. \* \* \* The agreement directly affected and restrained interstate commerce.

The case we regard as a plain one, and it is unnecessary to further enlarge upon it."

An illegal combination or trust cannot resort to equity to enforce a contract or sale calculated to perpetuate the illegal features of the combination.

*American Biscuit Co. v. Klatz*, 44 Fed. 171.  
*Consol. Wall Paper Co. v. Voight*, 148 Fed.  
 950, S. C., 212 U. S. 262.

As the statute makes the contract itself illegal, no recovery can be had upon it when the defense of illegality is shown to the court.

8 Enc. of Sup. Ct. Dec. 448.  
*Bement v. National Harrow Co.*, 186 U. S.  
 70, 88.  
*U. S. v. Joint Traffic Assn.*, 171 U. S. 505.  
*Northern Sec. Co. v. U. S.*, 193 U. S. 197,  
 331.  
*Harriman v. Northern Sec. Co.*, 197 U. S.  
 244.

See also:

*State v. Smiley*, 65 Kan. 240.  
*State v. Standard Oil Co.*, (Mo.) 116 S. W.  
 902.

*Standard Oil Co. v. Missouri*, 224 U. S. 270.

*U. S. v. American Tobacco Co.*, 221 U. S. 106.

*U. S. v. Standard Oil Co.*, 221 U. S. 1.

*International Harvester Co. v. Missouri*, 234 U. S. 199.

**(c) Changed conditions have terminated all obligations of the supply contract.**

The contract between the Kansas City Pipe Line Company and Small, McGowan and Morgan, which by successive assignments became the contract between Kansas City Gas Company and Kansas Natural Gas Company, contains the following provisions:

"Whereas, the party of the first part is the owner of gas lands and leases in the gas belt of Kansas and a pipe line for the conveying of natural gas from the gas fields in the state of Kansas to a point at or near the city limits of Kansas City \* \* \* and whereas the parties of the second part are the owners of an ordinance in the city of Kansas City, Missouri, \* \* \* and desire to secure a supply of gas for said city and its inhabitants \* \* \* the party of the first part agrees that it will during the period of such ordinance or any extension or renewal thereof \* \* \* supply and deliver through its said pipe line or lines to said parties of the second part \* \* \* natural gas in such amount as will at all times fully supply the demand for all purposes of consumption as provided in this contract \* \* \*. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and in-

terruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the *wells* and *pipe lines* of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying."

Ordinance No. 33887 (Rec., p. 838) was enacted with a distinct understanding that natural gas was to be supplied only under the conditions of the contract, Exhibit No. 1001-C. Section 14 thereof provides:

"Should the supply of natural gas obtainable by grantees reasonably accessible be at any time hereafter during the life of this ordinance inadequate to warrant them in continuing to supply natural gas under the terms of this ordinance, or should the common council of Kansas City, Missouri, find at any time (and in the event of any disagreement as to the facts in this respect either party or a gas consumer may have recourse to the courts to establish the facts), they shall not be longer required to do so, but shall manufacture and furnish manufactured gas to said city and its inhabitants through said mains and pipes under the provisions of this ordinance, as far as applicable and subject to all the terms and provisions contained in the Ordinance No. 6658 \* \* \*."

A careful examination of these contracts leads to the following conclusion: That the contracts were originally binding on Kansas City Pipe Line

Company and required the supplying of gas from the gas wells and pipe lines of that company in the gas fields of Kansas. The contract (Rec., p. 857) by which the Kansas Natural Gas Company assumed to perform these contracts obligated the Kansas Natural to perform such contract only and to supply 50 per cent of the gas produced *from its own wells*.

The evidence of Mr. Hays (Rec., p. 1102), the affidavit of Mr. Wyer (Rec., p. 1135 and Exhibits "E" to 2, inclusive) and the Missouri defendants' Exhibit 1001 make it clear that the gas wells of the Kansas City Pipe Line Company and the gas fields of Kansas reasonably accessible to the pipe lines of the Kansas City Pipe Line Company have long since become exhausted, and that the Kansas Natural Gas Company has long since ceased to be a *producing* company and is now a *purchasing* company.

The lease contract between Kansas City Pipe Line Company and Kansas Natural provides:

"5th. The lessee hereby assumes and covenants to perform all the obligations assumed by the lessor under the terms of an agreement \* \* \* dated November 17, 1906, between the lessor and Hugh J. McGowan, Charles E. Small and Randall Morgan for the supply of natural gas to Kansas City, Missouri, \* \* \* as amended by an agreement dated December 11, 1907. \* \* \* The lessee hereby assumes and covenants to perform all the obligations assumed by the lessor under the terms of all other contracts now in force and binding upon the lessor. \* \* \* The lessee agrees that if the gas



wells hereby demised situate in the territory of the lessor do not furnish a sufficient volume of gas, or if the pipe line of the lessor shall not have a delivery capacity sufficient to supply the demands for gas in the cities of Kansas City, Kansas, and Kansas City, Missouri, it, the lessee, will supplement said gas supply *from its own gas wells* up to an amount equal to 50 per cent of the gas which, by the use of due diligence in connecting existing wells and drilling new ones, it may be able to produce from the territory now or hereafter controlled by it." (Rec., p. 857.)

The contract recites that the Pipe Line Company is the owner of "gas lands and leases in the gas belt of Kansas," and the contract is predicated upon this recital. This is contained in a "Whereas" clause and according to universal rules of construction is conclusive evidence of the matters in the minds of the parties at the time the contract was made. (Rec., p. 844.)

But we are not confined to aids in construction. In the covenants of the contract it is found that the obligation of the Kansas City Pipe Line Company, after reciting the hazards of the business, limits the obligation of the Pipe Line Company by these words:

"but only to furnish such supply for such a period of time as the wells *and* pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying." (Rec., p. 845.)

There is no ambiguity about this language. After reciting that the company owned certain

gas lands and leases in Kansas the agreement is made only to furnish gas as long as the "wells" and pipe lines are capable of supplying. Observe that the connecting word is "and." If the wells give out—wells on the gas lands and leases of the first party in Kansas—the contract obligation is gone; or, if the wells stand up and the pipe line fails, then the obligation ceases. The phrase "and such other resources as the party of the first part shall be able to command" doubtless means such other leases and wells as they can reasonably acquire. It is one of those general phrases so often found in contracts which must be construed by the rule of reason or they become absurd. It cannot mean that the obligation lasted as long as gas remained in the world which might be obtained by the unstinted use of means or money.

It will be noted, then, that the Pipe Line Company only agreed to furnish gas as long as the wells lasted, and reference was expressly made to the Kansas fields. It is undisputed that these wells, and these fields, *belonging to the Pipe Line Company as well as the Kansas Natural, have been exhausted*, not only in Kansas, but in Oklahoma, for several years. These facts are in the record in many places.

Under the contract in question it is probably true that the Kansas Natural could not be compelled to buy from outside sources any gas to supplement its own supply in order to furnish better service to the distributing companies, but could stand on its contract and furnish gas as long as its wells in its Kansas fields lasted; but certainly when its own wells, not only in Kansas,

but in Oklahoma, become exhausted, and its own leases have been depleted, and it has bought and bought to enable itself to furnish a supply, it cannot be held under the contract when it is compelled to buy more than nine-tenths of its supply, at a price prohibitive under the contract.

Two other agreements were entered into about the same time which throw light upon this situation, although it would seem unnecessary to go beyond the contract itself. The parties who entered into the above referred to contract with the Kansas City Pipe Line Company, secured a franchise from the city of Kansas City, through which they expected to sell the gas purchased from the Pipe Line Company. In this ordinance this provision occurs:

"Should the supply of natural gas, obtained by grantees reasonably accessible, be at any time hereafter during the life of this ordinance inadequate to warrant them in continuing to supply natural gas under the terms of this ordinance, \* \* \* they shall not be required longer to do so, but shall manufacture and furnish manufactured gas," etc. (Rec., p. 838.)

The grantees under the ordinance are not compelled to furnish gas to the city except as long as it may be "reasonably accessible." What is reasonably accessible? We do not know, and this court is not called upon to determine with any degree of exactness. It certainly will not be contended that a gas field which has receded from Kansas into Oklahoma, from a territory a hundred

miles away to one nearly three hundred miles distant, is still reasonably accessible. Under all the circumstances of the case, it was the field at the time the ordinances were made, the then large supply of leases and wells owned by the supply companies, and it certainly cannot be contended that the present situation was within either the contemplation of the parties or the terms of the contract.

Later the Kansas Natural Gas Company entered into a contract with the Kansas City Pipe Line Company which had for its subject the contract between the Kansas City Pipe Line Company and the predecessors of the Kansas City Gas Company. In the ordinance referred to, one party to this contract contracted with the city concerning the contract in question; now we have the other party to the same contract contracting with the Kansas Natural concerning the same contract. In this latter contract, it is equally clear that the parties had in contemplation wells and leases owned by them in Kansas. Note:

"The lessee (the Kansas Natural) agrees that if the gas wells hereby demised situate in the territory of the lessor do not furnish a sufficient volume of gas \* \* \* the lessee will supplement said gas supply from its own gas wells up to an amount equal to fifty per cent of the gas which by the use of due diligence in connecting existing wells and drilling new ones it may be able to produce from the territory now or hereafter controlled by it." (Rec., p. 857.)

The contract itself limits the obligation of the Kansas Natural to its own wells in Kansas; each party to that contract construed it about the time of its execution by contracts with third parties, and in each instance the interpretation put upon it by the parties is in accord with its terms. There can be no other interpretation put upon it.

If any other aid to construction is desired, it is found in the common sense of the situation. Unless absolutely compelled to do so by the language of a contract, the courts will not impute to parties an intention which leads to a business absurdity. In striving to arrive at the real intention of the parties, the court will place itself in the position of the parties and not impute to them an intention which would lead to business suicide. The Kansas City Pipe Line Company might very well and very sensibly agree to furnish gas from its own leases for a period of years at a given price; with some degree of certainty the cost of drilling and transporting may be figured on. But to agree, for a term of years, to furnish gas it did not own at a stipulated price would be the most extensive deal in futures yet recorded. To agree absolutely to furnish tremendous quantities of gas at a fixed price, when that would certainly involve the purchase of such gas in an open and wildly fluctuating market, is a business absurdity. Fortunately the parties did not so contract; they contracted to sell their own gas and no other.

In a controversy in the Western District of Missouri, between the Kansas City Gas Company and the City of Kansas City, Missouri (both of whom are defendants in this suit, Judge Van

Valkenburgh had occasion to pass upon the franchise and supply contract here involved. The case is reported in 198 Fed. 500, and contains a very full discussion of the matter. We ask the court to give full consideration to that case, but we desire to refer specially to the following parts of the opinion.

In speaking of the franchise, the court said:

"It was originally contemplated and understood by both parties that the supply should be taken from Kansas fields as nearest and most accessible to Kansas City."

The franchise is incorporated into the supply contract, and the same understanding must have existed between the parties to the supply contract. The court there said:

"It is well recognized that natural gas is more or less elusive, unstable and uncertain. It is produced by nature in indeterminate quantities, not by man, according to fixed and controllable laws of production."

The court then quotes from Thornton, stating the rule to be that in case of the failure of natural gas, such failure would be a defense to the non-performance of a contract where the company had made all efforts to furnish gas.

Again, the court, in speaking of the contract there interpreted, stated:

"It was well understood that natural gas would eventually fail, and that when it did it would do so by degrees and not abruptly."

On page 523, the court once more called attention to the fact that it was in the contemplation of the parties that the supply would gradually fail, and that such a point had evidently been reached at that time (1912).

**(d) The bases of the supply contracts (the rate provisions of the franchise ordinances) are void for want of power in the cities and inoperative because violated and disregarded by the cities. Therefore the supply contracts so far as rates are concerned do not bind anyone.**

Before the franchise ordinances have any bearing whatever on this case it must be determined that the supply contracts are valid, subsisting and binding upon the receiver as to rates to be charged by him.

Let us concede for the moment that this question has been so decided. The next question, then, is: Are the franchise ordinances binding upon anyone? If not, of course they do not bind the receiver.

First let us consider the Kansas ordinances. In cities of the first class, such as Atchison, Topeka, Kansas City, Kansas, and Leavenworth, the power to making a binding contract as to natural gas rates has never existed. *State ex rel. v. Wyandotte County Gas Company*, 88 Kan. 165 (affirmed by this Court after reaching the same conclusion independently, 231 U. S. 622, 34 S. Ct. 226). Thus as to the principal cities of Kansas supplied by the receiver, the franchise ordinances did not constitute contracts and are not binding upon anyone. If it is insisted under *City*



of *Emporia v. Emporia Telephone Co.*, 88 Kan. 437, 443, that such a provision, although not constituting a contract, estops the public utility from increasing the rates until set aside by the state, we submit that the state of Kansas through its Public Utilities Commission, by prescribing rates to be charged for the sale of natural gas (we refer to both the 25-cent order and the 28-cent order), has waived and released the estoppel.

No city in Kansas at this time can require anyone to observe the franchise ordinances. In every instance the cities have violated the terms of the ordinances by requiring the companies to keep in force and effect rates lower than those named in the various ordinances. In all the Missouri river towns, after December 1, 1911, the natural gas companies were entitled to charge 27 cents per thousand cubic feet. Yet the cities in conjunction with the Public Utilities Commission of Kansas required the maintenance until December, 1915, of a rate of 25 cents per thousand, which rate was admittedly non-compensatory and confiscatory. (See statement of the Supreme Court of Kansas to this effect in 96 Kan. 372.)

Not only did the cities violate the terms of the franchise ordinances and by threats require the maintenance of rates lower than those prescribed in the ordinances, but they have at all times refused to recognize the ordinances as controlling. They have for some years insisted by appearances before the Public Utilities Commission of Kansas and by proceedings in courts, and even now are insisting in this Court, that the Public Utilities Commission alone has authority to name the rates

to be charged, and that the rates prescribed by these franchise ordinances are of no effect. Having thus repudiated the ordinance rates, the cities cannot now or hereafter insist that anyone is bound by the rates mentioned in the ordinances. *It is elementary that he who first violates a contract cannot thereafter compel the other party to observe such contract.* This principle is too well recognized, based as it is on the very fundamentals of justice, to require the citation of authority to support it. So here the cities by their attitude, by their violation of the rate provisions of the ordinance, have placed it beyond their power to demand the observance of the rate provisions of such ordinances from anyone. Hence these ordinances, so far as they affect cities in Kansas, do not control as to rates.

The same conditions exist as to the Missouri cities. Under the provision of the Constitution of Missouri, cities have never had the power to make binding contracts as to rates. *City of Fulton v. Public Service Commission*, 204 S. W. 386; *Kansas City Bolt & Nut Co. v. Kansas City Light & Power Co.*, 204 S. W. 1074; Brief of Kansas City Gas Company, pp. 77-83. So as in the case of the Kansas towns there is a lack of mutuality as to the rate provisions, and the ordinances do not constitute binding contracts between the cities and the distributing companies, as to rates.

Likewise all of the Missouri cities have insisted and have filed proceedings before the Public Service Commission of Missouri asking that body to prescribe the rates to be charged in the several cities. (Rec., pp. 360, 397, 402, 403, 404, 405,

293.) It is true in some instances that the distributing companies have made the applications to the Commission to change the rates and the cities have consented to the jurisdiction of the Commission. This is particularly the case in Kansas City, Missouri, where the Kansas City Gas Company and the city of Kansas City, Missouri, both consented to and recognized the authority of the Commission to prescribe rates for natural gas. (Rec., p. 365.) The Kansas City Gas Company contends in this Court that its rates are legislative and therefore cannot be contractual. (See brief of Kansas City Gas Company and Wyandotte County Gas Company, pp. 77, 80.) Thus, so far as the receiver is concerned, both the cities and the distributing companies in Missouri have repudiated the rate provisions of the ordinances and have refused to recognize them as binding on either party. Having refused to recognize the force of the ordinances as contracts, the cities cannot require that the ordinances shall measure the rates to be charged by the receiver. So it is that even if this Court should determine the supply contracts are binding on the receiver, yet the rates to be charged are those established by the receiver under order of the court appointing him, and not the rates named in the franchise ordinances repudiated by all parties.

If this Court adopts the same view as that of the District Court of Montgomery County, Kansas, approved by the Supreme Court of Kansas (102 Kan. 717), and as that of the United States District Court of Kansas, that the supply contracts are not binding on the receiver, then the

force and effect of the rate provisions of the franchise ordinances become immaterial. This is true whether this Court accedes to the position of the Supreme Court of Kansas, that the distributing companies act solely as the agents of the receiver in the distribution of the natural gas, the ownership of which continues in the receiver until delivery to the consumers, or to the position of the Missouri defendants that the distributing companies are not the agents of the receiver. Under the first view, as the natural gas is owned by the receiver he is not limited by the rate provisions of the franchise ordinances to which he is not a party or privy by contract or otherwise. If the Missouri view attains, the receiver is not compelled to furnish natural gas to the distributing companies until satisfactory arrangements are made with him and approved by the court whose receiver he is. The distributing companies and the cities will be obliged to make suitable terms with the receiver or secure their gas elsewhere. It follows that inasmuch as the supply contracts are not binding on the receiver, the validity of the franchise ordinances is not involved in this suit. For these reasons the court below deemed it unnecessary to pass upon the validity of the franchise ordinances or the validity of the supply contracts as between the distributing companies and the Kansas Natural Gas Company.

### **Summary as to Supply Contracts.**

1. In April, 1912, the Supreme Court of Kansas decided that the supply contracts were void because of their exclusive provisions.

2. The United States District Court for the District of Kansas in October, 1912, declared them not binding on its receivers until an order was made by the court making them so. No such order was ever made.

3. On December 30, 1912, the court below directed its receivers to charge schedules of rates entirely different from the supply contracts and provided for a different method of doing business than that provided by the supply contracts. Thus definitely were the supply contracts disavowed by the court below. (R., p. 21.)

4. The District Court of Montgomery County, Kansas, in its order of October 16, 1916, held that these supply contracts were not binding on the receiver. An appeal was taken from this order by the Wyandotte County Gas Company and the Kansas City Pipe Line Company to the Supreme Court of Kansas, and that court in dismissing the appeal said there was no substantial difference between its views and the order made by the District Court of Montgomery County, Kansas.

5. On June 5, 1917, the court below in adopting all administrative orders of the District Court of Montgomery County, Kansas, necessarily adopted the order of October 16, 1916, directing the receiver to disregard these supply contracts.

6. In the decree in this cause (Rec., p. 623) and in the opinion of Judge Booth (Rec., p. 619) these

supply contracts were held not to be binding upon the receiver.

7. The United States Circuit Court of Appeals, Eighth Circuit, in the case of *Kansas City Pipe Line Company v. Fidelity Title & Trust Company*, 217 Fed. 181, in considering the Kansas City Pipe Line Company's lease, decided that the receivers of the court below by their administrative acts had not adopted the lease. And the rule applicable to that lease is the same as that relating to the supply contracts.

8. Changed conditions have long since terminated all binding obligations of the supply contracts, especially in view of the fact that the receiver purchases most of his gas now, whereas the supply contracts contemplate the production of gas by the Kansas Natural Gas Company.

9. Inasmuch as the franchise ordinances, which were the basis of the supply contracts as to the matter of rates, are void for want of power in the cities, and inoperative because violated and disregarded by the cities, the supply contracts, so far as the question of rates is concerned, are not binding on anyone, whether the business conducted is interstate or intrastate commerce in its character.

**Answer to Certain Portions of Brief of the Cities  
of Kansas City, Joplin and St. Joseph, Missouri.**

Without pausing to correct the many misstatements of fact found in the brief of the above parties, we ask the indulgence of the Court to reply to a few points raised by these appellants:

Appellants' Brief, p. 35. The purpose of Section 56 of the Judicial Code is not only to aid in the collection of assets, but to protect those assets from dissipation after they are once collected. To prevent the assets of the Kansas Natural Gas Company in the possession of the United States District Court for the District of Kansas from being taken without compensation and without due process of law was the purpose of the suit instituted in the court below. Collection of assets without protection of those assets when collected would be a vain and futile thing. We submit that Section 56 of the Judicial Code necessarily covers the protection of assets as well as the collection thereof.

Appellants' Brief, p. 36. The contention found on this page that there was no receiver of the United States District Court for the District of Kansas in charge of the property in Kansas, and hence the retention of the possession of the property in Missouri by that court was illegal, is neither new nor original. Counsel for the receiver appointed by the state court made the same contention at length in the Circuit Court of Appeals, Eighth Circuit, but that court decided the point adversely to such contention. *Kansas City Pipe Line Company v. Fidelity Title & Trust*



*Company*, 217 Fed. 187. Whatever we might say on the subject is so much better stated in that opinion that we refer to that case as containing a full statement of the law on the subject.

However, there was a receiver of the United States District Court for the District of Kansas who was in possession of the reversionary interest in said property located in Kansas and who held potential possession of the property within the state of Kansas under the decree turning over the property within the state of Kansas to the state receiver, and actual possession of certain funds of the Kansas Natural Gas Company estate. (Rec., pp. 16, 1003.) This was George F. Sharitt, one of the defendants who sought in this suit the same relief as prayed for by the plaintiff herein, and who should be aligned with the plaintiff as a party plaintiff in determining the question of jurisdiction. It follows that the proposition of the defendants is sustained neither by the law nor the facts.

Appellants' Brief, p. 53. The franchise ordinance of Kansas City, Missouri, was not a contract so far as the matter of rates was concerned. The Supreme Court of Missouri has recently decided that under the terms of the Constitution of that state in force at the time this ordinance was passed and accepted, a city of Missouri cannot make a binding contract as to rates. *State v. Public Service Commission*, 204 S. W. 497; *Kansas City Bolt & Nut Co. v. Kansas City Light & Power Co.*, 204 S. W. 1074. Moreover, the decree of the United States District Court did not attempt to release the Kansas City Gas Company

from the obligation of its franchise ordinance. The decree merely released the receiver, who was not a party to such franchise ordinance, from furnishing his gas to consumers in Kansas City, Missouri, under the terms of the supply contract with the Kansas City Gas Company, which contract he had never adopted. The binding force of the supply contract on the receiver was directly raised by the pleadings.

Appellants' Brief, pp. 38, 39. The cities in question aided and assisted the Public Service Commission of Missouri in suspending the rates established by the receiver, and in having the Commission fix rates which were non-compensatory and in refusing to accept the rates put into force by the receiver, after the preliminary injunction had been granted by the three federal judges. (Rec., pp. 360, 398, 403.)

The portion of the above brief devoted to a discussion of the interstate character of the business transaction by the receiver will be answered in connection with the discussion of interstate commerce contained at another point herein.

### **Interstate Commerce in Natural Gas as Discussed in Appellants' Briefs.**

For the convenience of the Court we collect and print together the following parts of the record relating to interstate commerce:

Judge Booth's ten propositions of law in regard to interstate commerce are as follows (Rec., p. 591):

The following propositions which have a bearing upon the instant case seem to be well established:

(1) Interstate commerce begins when the goods are delivered to the carrier for transit from a point in one state to a point in another, or are actually started on their ultimate passage.

*Coe v. Errol*, 116 U. S. 517, 525.

*General Oil Co. v. Crain*, 209 U. S. 211, 229.

*T. & N. O. C. v. Sabine Co.*, 227 U. S. 111.

*La. Ry. Comm. v. Ry.*, 229 U. S. 336.

*Ill. Cent. Ry. Co. v. La. Ry. Comm.*, 236 U. S. 157.

*McClusky v. Ry.*, 242 U. S.

(2) Interstate commerce ends when the shipment reaches its intended destination, and except where Congress has expressly otherwise provided, the protection afforded to an interstate shipment includes the right to sell by the person introducing the goods; at least, up to the time when they have become commingled with the general property of the state; and where the goods are introduced in

the original packages, commingling does not take place until the original package is broken.

*Brown v. Maryland*, 12 Wheat. 419.  
*Am. Exp. Co. v. Iowa*, 196 U. S. 133.  
*Savage v. Jones*, 225 U. S. 501, 520.

(3) The intent and purpose of the party making the shipment have an important, if not controlling, bearing upon the question of where the interstate journey ends.

*Swift & Co. v. United States*, 196 U. S. 375.  
*So. Pac. Term. Co. v. Int. Com. Com.*, 219 U. S. 498.  
*Ohio Ry. Com. v. Worthington*, 225 U. S. 101.  
*T. & N. O. R. Co. v. Sabine Co.*, 227 U. S. 111.  
*La. Ry. Com. v. Ry.*, 229 U. S. 336.  
*Ill. Cent. Ry. v. La. R. R. Com.*, 236 U. S. 157.  
*United States v. Ill. Cent. Ry.*, 230 Fed. 940.

(4) A change of carriers or plurality of carriers does not affect the status of the interstate shipment:

*T. & N. O. R. Co. v. Sabine Co.*, 227 U. S. 111.  
*So. Covington Ry. v. Covington*, 235 U. S. 537.  
*Atchison Ry. v. Harold*, 241 U. S. 371.

(5) Change of ownership of the property during transit does not necessarily affect the status of the shipment.

*Swift & Co. v. United States*, 196 U. S. 375.

*Gulf Ry. v. Texas*, 204 U. S. 403.

*Atchison Ry. v. Harold*, 241 U. S. 371.

(6) Employment of an agent at the point of destination to effect delivery to the ultimate consignee does not destroy the character of the shipment.

*Caldwell v. N. C.*, 187 U. S. 622.

*Rearick v. Pennsylvania*, 203 U. S. 507.

*Stewart v. Mich.*, 232 U. S. 665.

*Davis v. Va.*, 236 U. S. 697.

*Grand Union Tea Co. v. Evans*, 216 Fed. 791.

(7) The time and place at which the title to the goods passes as between the seller and buyer is not controlling upon the character of the shipment.

*Norfolk Ry. v. Sims*, 191 U. S. 441.

*Penn. R. R. v. Coal Co.*, 238 U. S. 456, 468.

*Penn. R. R. v. Sonman Co.*, 37 S. C. R. 46.

(8) The parties, shipper, carrier and consignee may be three separate parties, or a less number.

*Kelly v. Rhoads*, 188 U. S. 1.

*Rearick v. Penn.*, 203 U. S. 507.

*Ohio R. R. Com. v. Worthington*, 225 U. S. 101.

*Stewart v. Michigan*, 232 U. S. 665.

Oil Pipe Line Cases, 234 U. S. 548.  
*Kirmeyer v. Kansas*, 236 U. S. 568.  
*City of Lee's Summit v. Jewell Co.*, 217  
 Fed. 965.

(9) Absence of a specific consignee at the time of shipment does not alter the character of the shipment.

*Swift & Co. v. United States*, 196 U. S. 375.  
*T. & New Orleans R. C. v. Sabine Co.*, 227  
 U. S. 111.  
*Grand Union Tea Co. v. Evans*, 216 Fed.  
 791.

(10) The exact destination need not be fixed at the time of the shipment provided the intent and purpose is to continue the journey beyond the limits of the state in which the journey begins.

*Ohio R. R. Co. v. Worthington*, 225 U. S.  
 101.  
*T. & N. O. R. Co. v. Sabine Co.*, 227 U. S.  
 111.

Judge Booth's quotation from the opinion of the Supreme Court of Kansas in the case of *State ex rel. v. Flannelly*, 96 Kan. 372, showing how the business of transportation and sale of natural gas is conducted, follows (Rec., p. 590):

"(A) In determining the question whether the transactions carried on by the receiver constitute interstate commerce, it will be helpful to have clearly in mind just what those transactions are. The Supreme Court of the State

of Kansas in *State ex rel. Flannelly, supra*, has stated the matter as follows:

'The gas sold by the receivers is produced in both Kansas and Oklahoma. It is transported from the wells through pipe lines beginning in Oklahoma, entering the state of Kansas near Coffeyville, at which place gas is first distributed and sold to consumers. The remainder is transported north through pipe lines into which gas from wells in Kansas is conveyed, and the gas from Oklahoma and Kansas is then transported through the same pipe lines and through compressing stations to Independence and north and east throughout this state, and after supplying the consumers in this state, it is transported into the state of Missouri, where it is sold to other consumers. After the gas from this state is discharged into the pipe lines with the gas from Oklahoma, it is impossible to distinguish one from the other or to separate one from the other. About 85 per cent of the gas sold is produced in Oklahoma, and 15 per cent is produced in Kansas. About 60 per cent of the gas sold is sold in Missouri and 40 per cent is sold in Kansas. The gas sold in Kansas is delivered to the consumers thereof, in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities, fixing the rates charged customers for gas. These distributing companies act as agents for the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Com-



pany, under the control of the receiver, into the pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers. The gas is consumed as fast as it is sold, and is consumed immediately after passing through the meter measuring the gas to consumers.' "

Judge Booth's analysis of how the business of the receiver is conducted as contained in his opinion (Rec., p. 593):

"Reverting to the character of the business transacted by the receiver, it is to be noted.

(a) That the shipment is started on its journey from one state to another, (b) with the purpose that it shall be delivered to a consumer, (c) that it moves continuously from a point of shipment in one state to the consumer in another state, (d) that it is moved part of the way in the pipe lines of the receiver, and part of the way in the pipe lines of the distributing company; whether as agent of the receiver or as connecting carrier is immaterial. (e) The destination of the shipment is intended at the time of the shipment to be beyond the state, although the name of the particular consumer for any specific portion of the gas shipped is not known. (f) There is no stoppage in transportation. (g) The title to the gas remains in the receiver until delivery to the ultimate consumer.

In substance and effect there are continuing orders by the consumers to the receiver through the distributing company to supply them with gas from the Oklahoma fields. Such transactions have the character of interstate commerce at their inception, and this character continues until final delivery."

The sample contract between a distributing company and a consumer (Rec., p. 1072) shows that the consumer makes a contract which is a standing order for natural gas good until three days after the day on which he gives notice to discontinue the supply. Under this contract the consumer agrees to pay for the natural gas, not each time he turns on a cock, as appellants would have the court believe, nor by each thousand cubic feet of natural gas consumed, but from month to month, and if the bill for natural gas at the regular rates does not amount to 50 cents per month, he yet agrees to pay that amount as a readiness-to-serve charge.

The method in which the business is conducted is also stated in the evidence found in paragraphs numbered 61 to 65, inclusive. (Rec., pp. 809-812.) The course of business is graphically illustrated in Exhibit "R" (Rec., p. 1143), attached to the affidavit of Samuel S. Wyer. Mr. Wyer, who has made numerous investigations and examinations of the pipe line system operated by the receiver, was recently appointed under the proclamation of the President of September 16, 1918, "Chief, Natural Gas Conservation Under the Fuel Administration," pursuant to the provisions of the Act of August 10, 1917, known as the Lever Bill.

A condensed statement of Mr. Wyer's evidence in respect to the method of carrying on the business is found at page 810 of the record. It follows:

"Gas passes from the well tubing, where found, out to the conveying lines, then to the

measuring stations and to the various compressing stations, through the main line measuring stations at the gates of the town, and then through the medium of the pressure lines of the town; then through the low pressure line of the town to the gas service cocks and the gas service lines to the consumers' pipe, and ultimately fixing its final destination at the burner of the consumers' fixtures. It requires all of these pipe lines, those of the Kansas Natural, the distributing company and the consumer to complete the system. All of them are essential to the transmission of gas from Kansas or Oklahoma to the consumers in Missouri. Gas is a fluid composed of a large number of molecules which are vehicles of energy continually in motion, and having an inherent tendency to get farther and farther apart. The range of motion of the molecules is limited only by the volume of the closed containing vessel in which they constantly move to and fro. The most distinguishing characteristic of gas is its universal property of completely filling an enclosed space.

"Natural gas is a highly combustible gas made by a secret process of nature. It is not a chemical compound, but is a mechanical mixture of several gases, the number and proportion of the various constituents varying somewhat with different localities and at individual wells. Gas pressure is the result of the combined efforts of all of the moving molecules in the mass trying to get farther and farther apart. Being restrained in the container it exercises a pressure against the walls of the vessel. The pressure is the same in all directions on equal areas of surface. With a given mass of gas any increase in the volume of the containing vessel will give the mole-

cules more range of motion and thereby lower the pressure. So if part of a given mass of gas is removed from a reservoir the remaining mass of gas will expand instantly and keep the reservoir filled, but at a lower pressure.

In the transportation of natural gas from the gas stand to the ultimate consumer the gas is never at rest, but is a constantly seething, moving mass between the gas stands in the fields and the consumers' fixtures in the various cities.

When the line is operated at its fullest capacity the gas will move at a greater velocity than the fastest express train. The gas can only go in one direction at the same time when flowing through a given pipe. The gas is compressed at compressor stations and is thus forced from the field to the point of consumption. At the intake of the line the pressure must be large and at the discharging end of the line the pressure should be relatively low. There is no delivery until the gas has not only passed through the consumer's meter, but is burned at the consumer's fixtures. Each distributing plant is simply one of the integral transportation system as a whole. There is no delivery beginning at the consumer's pipe line to the service pipe.

In making a comparison between the transportation of railroad and the transportation of natural gas by pipe lines, the receiver of the goods in the railroad shipment corresponds to the ultimate consumer of the natural gas. There is no other feasible way of transporting natural gas except by this system or method of pipe lines. The continuous movement of gas in the pipes is caused by the expansion power of the gas produced orig-

inally by natural rock pressure and as that pressure declines it is supplemented by gas compressors along the main transportation line. In the system of the Kansas Natural Gas Company the movement is always from Oklahoma north through Kansas into Missouri.

The demands on the pipe line vary very largely with the hours of the day. Gas being compressible, if the compressor stations are operated practically uniformly, that is, with a practical uniform rate, then during certain periods of the day when the consumption is less than the output at the compressing station may be made to do what in the natural gas man's parlance is known as 'packing the lines,' which will result in a limited storage capacity in the line. This is inevitably connected with the transportation of gas and if it were not present transportation of gas could not be made with the present size of the Kansas Natural pipe line system.

During such periods of the day as the natural gas flow is below the normal, service gas may be by-passed into a storage holder, and then it may be removed from the holder during the peak-load-demand in order to take care of the peak-load-demand at the distributing plant. This is not necessary so far as the transportation of gas is concerned, but is useful to improve the service rendered by the distributing company. Ordinarily the percentage of gas thus flowing through a holder is relatively small. Such holders are not generally used in the transportation and delivery of natural gas. Such holder is not a part of the transportation of gas, but is a mere incident and is merely a part of the distribution. Storage might be compared to the milling of

grain in transit, or the feeding of cattle in transit, or the compressing of cotton in transit. It might also be compared to water standing in an irrigation ditch.

The Kansas Natural has a 16-inch main running from Petrolia to Kansas City, 110 miles long. The mean pressure is 250 pounds. The storage capacity of that would be 14,634,620 cubic feet. If there is a delivery of 70 million cubic feet a day from this pipe line it would have to be filled and emptied five times during the day."

It is conceded that the transportation of natural gas through the gathering lines of the receiver in Oklahoma and through the trunk lines in Kansas and Oklahoma is interstate commerce, but appellants contend that it loses its interstate character or becomes interstate commerce of a local nature when it passes from the trunk lines of the receiver to the lines of the distributing companies in each of the forty-five cities in which the natural gas is sold. Judges Sanborn, Booth and Campbell, who granted the preliminary injunction, were unanimous in holding that the receiver was engaged in interstate commerce. Judge Booth, who entered the decrees appealed from, found that the interstate commerce character of the business did not end when the natural gas passed into the lines of the distributing companies, but continued until it reached the burner tips of the consumers. It is therefore pertinent to consider what change happens in the method of carrying on the business in the transfer of the natural gas to the distributing companies that causes it to lose its interstate character.

(1) It is not delivered to the distributing companies, but passes as freely from the trunk lines of the receiver to the lines of the distributing companies as it does from the gathering lines in Oklahoma to the trunk lines.

(2) It is not sold to the distributing companies, but remains the property of the receiver until delivery is made to the consumers. While the price is all paid to the distributing companies, yet it is divided—part going to the receiver and the balance to the distributing company. If the consumer does not pay, there is nothing to divide, and neither the receiver nor the distributing company gets anything. The receiver loses his gas. If there had been a delivery and sale of the gas to the distributing company, the loss would fall upon the distributing company. But as the distributing company pays nothing to the receiver except a percent of what is collected from the consumer, the distributing company never owned the gas at any time and only represents the receiver in the distribution and sale of the natural gas to the consumers. The receiver likewise alone suffers from all leakage up to the consumer's meter.

(3) Whether the distributing company is the agent of the receiver or a connecting carrier transporting the receiver's gas through its distributing system is immaterial. It performs a service in the transportation of the natural gas, and while it never owns or has title to the natural gas, yet it receives its pay for what it does, out of what the consumer pays for it. Its position is very much like that of the real estate agent who gets a commission based on the amount involved. Out of the



commission he maintains his office, advertises the land for sale, and perhaps collects the money. If there is any loss in the transaction, if the land is not sold for its full value, the loss falls on the owner. So here any loss from bad accounts and from leakage falls on the receiver. He buys or produces the gas in Oklahoma. He pays for it as measured by meter in that state. Title passes to him. No other sale is made until the gas reaches the consumer, who pays for the gas on the basis of his meter readings. If the distributing company bought the gas and paid for it at the connection with the receiver's mains, the amount to be received by the receiver would be measured by the meters at the connection at the city limits. Such, however, is not the fact in this case. The only sale is to the consumer, and out of what is obtained from him the receiver obtains pay for what the natural gas cost him, the cost of transportation in the trunk lines, and his profit, and the distributing company gets pay for transporting the natural gas from the trunk lines to the consumer, the cost of collection and its profit.

(4) The movement of the natural gas from the well to the consumer's burner tips is continuous and uninterrupted by any stoppage or periods of rest or storage. Whatever storage exists in the distributing company's lines is incidental and part of the transportation.

**(a) Incidental stoppage or storage.**

The affidavit of Mr. Wyer (Rec., p. 812) shows that at certain periods of the day when the consumption is less than the output "there is a pack-

ing of the lines which results in a limited storage capacity in the line," also in a few of the cities there are holders where a part of the gas is stored for future delivery. Mr. Wyer states, however, that the packing of the lines is but an incident to the transportation and the use of the holder is a mere incident and a part of the distribution. He also says (Rec., p. 812) that there is a 16-inch main running to Kansas City 110 miles long, and that if there is a delivery of 70 million cubic feet per day from this line it would have to be filled and emptied five (5) times during the day.

Exhibit "R" to Mr. Wyer's affidavit (Rec., p. 1142) also shows that the movement of the gas is accelerated shortly after it leaves the well by use of compressors, while its movement is made slower shortly before it reaches the service line of the consumer by the use of low pressure regulators. Mr. Wyer also states that when the line is operated at its fullest capacity the gas will move at a greater velocity than the fastest express train.

Mr. Hurlburt, engineer for the Kansas City Gas Company, appellant, testified (Rec., p. 810) that the carrying capacity and the storage capacity are requisite and necessary for the proper supply of gas and that if it were not for the storage capacity the receiver would not be able to supply the instantaneous demands of consumers; that all gas is in constant motion, and even if enclosed in a holder it cannot be held still; that there is a constant movement of gas in the pipe lines, the general direction of which is from the gas sands of the wells toward the consumers' appliances.

This Court has recognized that in the transportation of products there must and will necessarily be incidental stoppages and storage. Such stoppages and storages have never destroyed the interstate character of the movement.

In *Kelley v. Rhoads*, 188 U. S. 1, the sheep grazed along the road through Wyoming to Nebraska; in *Swift & Company v. United States*, 196 U. S. 375, the cattle were held for a time in the stock yards; in *S. P. Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498, the cotton seed cake was stopped at Galveston in order that it might be transformed into meal; in *T. & N. O. R. Co. v. Sabine Tram Co.*, 227 U. S. 111, the lumber was transferred from the cars to the docks in order that it might be loaded on ships; in *Railroad Commission of Louisiana v. T. & P. Ry. Co.*, 229 U. S. 336, the staves and logs were transhipped from the railroad cars to ships at New Orleans; in *A. T. & S. F. R. Co. v. Harold*, 241 U. S. 371, the grain was taken from the defective car and placed in another car to be forwarded from Topeka to Elk Falls; in *Railroad Commission v. Worthington*, 225 U. S. 101, the coal was moved by railroad to Huron, Ohio, where it was stored in large quantities and later put upon vessels and shipped out of the state; in *Cleveland C. C. & St. L. R. Co. v. Dettlebach*, 239 U. S. 588, the goods were placed in the freight house in September, after the transportation by rail was ended, and not called for until November; in *Western Transit Co. v. Leslie & Co.*, 242 U. S. 448, the goods had free storage at Buffalo for a period to await further orders before forwarding to New

York; in *So. Pac. R. Co. v. Prescott*, 240 U. S. 632, the entire freight charges were paid and four boxes were taken away by the consignee, nine boxes remained to meet the convenience of the consignee in removal; in *Western Oil Refining Co. v. Lipscomb*, 244 U. S. 346, the oil was shipped in tank cars and barrels accompanied it to Columbia, Tennessee, part of the oil was disposed of and the remainder with the barrels shipped to Mount Pleasant; in the *Ticker Cases*, 38 S. Ct. 438, the information was transmitted over the telegraph lines to Boston where it was translated from the Morse code into English and thus transmitted to the offices of the customers; in *Mo. Kan. & Tex. Ry. Co. v. Texas*, 245 U. S. 484, the train was stopped in order to change engines and crews. In each and all of the above cases there was more incidental stoppage and storage than in this case, and yet those stoppages and storage did not affect or destroy the interstate character of the movement.

**(b) Fallacy of appellants' commingling theory.**

Kansas Defendants' Brief, p. 36.—The fallacy of the commingling theory advanced by defendants is apparent when it is remembered that the question of whether or not the goods previously transported in interstate have been commingled with the mass of property in the state is but one criterion by which to determine whether the goods have come to rest and the interstate journey has ended. It is not the sole rule for determination, nor does the mixing of interstate shipments with intrastate shipments destroy the pro-

tection given to the interstate so long as the movement originally intended continues. The intent to commingle at arrival is not of any moment because every shipper must know that ultimately the shipment will be commingled with the mass of property within the state. It is the cessation of the journey and delivery of the shipment that terminates the interstate character of the transaction. Mere mixing the interstate with the intrastate shipment does not destroy the interstate character of the transaction so long as the end intended at the commencement of the interstate journey has not been reached. It is admitted by all parties that the movement of the natural gas from Oklahoma to the Kansas state line is interstate in its character, for this Court has so determined the matter in *West v. Kansas Natural Gas Co.*, 221 U. S. 229.

As was said in *Illinois Central R. Co. v. Louisiana R. R. Commission*, 236 U. S. 157, 163, 35 S. Ct. 275, 59 L. Ed. 517:

"When freight actually starts in the course of transportation from one state to another it becomes a part of interstate commerce. The essential nature of the movement and not the form of the bill of lading determines the character of the commerce involved. And generally when this interstate character has been acquired it continues at least until the load reaches the point where the parties originally intended that the movement should finally end."

The record shows clearly that the Receiver initiates the interstate journey in Oklahoma with

the intention that the natural gas shall move to the burner tips of the consumers in Kansas and Oklahoma, for he receives his pay only for such gas as is actually delivered and used by the consumers.

The contention of the Kansas defendants in respect to the commingling before the termination of the interstate trip is refuted by the decisions of this Court in the Worthington case, 225 U. S. 101, 32 S. Ct. 653. There the coal was shipped from the mines to the docks without knowing the ultimate destination, the specific consignee, and with interstate and intrastate mixed indiscriminately. Part of the coal was ultimately and regularly consumed within the state of Ohio, thus making part of the shipment entirely intrastate. All coal forwarded in coal cars was dumped in big heaps at the docks, where it sometimes remained for weeks. From these big heaps part was taken for intrastate shipment and part for the continuation of the interstate journey. The admixture of the intrastate with the interstate, the lack of knowledge of the specific consignee for any of the coal, the unknown destination, and the intent at the time of the commencement of the trip that interstate and intrastate shipments should be mixed beyond separation in the course of the transportation did not give to the Railroad Commission of Ohio, even though Congress had not assumed control over the commerce there involved, power to prescribe rates for the interstate commerce involved. This commingling theory of the defendants was also answered in the case of *S. P. T. Co. v. Interstate Commerce Commission*, 219

U. S. 498, 31 S. Ct. 279. In *Swift & Company v. United States*, 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518, the same indiscriminate mixing of interstate and intrastate shipments is found. The ultimate consignee and destination of both interstate and intrastate shipments were alike unknown. The part of the articles intended for interstate commerce could not until the end be distinguished from the intrastate. The statement found in the *Minnesota Rate Cases*, 230 U. S. 352, is conclusive, namely:

"The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations."

And Congress has declared by its inaction in this case that the subject of fixing rates for natural gas must be left free from control of the states. Congress's declaration in this respect is controlling, even though interstate and intrastate shipments be mixed. When there is a conflict between the power of Congress over interstate commerce and that of the state over intrastate commerce, the power of the state must yield to that of Congress. Otherwise every shipment of grain from Kansas to Missouri, at the option of the shipper, would be governed by the intrastate rates, for the shipper at the proper moment would mix a handful of grain grown within the state of



Missouri into the car of Kansas grain and thus commingled the shipment in Missouri would become intrastate, and the through interstate rate and the authority of the Interstate Commerce Commission would be defeated. Thus stated, the absurdity of the contention of the Public Utilities Commission is apparent. A holding as that sought by the Commission in this case would result in endless confusion, permit the shipper to determine what rates should govern by the expediency of mixing with the interstate some intrastate shipment, however small in comparison with the interstate shipment, and avoid any distasteful rulings of any regulatory body. We say "however small" for the reason that here the intrastate gas consumed in Kansas is less than 6 per cent of all the gas transported and sold by the Receiver.

No gas produced or manufactured in Missouri is mixed with the gas transported by the Receiver and delivered to consumers in Missouri. There is a statement in the brief of the Wyandotte County Gas Company and Kansas City Gas Company (p. 34) to the effect that gas manufactured in St. Joseph, Mo., is mixed with the natural gas sold consumers in that city, but the Receiver is not now nor for some time past has he transported any gas to St. Joseph. Some time ago the pipe lines under the Missouri River were washed out, and they have never been rebuilt.

**(c) No change of title.**

Kansas Defendants' Brief, p. 58—This statement is made: "The title does not remain in the

name of the transporter, but is owned as much by the distributing company as the importer after the passage of the gas into the distributing company's lines at the ratio," etc. Also we find the following: "The two elements of the transaction—transportation and distribution—seem to be elements of partnership," etc.

We direct the Court's attention to the statement of facts in the same brief (pp. 5 and 6), wherein it is stated that the statement made by the Supreme Court of Kansas as to how the business is transacted was adopted by the District Court and *all parties* as a fair statement. The following from the statement of the Supreme Court, accepted and quoted by the Kansas defendants, refutes the contention as to joint ownership and partnership:

*"These distributing companies act as agents for the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Company, under the control of the receivers, into the pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers."*

If the natural gas was owned by the distributing companies in whole or in part, or if the distributing companies were not the agents of the receiver in distributing the gas, the Public Utili-

ties Commission was not entitled to make the order it did, because most of the distributing companies are limited in their business to one city, and under Section 3, Chapter 238, Session Laws of Kansas, 1911, the Public Utilities Commission has no jurisdiction over such utilities. (Kansas defendants' brief, p. 158.)

There is no element of partnership because the gas is purchased or produced in Oklahoma by the Receiver, out of his own funds, the losses from leakage and bad bills are borne entirely by him, he stands his own expenses and the distributing companies their own. The Receiver does not account to the distributing company for any part of his net profits, and the distributing company does not share with the Receiver any part of its net profits. There is no partnership. As the court below found, and as the Supreme Court of Kansas held, the title to the natural gas remains in the Receiver until it is delivered to the consumers.

At several points in the briefs of the various appellants we find the contention made that the gas is forwarded to the distributing companies by the Receiver to be held for sale to whomsoever shall pay for it, in such quantities and at such times as the party shall apply to the local agent who holds the same for sale. Such a position is untenable. Judge Booth found that in substance and effect there are continuing orders by the consumers to the Receiver through the distributing company to supply them with gas from the Oklahoma fields. (Rec., p. 593.) The sample contract between a distributing company and a consumer (Rec., p. 1072) establishes that the

consumer makes an agreement which is a standing order for natural gas good until three days after the day on which he gives notice to discontinue the supply. He is required to pay each month for the gas delivered to him, and if he has not purchased gas sufficient to equal 50 cents in value under the regular rates he must pay such amount as a readiness-to-serve charge.

If each time the consumer used gas it amounted to a separate sale and delivery, the distributing company would be obliged to send a man out to the service cock in front of the consumer's house and turn the gas on and off each time the use was made, and collection would be made on the amount used at such time. This is not the case. The amount used each time is not separated. Those only can use gas who have their pipe lines connected with the distributing system and who have entered a standing order for gas to continue until three days after the order to discontinue the supply is given. No others can obtain it. Just as in the Ticker cases, 38 S. Ct. 438, the customers are solicited by the local companies, the service lines are connected with the distributing company, the service is there ready to be used when the customer wants it, for which he pays by the month. Each time the customer uses the service he does not pay a separate and distinct charge. He waits until the end of the month and pays the sum total. In that case, such a manner of doing business did not destroy the interstate character of the business, and it does not do so here. Here, as there, the normal, contemplated and followed course of trans-

portation is as continuous and rapid as science can make it from the gas wells in Oklahoma to the consumers in Kansas and Missouri. Such is the testimony of Mr. Wyer and of the witnesses for the appellants. (Rec., pp. 810-812.) Such is the finding of the lower court. (Rec., pp. 593, 617.)

**(d) Cases cited by appellants not applicable.**

Of the cases cited on interstate commerce by the various appellants, we shall point to only a few in order to show that the line of authorities relied upon by them is not applicable. All cases cited by them involve indirect burdens and regulation of interstate commerce. This is true of the taxation cases mentioned. A state may tax goods from another state come to rest therein, the same as other property in the state, even though the protection from direct regulation under the commerce clause has not been ended. This proposition is clearly explained in *American Steel & Wire Co. v. Speed*, 192 U. S. 500, where this Court said (l. c. 519):

“Assuming that the goods concerning which the state taxes in this case were levied were in the original packages and had not been sold, if the bringing of the goods into Tennessee from another state constituted an importation, in the constitutional signification of that word, it is clear they could not be directly or indirectly taxed. But the goods not having been brought from abroad, they are not imported in the legal sense and were subject to state taxation after they had reached

their destination and whilst held in the state for sale. This is conclusively foreclosed by the decisions of this Court as is the doctrine resting upon the decision in *Brown v. Maryland*. *Woodruff v. Parham*, 8 Wall. 123; *Brown v. Houston*, 114 U. S. 622. The doctrine upon which the cases rest was this: that imports, in the constitutional sense, embrace only goods brought from a foreign country, and consequently do not include merchandise shipped from one state to another. The several states, therefore, not being controlled as to such merchandise by the prohibition against the taxation of imports, it was held that the states had the power, after the goods had reached their destination and were held for sale, to tax them, without discrimination, like other property situated within the state."

Continuing, Mr. Justice White said (l. c. 521):

"Thus, in *Brown v. Maryland* there was an absolute want of power to tax imports, and it was held that the state enactment which operated to tax imports, whether directly or indirectly, was within the positive prohibition. In other words, that imports could not be taxed at all until they had completely lost their character as such. *Woodruff v. Parham* and *Brown v. Houston*, on the other hand, so far as interstate commerce was concerned, dealt with no positive and absolute inhibition against the exercise of the taxing power, but determined whether the particular exertion of that power by the state so operated upon interstate commerce as to amount to a regulation thereof, in conflict with the paramount authority conferred upon Congress. In order to fix the period when interstate commerce

terminated, the criterion announced in *Broten v. Maryland*, that is, a sale in the original package at the point of destination, was applied. The court, therefore, conceded that the goods which were taxed had not completely lost their character as interstate commerce, since they had not been sold in the original packages. As, however, they had arrived at their destination, were at rest in the state, were enjoying the protection which the laws of the state afforded, and were taxed without discrimination like all other property, it was held that the tax did not amount to a regulation in the sense of the Constitution, although its levy might remotely and indirectly affect interstate commerce. In *Leisy v. Hardin* and *Lyng v. Michigan* the same question in a different aspect was presented. The goods had reached their destination and the question was not the power of the state to tax them, but its authority to treat the goods as not the subjects of interstate commerce and to prohibit their introduction or sale. This was held to be a regulation within the constitutional sense and therefore void. The cases, therefore, did not decide that interstate commerce was to be considered as having completely terminated at one time for the purposes of import taxation, and at a different period for the purpose of interstate commerce. But both cases, whilst conceding that interstate commerce was completely terminated only after the sale at the point of destination in the original packages, were rested upon the nature and operation of the particular exertion of state authority considered in the respective cases."



Thus it appears that the sustaining of the power of a state to tax goods transported in interstate commerce, without discrimination, like other goods in the state, does not amount to a holding that the interstate character of the transaction has been lost, but only that the goods have come to rest within the state. In other words, the exertion of the general taxing powers of a state, without discrimination, is but a remote and indirect burden upon interstate commerce.

The same distinction between the power of the state to indirectly affect interstate commerce by taxation, but not directly to burden it by regulation or prohibition, is found in *American Express Co. v. Iowa*, 196 U. S. 133, l. c. 146.

*General Oil Co. v. Crain*, 209 U. S. 211, cited and relied upon by appellants, involved the same question as that in *American Steel & Wire Co. v. Speed*, *supra*, and the decision is based entirely on that case.

*Brown v. Houston*, 114 U. S. 622, is distinguished in the quotation we have made from *American Steel & Wire Co. v. Speed*, *supra*.

The case of *Banker Bros. v. Pennsylvania*, 222 U. S. 210, strongly urged by some of the appellants as decisive, likewise involved solely the right of the state to exercise its general taxing powers. Nothing said in that case can be taken as modifying the analysis of the cases set forth in *American Steel & Wire Co. v. Speed*, *supra*, for the latter case is the authority on which the former is decided.

*Browning v. City of Waycross*, 233 U. S. 16, was also a taxing case. The following statement

from the opinion therein shows it is no exception to the rule:

"The general principles by which it has been so frequently determined that a state may not burden by taxation or otherwise the taking of an order in one state for goods to be shipped from another or the shipment of such goods in the channels of interstate commerce up to and including the consummation by delivery of the goods at the point of shipment have been so often stated as to cause them to be elementary and as to now require nothing but the mere outline of the principle."

Of the cases cited by the appellants, the Wyandotte County Gas Company and the Kansas City Gas Company, on the question of interstate commerce, we direct the Court's attention to the fact that they do not involve interstate commerce or else they concern only the power of the state to indirectly burden it. The contention advanced by the same appellants that a public utility selling the article it transports is not entitled to the protection of the commerce clause of the Federal Constitution is too absurd to entitle it to serious consideration. In the Ticker cases, *supra*, the telegraph companies were not acting as common carriers, were selling the product they transported, and yet the protection of the commerce clause of the Constitution was accorded them.

That the fixing of rates for interstate transportation or the fixing of prices at which articles transported in such commerce shall be sold is a

direct burden upon such commerce and beyond the power of the state is too well decided to require any lengthy citation of authority. We do not mean to say that the states cannot prescribe reasonable rules and regulations as to the manner of handling gas which concern the question of safety, but they cannot directly burden it by prescribing the rates for gas transported in interstate commerce.

But all controversies as to who owns the natural gas after it reaches the pipe lines of the distributing company or when it is delivered to the consumer is immaterial in determining the question as to whether it moves in interstate commerce until it reaches the burner tips of the consumer.

The ownership of the property may change in transit as it did in the Harold case (241 U. S. 371); there may be a change of carriers as in that case; the distributing company may purchase the gas outright from the receiver, and own it all when it is delivered to the consumer, and yet if, when it was started on its journey in Oklahoma, it was the purpose to deliver it to consumers in Kansas and Missouri, and that purpose is carried out, it moves in intercommerce until it reaches the burner tips of the consumers, notwithstanding the change of ownership and of carriers.

**(e) The fixing of the price at which gas is sold to consumers is the fixing of the rate for transportation and a direct interference with and an undue burden on interstate commerce conducted by the receiver.**

The price at which natural gas is sold includes the cost of production, transportation, and distri-

bution, and profit, if any. Natural gas in Oklahoma costs the plaintiff about 7 cents per thousand cubic feet. If it is sold for 28 cents in Topeka and the distributing company gets one-third of the amount received from the consumer for distribution, then the plaintiff would receive  $18\frac{2}{3}$  cents for gas for which he paid 7 cents. Eleven and two-thirds cents would be left to pay transportation and profit. It thus appears that the cost of transportation is an important factor, and when the state attempts to fix the price at which gas can be sold it, in effect, fixes the cost of transportation in interstate commerce, and this is a regulation of interstate commerce. (See statement of Judge Booth on this subject, Rec., p. 599.) Every obstacle or burden laid upon interstate commerce by legislative authority is regulation. State Freight Tax cases, 15 Wall. 232, 82 U. S. 232, 21 L. Ed. 146.

The attempt to fix any price being a regulation, it is beyond the power of the state to do this on natural gas produced or purchased in Oklahoma and sold in Kansas.

In *Missouri, Kansas & Texas R. Co. v. Texas*, 245 U. S. 484, the first syllabus is:

"Where, in regular course, a passenger train is moved by one company from one state to a point in another, and is there taken charge of and carried to destination by a second company, local to the second state, it is manifestly erroneous to hold that its interstate character is lost because the second company employs new crews and engines and cannot go beyond the state line."

In the course of the opinion this language is used:

"Again, the question is not what the State Commission might require of a road deriving its powers from the state, with regard to local business (*Missouri Pacific Ry. Co. v. Kansas*, 216 U. S. 262, 283), but whether the order if applied to this case would not unlawfully interfere with commerce among the states.

On its face the order as applied was an interference with such commerce."

The order was declared to be void and beyond the power of the state. So here the state has no power to directly burden the interstate commerce conducted by the receiver, though the gas after reaching the city limits of the various cities is taken charge of and carried to destination by the distributing companies local to their respective states.

In the case of *L. & N. R. Co. v. Eubank*, 184 U. S. 27, 46 L. Ed. 416, 22 Sup. Ct. Rep. 277, a section of the Kentucky Constitution which had been held constitutional in the case of *L. & N. R. Co. v. Kentucky*, 183 U. S. 503, 22 Sup. Ct. Rep. 95, when applied to intrastate commerce, was held unconstitutional when applied to interstate commerce for the reason that the state has no jurisdiction over interstate transportation, and that an attempt to regulate such rates by the state or under its authority is void.

This case was cited with approval in *Railroad Commission v. Worthington*, 225 U. S. 101, 32

Sup. Ct. Rep. 653. In this case the court decided that coal originating in Ohio and shipped to the ports of Huron and Cleveland, Ohio, for carriage by defendants on Lake Erie to points in other states, was being transported in interstate commerce. There was a small quantity of the coal that was unloaded in the Ohio islands in Lake Erie. Although there is a small quantity of the gas both produced and sold in Kansas, yet it cannot affect the great bulk of the gas that is produced in Oklahoma and sold in Kansas. In the Worthington case the Supreme Court did not endeavor to ascertain whether the rate fixed by the Railroad Commission of Ohio was too low, but after determining that the coal was being transported in interstate commerce held that the act of the Ohio Commission in fixing the rate was void. The court said:

"We therefore reach the conclusion that under the facts shown in this case the Railroad Commission in fixing the rate of 70 cents for the transportation above described attempted to directly regulate and control interstate commerce, and for that reason the enforcement of its order should be enjoined."

To the same effect are *Wabash, St. L. & P. R. Co. v. Illinois*, 118 U. S. 557; *Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204, and *Hanley v. K. C. S. Ry. Co.*, 187 U. S. 17.

**(f) Other contentions of appellants answered.**

Concerning the remaining proposition relative to interstate commerce set out in the Kansas de-

fendants' brief at page 59, that the gas business carried on under a local franchise originally intended to apply wholly to local gas estops the importer from claiming immunity from local control, we condense our answer into the following propositions:

(1) Jurisdiction over interstate commerce cannot be conferred upon the Public Utilities Commission by consent of parties.

(2) The Kansas Natural Gas Company, in applying for admission to do business in the state of Kansas, consented only to the regulation of its intrastate business by the state. And though its business at the time of the application was entirely intrastate, it was not thereby estopped to afterwards engage in interstate commerce nor could the state impose such a limitation on the exercise of its corporate functions. *West v. Kansas Natural Gas Company*, 221 U. S. 229.

(3) The state cannot impose as a condition upon the doing of domestic business within the state, the right to burden the interstate business of the corporation. This was established in *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, where the counsel for the Kansas defendants presented the same argument he now urges in this case, and which was by this Court overruled.

(4) The use of local franchises, the use of the streets and alleys, does not give to the state the power to regulate directly interstate commerce. The Ticker cases, 38 S. Ct. 438.

(5) Whatever agreement the Kansas Natural Gas Company may have made with the state of Kansas was personal to that company, did not



run with the title or possession of its property and is not binding on the receiver, or a purchaser of the property at foreclosure sale.

As to the contention of the same defendants found on the same page (59), that the imported gas is still mingled with local gas, constituting a substantial part of the whole, we reiterate that less than 6 per cent of the gas sold by the receiver in Kansas is produced within that state. (Rec., p. 597.) More than 94 per cent of the gas delivered to consumers in Kansas comes from Oklahoma. None of the gas delivered to consumers in Missouri is produced within that state. The figures speak for themselves.

As to the local character of the interstate commerce conducted by the receiver, we again invite the attention of the Court to the statement of Judge Booth (Rec., p. 596) that the state of Kansas has recognized the subject is one which requires uniformity of regulation which cannot be given it by the states. It would indeed be a strange anomaly that the transportation of natural gas from the wells in Oklahoma to the state line should constitute interstate commerce of a national character free from direct regulation by the state, but when it passes into Kansas it immediately becomes local in its nature and subject to direct regulation, by the states. We do not believe this Court will depart from its decision in *West v. Kansas Natural Gas Co.*, 221 U. S. 229, but will reach the same conclusion here as there, that the commerce conducted by the receiver is interstate in its character and free from state control.

**No assignment of error on account of confiscatory rate made by Kansas City Gas Company, Wyandotte County Gas Company, Kansas City Pipe Line Company or Fidelity Trust Company.**

We have sought in vain to find any assignment of error by the Kansas City Gas Company, the Wyandotte County Gas Company, Kansas City Pipe Line Company or the Fidelity Trust Company to the effect that the court below erred in holding that the 28-cent rate is unreasonable, non-compensatory and confiscatory. If we are mistaken we should be glad to have counsel on the other side point out this specific assignment which covers such error.

Respectfully submitted,

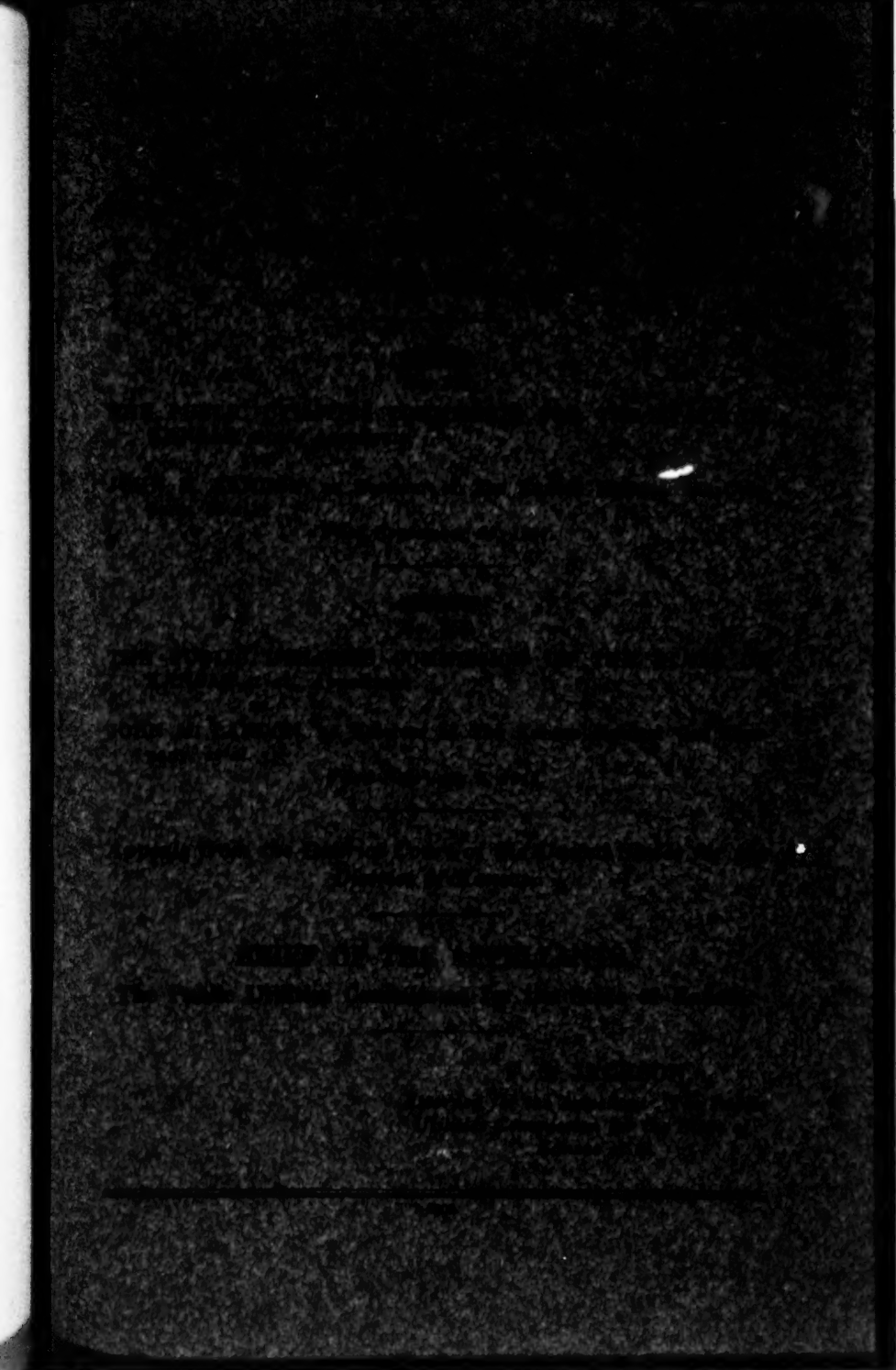
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# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

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No. 693.

No. 277.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF  
KANSAS *et al.*, Appellants;

*vs.*

JOHN M. LANDON, as Receiver of The Kansas Natural Gas Com-  
pany, *et al.*

*Filed September 20, 1917.*

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No. 856.

No. 353.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS *et al.*, Appellants,

*vs.*

JOHN M. LANDON, as Receiver of The Kansas Natural Gas Com-  
pany, *et al.*

*Filed February 6, 1918.*

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*Appeals from the District Court of the United States for the  
District of Kansas.*

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## BRIEF OF THE APPELLANTS,

The Public Utilities Commission for the State of Kansas.

## STATEMENT.

This case involves the legality of rates prescribed by the Public Utilities Commission of Kansas for the receiver of the Kansas Natural Gas Company in supplying natural gas to consumers:

(a) As to the compensatory character of the rates.

(b) As to whether local regulation of rates in Kansas and Missouri constitute a burden or restraint on interstate commerce.

The receiver of the Kansas Natural Gas Company operates as a whole a system of pipe lines for the transportation, and, by joint arrangement with the local gas companies, for the sale and distribution of natural gas throughout eastern Kansas and western Missouri, including, with numerous small cities and towns, the larger cities of Kansas City, Mo., Kansas City, Kan., St. Joseph, Mo., and Topeka, Kan.

Under the local laws the receiver, and before his appointment the company, was within the regulatory control of the Public Utilities Commission for Kansas in that state and the Public Service Commission of Missouri, as to its business in Missouri. The original rates of the gas company were fixed by franchise ordinances of the cities, which ordinances, as to rates and other conditions, were accepted and approved by the local distributing companies and the Kansas Natural by contracts entered into between them, with the knowledge of the cities and all parties concerned, as hereinafter more particularly appears.

In 1915 the receiver, desiring to increase the rates then in effect, some of which were lower than the so-called contract or franchise rates, applied to the Kansas Commission for permission to make such change in rates. After extended hearings before the Commission and some litigation in the state courts, the results proving unsatisfactory to the receiver, this suit was brought in the United States district court of Kansas asking for an injunction against the Kansas State Commission, forbidding it from enforcing the rates then in effect as unconstitutional, confiscatory of the property in his control, and void; that the State Commission be commanded to consent to

and approve the putting into force and effect immediately by the plaintiff receiver of reasonable rates and charges. The state commissions of Kansas and of Missouri, the attorneys-general of each state, and all the towns and cities therein supplied with gas by the receiver, as well as the distributing companies engaged in serving the cities, were made parties to the suit. An injunction was asked against all of these, prohibiting them from bringing any suits in any other courts for the purpose of litigating any of the questions involved in this suit, and the cities and distributing companies were asked to be enjoined from enforcing the contract set forth in the petition heretofore mentioned and from interfering with the plaintiff in establishing reasonable rates ordained by competent authority. A temporary injunction was asked for.

It was alleged in the petition that the fixing of rates by the State Commission for the sale and supply of gas under the circumstances of the case constituted an unlawful interference with interstate commerce and a burden thereon. The trial court found that the transactions carried on by the parties to the suit in the transportation, distribution and sale of gas to the consumers in the Kansas and Missouri cities constituted interstate commerce of a national character, over which the exercise of the police powers of the state for the purpose of regulating, burdening or interfering therewith was in violation of the constitution of the United States.

There was a hearing on the application for a temporary injunction before an enlarged court, consisting of Circuit Judge Walter H. Sanborn, and District Judges Ralph E. Campbell and Wilbur F. Booth. This hearing resulted in the issuance of a temporary injunction by the court so constituted, on the condition that the receiver should pay no more upon the principal of the debts of the creditors represented in the suits in which the receiver was appointed, until \$750,000 had been invested in the necessary extension of pipes of the Natural Gas Company and the necessary compressors to enable the receiver to furnish his customers a reasonably adequate gas supply, and that \$500,000 of that amount should be invested within six months after the entry of the decree.

The rates attempted to be put into effect by the Kansas State Commission were found to be noncompensatory and illegal and the Commission was enjoined from putting them into



effect during the pendency of the suit. The receiver was also required to keep accounts showing the excess paid by any customer of the gas company for gas in excess of the amount fixed by the Commission, and the receiver was required to repay to him such amount in case the injunction was finally not sustained.

The date of the interlocutory injunction was June 3, 1916, and the decree and opinion of the court appear in the record at pages 294 and 298, respectively. The final judgment against the Kansas Commission as to the constitutionality of the rate and on the question of interstate commerce was entered April 21, 1917. The opinion appears at page 563 of the record and the decree at page 601. These appellants, the State Commission and Kansas cities, appeal from this decree.

Still later, on August 13, 1917, the case was heard as to the Missouri defendants and the court entered a decree as against them, and a further decree against all of the Kansas defendants, including this appellant. This decree appears at page 621 of the record. In this decree it was found that the business transacted by the plaintiff, to wit, the transportation of natural gas from Oklahoma to Kansas and Missouri and the distribution and sale therein of said gas in said states by plaintiff and distribution companies above mentioned is interstate commerce of a national character and not of a local nature; that certain orders of the Public Service Commission of the state of Missouri suspending and otherwise regulating certain tariffs or schedules of rates applicable to Missouri cities and distributing companies and the threats made by said Commission and the statements made by counsel for the Commission to the court that other similar orders will be entered whenever plaintiff or the distributing companies mentioned shall attempt to establish new schedules of rates, are attempts directly and unduly to burden and regulate interstate commerce, and therefore unauthorized and void. (Rec. 622.)

That the operation of provisions of the state law of Missouri authorizing the Commission to suspend rates, and defer the use of the same by the Commission, constitute the taking of the property of the plaintiff and distributing companies above named without due process of law and without just compensation, and deny to the plaintiff and the distributing companies the equal protection of the law.

It is further held that certain contracts and leases executed by the Kansas Natural Gas Company prior to the appointment of the receiver were not binding upon the receiver. These contracts are enumerated in the decree at page 623 of the record. These contracts constituted practically all of the supply contracts made between the Kansas Natural Gas Company and the distributing companies. These appellants, the Kansas Commission and the cities of Kansas, were enjoined from enforcing the aforesaid supply contracts or rates fixed or referred to therein against the plaintiff, the said distributing companies, and from interfering with the plaintiff or any of said defendant distributing companies in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri, and the defendant distributing companies were permanently enjoined from enforcing the said supply contracts or rates fixed or referred to therein against plaintiff, and from interfering with the plaintiff in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri. These appellants also took appeals from this decree. The assignments of error on both appeals appear at the close of the statement of facts in this brief.

The Missouri State Commission and Kansas City, Mo., each also appeal, as does the Kansas City Gas Company and the Wyandotte County Gas Company, from the judgment and decree rendered jointly against the state commissions and the said gas companies and cities.

### INTERSTATE COMMERCE.

On the question of interstate commerce the facts constituting the nature of the business transacted were stated by the Kansas supreme court, *State v. Flannelly*, 96 Kan. 372, a case of which more will be said later. The facts as so stated by the supreme court of Kansas were adopted by the district court and all parties as a fair statement of how the business is, in fact, transacted. This follows:

"The gas sold by the receivers is produced in both Kansas and Oklahoma. It is transported from the wells through pipe lines beginning in Oklahoma, entering the state of Kansas near Coffeyville, at which place gas is first distributed and sold to

consumers. The remainder is transported north through pipe lines into which gas from wells in Kansas is conveyed, and the gas from Oklahoma and Kansas is then transported through the same pipe lines and through compressing stations to Independence and north and east throughout this state, and after supplying the consumers in this state it is transported into the state of Missouri, where it is sold to other consumers. After the gas from this state is discharged into the pipe lines with the gas from Oklahoma, it is impossible to distinguish one from the other or to separate one from the other. About 85 percent of the gas sold is produced in Oklahoma, and 15 percent is produced in Kansas. About 60 percent of the gas sold is sold in Missouri and 40 percent is sold in Kansas. The gas sold in Kansas is delivered to the consumer thereof in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities, fixing the rates charged customers for gas. These distributing companies act as agents for the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Company, under the control of the receivers, into the pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers. The gas is consumed as fast as it is sold, and is consumed immediately after passing through the meter measuring the gas to consumers." (Rec. 1113.)

The argument upon the question of interstate commerce will be based upon this statement of fact in connection with certain facts concerning the history of the companies and the manner in which they accepted the local franchises and entered upon and carried out the business of distributing gas. This and other considerations make it necessary that a complete history of the company be embodied in the statement of facts. The statement which we here adopt is the one contained in the opinion of the district court, and has been adopted by all parties to the suit as a succinct, carefully made and correct history of the company (rec. 1074-1084):

## HISTORY OF THE KANSAS NATURAL COMPANY AND ITS PROPERTY.

The company was organized under the laws of the state of Delaware in April, 1964, with a capital stock of \$6,000,000. In July, 1905, it obtained a license to do business in the state of Kansas. The principal business of the corporation was the production and sale of natural gas, but it was authorized under its charter to purchase the stock, business and property of other corporations. Its first gas fields were located in the state of Kansas. Prior to 1912 the company had, by purchase and consolidation with other companies, largely increased its initial holdings. It had by means of various contracts undertaken to supply gas through distributing companies to more than thirty cities in the state of Kansas, as well as certain cities in the state of Missouri, including the cities of St. Joseph and Kansas City, Mo. These contracts were of various types, but, generally speaking, covered a considerable period of years, and provided for increases in the rates at certain fixed dates. They provided further for a division of the price paid by the consumers between the distributing company and the Kansas Natural Gas Company, generally on a basis of one-third to the distributing company and two-thirds to the Kansas Natural Gas Company.

The character of these franchises and contracts and the rules provided for therein appear in Exhibit B to plaintiff's bill, and Exhibits A to E, inclusive, of the amended and supplemental answer of L. G. Treleaven, receiver of Consumers Light, Heat and Power Company—the same being typical of each of said contracts and franchises.

For the purpose of completing its lines to Kansas City, Mo., the company had caused to be incorporated the Kansas City Pipe Line Company, and became owner of 50 percent of the stock of said company, the other 50 percent being owned by the United Gas Improvement Company. Shortly thereafter, in November, 1906, the Kansas City Pipe Line Company leased to the Kaw Gas Company (a subsidiary corporation of the Kansas Natural Gas Company), all of its property for ninety-nine years. In place of this lease a new lease was substituted between the Kansas City Pipe Line Company and the Kansas Natural Gas Company in January, 1908.

For the purpose of extending its pipe lines into Oklahoma, the Kansas Natural Gas Company had caused the incorporation of the Marnett Mining Company, and through stock ownership controlled said last-named company. Two issues of bonds had been made by the Kansas Natural Gas Company: First mortgage series and second mortgage series; and one by the Kansas City Pipe Line Company and one by the Marnett Mining Company. The properties of the three mentioned companies were operated as a unit, and included a continuous pipe line from the fields in Oklahoma to the two Kansas Cities, with other lines extending to various cities in Kansas and Missouri. The company during the year 1912 was supplying natural gas to approximately 150,000 households, and selling for household and industrial uses upwards of 28 billion cubic feet of gas per annum.

The financial operations of the company, including its requirements of leaseholds for the purpose of gas production, were as follows:

That in 1903 R. M. Snyder and associates formed a copartnership, known as the New York Oil and Gas Company, and acquired nearly 18,000 acres of gas leases, upon which they developed a supply of gas and secured a franchise to use the streets and alleys of Independence, Kan., to supply gas to the citizens thereof. During the same year said Snyder and associates obtained from the Consolidated Gas, Oil and Manufacturing Company and the Independence Gas Company, corporations then owning a plant for the sale and distribution of gas in the city of Independence, an option to buy said plant in Independence and some 80,000 acres of leases located principally in the counties of Montgomery and Chautauqua, in Kansas, paying for said option the sum of \$10,000. The full purchase price for said property was to be \$550,000. During the same year R. N. Barnsdall and James O'Neil acquired about 90,000 acres of leases and brought in some producing gas wells thereon, located principally in Allen, Neosho, Wilson and Labette counties, Kansas, and organized the Kansas Natural Gas Company.

In 1904 the said Barnsdall and Snyder and their associates consolidated their propositions and increased the stock of the Kansas Natural Gas Company from \$6,000,000 to \$12,000,000, and each group of associates transferred to the Kansas Nat-

ural Gas Company their various properties herein enumerated; the said Barnsdall and associates received for their property \$6,000,000 of the capital stock of the Kansas Natural Gas Company, and Snyder and his associates received the remaining \$6,000,000 of said capital stock. Said Snyder and associates received in addition thereto the sum of \$900,000 in money, \$540,000 of which was to be devoted to the payment of the balance of the purchase price of the properties of the Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company; that the \$900,000 paid to Snyder and his associates was realized from the sale of the first mortgage bonds of the Kansas Natural Gas Company.

On these leases there were 32 oil and 132 gas wells, all producing. When the original contract was made these leases were producing 400,000,000 cubic feet a day from the Snyder leases and by April 15, 1904, the production had increased 24,900,000 cubic feet on the Snyder leases and 221,923,000 cubic feet on the other leases. The leases transferred for stock have produced in ten years about \$24,000,000 gross, the cost of producing being very considerable. The present leaseholds are carried on the balance sheet of the company at \$1,670,370. They may be worth nothing to-day and \$100 an acre to-morrow, depending on business developments. A good deal of this acreage was beyond reach of the Kansas Natural lines. These leaseholds were valued by the engineer for the Commission in 1915 at \$1,126,359.34.

That the Kansas Natural Gas Company thereafter acquired other leases, all of which said leases cost the Kansas Natural Gas Company not to exceed \$4,100,000, and said sum included the value of all materials used in the wells. The Kansas Natural Gas Company had two mortgage bond issues on its property, a first-mortgage bonds of \$4,000,000, which was sold at par, and a second-mortgage bonds for \$4,000,000, which sold for \$750 per share of the par value of \$1000. These two bond issues of the Kansas Natural Gas Company were secured by a mortgage on all the property of the company then owned or afterwards acquired.

When the Kansas City Pipe Line Company was organized, with a capital stock of \$4,500,000, the bonds of this company were issued in the sum of \$4,745,000. All the bonds of this company were bought by the United Gas and Improvement

Company of Philadelphia. The stock of the Kansas City Pipe Line Company represented no value above the bonded debt. The Marnett Mining Company was organized to extend the pipe lines of the company farther south into Oklahoma. All the lines of the Marnett Mining Company are located in the state of Oklahoma. So it will be seen that the Kansas City Pipe Line Company and the Marnett Mining Company have always been, in fact, subsidiary companies to the Kansas Natural Gas Company, and the property of the three companies is one contiguous whole, all used in producing and transporting gas from the Mid-Continent gas fields to the consumers within the states of Kansas and Missouri, and all this property is in the possession of and is operated by the receiver. The following table shows the amount of capital stock and bonds issued by each of these three companies:

<i>Kansas Natural:</i>	
Common stock .....	\$12,000,000
First-mortgage bonds .....	4,000,000
Second-mortgage bonds .....	4,000,000
<i>Kansas City Pipe Line Company:</i>	
Stock .....	4,500,000
Bonds .....	4,745,000
<i>Marnett Mining Company:</i>	
Stocks .....	2,500,000
Bonds .....	2,000,000
	<hr/>
	\$33,745,000

The statement shows that these companies have issued bonds of the face value of \$14,745,000, for which they received \$13,404,250. Of this amount \$1,035,000 was invested by the Kansas Natural Gas Company in the bonds of the Marnett Mining Company, leaving a balance of \$12,269,250 outside money actually received from the sale of said bonds.

The table on page 20 is a statement prepared by the accountant for the Commission after an examination of the books of the receiver to show the investment and property at the close of each year, together with the accrued depreciation and net investment, and divided as between transportation and production property, columns 2 and 3 being his deductions and conclusions from the data drawn from the books of the receiver and the valuation placed upon the property by the engineer for the Commission. All of the money invested in the



property after the organization of the Kansas Natural had been perfected was derived either from the sale of the bonds or from earnings. (For this table, see Record, 1078.)

The Kansas Natural Gas Company had, however, in acquiring its properties and extending its system, violated the anti-trust statute of the state of Kansas; and in January, 1912, suit was begun in the district court of Montgomery county, Kansas, by the attorney-general of the state of Kansas against the Kansas Natural Gas Company, the Independence Gas Company, and the Consolidated Gas, Oil and Manufacturing Company; amongst other relief prayed for was the ousting of the defendants from the exercise of certain corporate powers within the state, and the appointment of receivers. The case was heard, and resulted, so far as the Kansas Natural Gas Company was concerned, not in a complete ouster, but in the appointment of receivers, one of them being the plaintiff in the present suit, the order being filed February 17, 1913. Said receivers were to "manage the corporate property and business of the said defendant until the perversion and abuses of privileges by said defendant are corrected so as to protect the rights of all parties, especially all the gas consumers of the defendant company, and all parties interested in the property of the Kansas Natural Gas Company, whether as bondholders, trustees of bondholders, distributors of gas or otherwise."

Meanwhile, in October, 1912, a suit (No. 1351 Equity) was commenced in United States district court for the district of Kansas by John L. McKinney, a stockholder and a bondholder of the Kansas Natural Gas Company, alleging the insolvency of said company, and praying the appointment of receivers to take possession of and manage its property and assets. On October 9, 1912, Eugene Mackey, Conway F. Holmes and George F. Sharritt were appointed receivers. They immediately took possession of the property and began carrying on its business.

On February 3, 1913, another suit (No. 1-N Equity) was commenced in the United States district court for the district of Kansas by the Fidelity Title and Trust Company, trustee under the first mortgage of the Kansas Natural Gas Company, to foreclose said mortgage; and on the same date the receivership theretofore existing in the McKinney suit was extended to

the Trust Company suit, and the same persons were appointed receivers in the latter suit.

Immediately after the appointment of the receivers in the state court, and acting under the suggestion of that court, the attorney-general of the state of Kansas and the receivers appeared in the federal court and urged the prior jurisdiction of the state court, and prayed the federal court for an order directing its receivers to turn the property of the Kansas Natural Gas Company over to the receivers appointed by the state court. Litigation followed which finally resulted in all of the property of the Kansas Natural Gas Company, whether located in the state of Kansas, Missouri or Oklahoma, being turned over by the federal court to the two receivers of the state court, for the purpose of managing the property and carrying out of the decree of the state court in the antitrust suit above mentioned. The history of this litigation may be found in 206 Fed. 772, 209 Fed. 300, and 217 Fed. 187. In the last-mentioned case the court in its opinion said: "The court below (United States district court for the district of Kansas) has the right to retain the foreclosure suit and await the progress and disposition of the action in the state court, with power to make such orders and decrees as future exigencies may require."

On January 9, 1915, the United States district court for the district of Kansas made an order appointing John M. Landon, the present plaintiff, ancillary receiver of the federal court for the properties located in Missouri and Oklahoma. At the present time John M. Landon is the sole receiver of the state court, and is ancillary receiver of the federal court, and George F. Sharritt is receiver under the federal court in the McKinney and Fidelity Trust Company suits, the other receivers having either died or resigned.

By chapter 238 of the Laws of 1911 of the state of Kansas there was established the Public Utilities Commission for the state of Kansas, and with control over the public utilities and common carriers doing business in the state. Included under the term "public utility" were companies operating plants for the conveyance of oil and gas through pipe lines, also the lessees and receivers thereof. By said act it was provided that the rates charged by public utilities should be published and filed with the Public Utilities Commission. It was further

provided that said Commission, either upon complaint of parties or upon its own initiative, should have power to investigate such rates, and fix and order substituted therefor other rates if found necessary. It was further provided that unless the Commission should otherwise order, it should be unlawful for any public utility to collect a greater rate than that fixed on the lowest schedule of rates for the same service on the first of January, 1911.

The federal court, shortly after the appointment of its receivers in 1912, established a schedule of rates to be charged by the receivers, but this schedule was shortly thereafter suspended by the same court.

In January, 1913, application by the attorney-general of Kansas was made to the Public Utilities Commission to cause an investigation to be made and to fix rates to be charged by the receivers of the Kansas Natural Gas Company. The receivers and numerous distributing companies appeared and asked for changes in the then existing rates. In July, 1913, the Commission made its order denying any increases in rates, and approving and confirming the rates then in effect.

Upon a further hearing in July, 1913, the Commission directed the receivers to make certain extensions of the pipe lines into the Oklahoma field, and thereupon the receivers applied to the federal court for directions as to their duties in respect to this order. Upon a hearing the receivers were directed not to comply with the order of the Commission. (See 219 Fed. 614.) This application and order, it will be noticed, were made prior to the time when the federal court turned over to the receivers of the state court all of the property of the Kansas Natural Gas Company. This was not completely effected until September, 1914.

In December, 1914, various of the parties before the court in district court of Montgomery county in the suit brought by the state of Kansas (No. 13,476), after consideration and investigation, entered into an agreement known as the creditors' agreement, covering certain phases of the financial management of the property of the Kansas Natural Gas Company, while the same should be in the hands of receivers and under the control of the state district court.

This creditors' agreement took the form of a stipulation filed in the state district court in case No. 13,476. It provided,

among other things, for the scaling down of the outstanding stock of the Kansas Natural Gas Company from \$12,000,000 to \$6,000,000. It also provided for the scaling down of certain of the issues of bonds above mentioned. It recited that the opinion of experts after investigation was that the life of the gas field would be six years. It, therefore, provided for the payment of the several bond issues during such period. It provided payment out of earnings for extensions which would be necessary during such period, if the property should be operated at compensatory rates. It provided that application might be made, with the consent of the state court, to the Public Utilities Commission or other public authority when deemed advisable by the state court. It provided that creditors and lien holders should defer their rights of foreclosure or assertion of liens during the above mentioned period, provided the agreement was being carried out, subject, however, to the order of the court. This agreement was consented to by the Kansas Natural Gas Company and its auxiliary companies, by the receivers, by the great majority of the bondholders of the several companies, and by the state of Kansas through its attorney-general.

This instrument appears as Exhibit A of the plaintiff's bill of complaint.

In April and May, 1915, the receivers, by direction of the district court of Montgomery county, filed a petition with the Public Utilities Commission requesting the Commission to establish a schedule of joint rates for the distribution and sale of gas by the complainants and the respondents distributing companies. The schedule proposed by the receivers represented a decided advance in rates from the 25-cent rate then in force, and ranged 20, 25, 30, 35, 37, 40 and 45 cents, according to the location of the cities served, distance being one of the elements recognized. A large amount of testimony was taken, and the Commission filed findings July 16, 1915, to the effect that the rate ought to be raised in all markets where the price was 25 cents per thousand cubic feet to the flat rate, 28 cents. Included in the evidence before the Commission at that time was the creditors' agreement, and the findings of the Commission were based, to some extent at least, upon the estimates and figures found in the creditors' agreement. No order was,

however, made by the Commission at this time, and the reason given is stated by the Commission itself as follows:

"It developed upon the hearing that more than half the natural gas supplied and marketed by complainants is sold in the state of Missouri. It is conveyed, by means of pipe lines passing through Kansas, to Joplin, Kansas City, St. Joseph and other cities in our sister state. It would be manifestly unfair to permit complainants to advance the price of gas to their Kansas patrons unless a corresponding increase were made to consumers in Missouri. It is conceded that an advance in Kansas without a similar one in Missouri would be unavailing for the purposes contemplated by complainants, and they do not desire any advance in Kansas except as it may be simultaneous with a corresponding one in Missouri.

"The Commission, therefore, awaits the pleasure and action of the rate-regulating body or bodies of Missouri having jurisdiction of the subject matter; and if in that state proper and necessary orders be issued establishing a schedule of rates as herein outlined, an order, effective, if possible, simultaneously, will be issued by this Commission in accordance with the views herein expressed."

Shortly after this decision the receivers filed in the district court of Montgomery county an application for an injunction restraining the Public Utilities Commission from putting into effect the joint rate proposed in their findings of July 16, 1915. Service having been attempted to be made upon the Commission and the members thereof, special appearance was made on their behalf, and a motion made to quash the summons and the service thereof. Said motion being overruled, a demurrer was interposed by the Commission, also challenging the jurisdiction of the state court. The demurrer was overruled, and the Utilities Commission elected to stand upon its demurrer. Thereupon testimony was introduced on behalf of the receivers, and on the 27th of August, 1915, the state district court entered its findings to the effect that the 28-cent rate was unreasonably low and not sufficient to carry out the requirements of the creditors' agreement; and authorized a 30-cent rate to be temporarily established. The court also expressed the opinion that the receivers were engaged in interstate commerce; and furthermore entered an order enjoining the Public Utilities Commission from putting into effect the

rates proposed by it in its findings of July 16, 1915. An appeal to the state supreme court was taken by the Utilities Commission from the order overruling the demurrer above mentioned. Meanwhile, on August 17, 1915, the Public Utilities Commission filed in the state supreme court an application for an alternative writ of mandamus against the judge of the district court of Montgomery county and the receivers of the Kansas Natural Gas Company, praying that said judge be directed to vacate and set aside the order making the Public Utilities Commission a party defendant to the injunction suit; also to set aside the temporary restraining order; and also to dismiss the suit itself; and also that the receivers be compelled to perform their legal and public duty.

An answer was interposed by the receivers in the mandamus proceedings. These two matters, the appeal of the Public Utilities Commission from the order of the state district court overruling their demurrer, and the mandamus proceedings brought by the Public Utilities Commission in the supreme court, were heard together in that court. On October 4, 1915, the order of the district court overruling the demurrer was reversed, the supreme court holding that no jurisdiction had been obtained over the Commission. The writ of mandamus was denied, the court holding that inasmuch as the Commission had made no order a writ of mandamus could not properly issue. The court concluded its opinion as follows:

"The demurrer of the Public Utilities Commission to the receivers' petition is sustained, and the injunction against the Commission is set aside. No writ of mandamus will issue at this time. The action in this court is dismissed as to Honorable Thomas J. Flannelly, but is retained as to the defendants John M. Landon and R. S. Litchfield for such orders and judgments as may be hereafter made." (96 Kan. 372.)

October 7, 1915, the receivers filed with the Public Utilities Commission a petition for rehearing. Further testimony was introduced and the entire matter was considered *de novo*. December 10, 1915, the Commission filed its findings and order; again finding that 28 cents, with certain exceptions, was a sufficient rate, and authorizing such a schedule to be filed. December 28, 1915, the receivers filed the authorized schedule, which was approved on the same day, and thereafter, on December 29, 1915, the receivers, by direction of the district

court of Montgomery county, filed the bill of complaint in this court in the present suit, said suit being designated 136-Equity.

On the 3d day of January, 1916, the Public Utilities Commission presented an application in the mandamus proceeding above referred to, asking the state supreme court for an injunction restraining the receivers from prosecuting the present suit in the federal court. On January 7, 1916, the receivers filed a petition for removal of the mandamus proceedings from the state supreme court to the federal court. On the 3d day of January, 1916, the Public Utilities Commission also filed a supplemental petition in the mandamus proceedings, asking that the receivers be compelled to perform their official duties and furnish their customers efficient and sufficient service.

On January 16, 1916, the state supreme court filed a decision denying the petition of the receivers for removal, denying the petition of the Public Utilities Commission for an injunction, and dismissing the mandamus proceedings. (96 Kan. 833.)

The bill of complaint in the present suit, 136-N, alleges that it is dependent upon and ancillary to the suits above mentioned pending in this court, the McKinney suit No. 1351 and the Trust Company suit No. 1-N Equity.

It appears that the rate in Montgomery county prescribed by the Commission in its order of December 10, 1915, was called to the attention of the state district court shortly after the rates were promulgated, and the district court, upon application of certain cities in Montgomery county, enjoined the receivers from collecting in those cities the rates authorized by the order of the Commission of December 10, 1915. To this proceeding the Commission was not a party. It is admitted by the plaintiff that the rate that has been charged in Montgomery county since the order of December 10, 1915, has been 20 cents at all times and that is the rate now. The record shows that the rates in question in Montgomery county were competitive rates, and it does not appear that gas could have been sold in that territory by the receiver at a rate higher than 20 cents, the rate then in force; nor does it appear that if the gas had been brought to Kansas City and sold at 28 cents there would have been any greater profit for the receiver than by selling it in Montgomery county at 20 cents. Finally, it appears that the



rate in Montgomery county prescribed by the Commission in its order of December 10, 1915, was called to the attention of the state district court shortly after the rates were promulgated, and the district court upon application of certain cities in Montgomery county enjoined the receivers from collecting in those cities the rates authorized by the order of the Commission of December 10, 1915.

#### **DIVISION OF RATE BETWEEN RECEIVER AND DISTRIBUTING COMPANIES.**

It is to be noted that the 28-cent rate fixed by the Commission was a joint rate; that is, a rate covering both the compensation to the receiver and to the distributing companies, which joint rate was to be paid by the ultimate consumer. Under the contracts made by the Kansas Natural Gas Company with the various distributing companies, a division of the rate to be paid by the ultimate consumer was provided for, which division was generally two-thirds to the Kansas Natural Gas Company and one-third to the distributing company, although, in a few instances, this proportion was different; in the two Kansas Cities it was 62½ percent to the Kansas Natural.

These contracts between the Kansas Natural and the various distributing companies were never adopted by the receivers appointed by the state court, and the order of the federal court, appointing the original federal receivers, provided that these contracts should not become binding upon the receivers, except by the express order of the court. No such order has ever been made. The receivers, however, continued to distribute gas to the various distributing companies, and to collect therefor upon the ratio of the division of rates fixed by the contracts.

At the hearing before the Public Utilities Commission it was assumed that any joint rate fixed by the Commission would be divided between the receiver and the distributing companies upon the same basis, namely, two-thirds and one-third. At the hearing before the enlarged court, upon the application for a preliminary injunction, the same assumption was made. When the case came on for final hearing, however, the attorneys for the Commission took the position that the assumption would no longer be acquiesced in by the Commission, and that the basis of rate-making had been changed by the position taken by the receiver, under the direction of the district court of

Montgomery county, to the effect that he would no longer deliver gas on that basis. Under the view taken by the trial court, this left the question open whether the receiver could reasonably expect to secure a greater percentage of the joint rate fixed by the Commission than the two-thirds, and it became necessary to determine this question, because, even though it might be established that two-thirds of a 28-cent rate would be confiscatory to the receiver, it would not follow that five-sixths or seven-eighths would be confiscatory. In the absence of an assumption that two-thirds was all that could be obtained, evidence was required as a basis for a finding with regard to the matter. Accordingly, considerable evidence was introduced touching the financial status of the various distributing companies, the valuation of their plants, the character and extent of their business, their operating expenses, and other allied matters. This evidence was introduced, not for the purpose of ascertaining with accuracy what would be a just and fair rate to be charged by the various distributing companies, but solely for the purpose of ascertaining whether there was any reasonable grounds for holding that the receiver could obtain more than two-thirds of the 28-cent joint rate. This evidence was taken and the inquiry made on the basis of laying aside temporarily the contracts between the Kansas Natural Company and the distributing companies, and without undertaking to pass upon the validity of those contracts as between the original parties.

In a number of the cities in northern Kansas, after the temporary injunction, the receiver demanded 18 cents per thousand feet at the gates of the city, and at others on the southern trunk he demanded 16 cents.

#### **THE ANNUAL REQUIREMENTS OF THE GAS COMPANY AND ITS PROBABLE RECEIPTS AND DISBURSE- MENTS.**

The Commission, in its decision of December 10, 1915, presented a table showing its estimate of the requirements of the receiver for the year 1915, and the estimated revenue under the 28-cent rate. The table follows:

TABLE No. 5, KANSAS NATURAL GAS COMPANY.

*Statement of estimated revenue and requirements for the ensuing year, based on 1914 figures, revised as previously explained, for the State of Kansas.*

	Requirements.	Transportation.	Kansas.
25,671,445 M. cubic feet gas at 4c.....		\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation .....	510,536.14		223,245.11
Receivership expenses .....	32,228.00		14,093.30
Uncollectible gas accounts .....	12,555.07		6,359.14
Taxes, Kansas City Pipe Line.....	32,288.27		16,860.51
Taxes, Marnett Mining Company.....	10,497.35		5,316.91
Maintaining organization, Marnett Mining Co. ....	690.20		349.59
Total .....		\$1,626,652.83	\$780,269.57
Present value of transportation property, \$7,083,605.64; depreciation on basis of 12 years .....	590,300.00		268,468.44
Requirements, exclusive of a return on property investment .....	2,216,952.83		1,048,738.01
*Return on present value, \$7,083,605.64.			
Add for working capital, \$200,000.			
Total .....		\$437,016.35	\$198,755.00
		\$2,653,969.18	\$1,247,493.01
<i>Estimated Revenue.</i>			
Gas sales, 1914.....			\$1,192,089.82
**Gas used in compressor stations (on basis of use) .....			31,737.70
Total .....			\$1,223,827.52
Estimated revenue from increased rates.....			171,513.63
Total estimated revenue from Kansas.....			\$1,395,341.15
Deduct requirements as above.....			1,048,738.01
Estimated net revenue .....			\$346,503.14
Which is equal to a return of 10.46% on the present value, \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,605.64 or total estimated revenue for Kansas....			1,395,341.15
Less requirements, including a 6% return.....			1,247,493.01
Surplus .....			147,848.14

\* The division of these items between Kansas and Missouri has been made on basis of use of property as shown in Table No. 1.

\*\* This item is placed here to balance an equal sum included in the expenditures. It is a bookkeeping entry solely.

**POSITION OF THE APPELLANT COMMISSION AND  
CITIES OF KANSAS, DEFENDANTS IN THE COURT  
BELOW.**

**Interstate Commerce.**

*Assignments of Error V, VI, Record 605.*

(a) These appellants deny that the receiver of the Kansas Natural Gas Company is engaged in interstate commerce in Kansas, and deny that the circumstances set forth in the afore-said statement of facts constitute interstate commerce of a national character, so far as the sale and delivery of natural gas at the meter tips of the consumers is concerned.

(b) That when the Kansas Natural Gas Company accepted, through its agents and partners in business, the distributing companies, the local franchises granted by the cities of Kansas to furnish and distribute locally natural gas to the consumers thereof within said cities under the local laws and police regulations of the state, both its production and transportation of gas was entirely intra-Kansas. Its authority to transact business and its agreement and contract to do so relate solely to intrastate commerce, and its agreement resulting from said franchises and contracts was to engage in the domestic production, transportation and sale of natural gas for the purposes named in the franchises to the local consumers thereof. These transactions constituted an irrevocable contract as to its intentions concerning its business in Kansas. This operates as an estoppel from which the company has never been relieved by the consent of the state or any of its agencies in state government.

(c) The enlargement or widening of the business of the company at a later date to the end that it produced in and transported from the state of Oklahoma large quantities of gas, varying from a small percentage at first to a large percentage at the present time of its entire product, does not relieve it from the effect of the estoppel mentioned in paragraph (b) and does not prevent the state of Kansas from exercising its police power in regulating and controlling the business of the company under its original arrangement with the company for the transaction of business within the state and the exercise of local franchises by it under the state government.

(d) A considerable portion of the gas still produced and distributed in Kansas by the Kansas Natural Gas Company is produced in Kansas, and the gas from without the state is mixed with it, in some cases in the pipe lines of the company, and the local consumers supplied from these pipe lines. This constitutes an intentional intermingling of the property of the company transported from another state with the general property of this state and deprives the entire mass of property controlled by it of its interstate character.

(e) It follows from the statement in paragraph (d) that the state of Kansas must be protected in its right to exercise police control and regulation over at least the sale of the gas produced, transported, sold and distributed for use wholly within the state of Kansas.

(f) The production, transportation, sale and distribution of natural gas to consumers within the state under local franchises held by the producing and transporting company or its agencies, if partaking of the nature of interstate commerce, is not interstate commerce of a national character, subject to natural control alone, without the interference or control of the state government, when Congress has not acted as to the control of such commerce.

(g) The question of whether the transaction of the business of the receiver in this case constituted interstate commerce had been adjudicated between the parties to this case by the judgment rendered by the supreme court of Kansas in the case of *In re Flannelly*, 96 Kan. 372 (Rec. 174-177), and also in the prior proceedings and trial in the case of *State of Kansas, ex rel. John S. Dawson, Attorney General, v. The Kansas Natural Gas Company*, in which case the Kansas Natural Gas Company was adjudged guilty of violating the local antitrust laws of the state of Kansas and the receiver who brought this action appointed to take charge of its property because of said offenses against the local laws of the state of Kansas; and again in the case of *John L. McKinney et al. v. The Natural Gas Company*, No. 1351, and *Fidelity Title & Trust Co. v. Kansas Natural Gas Co. et al.*, No. 1-N, In Equity, the cases in which the receiver now acts and controls the property in controversy, in a proceeding or petition made by the receiver of the said state court to the United States district court for the purpose of recovering the control and management of the physical property

of the Kansas Natural Gas Company; that in said proceeding the issue as to whether the receiver and the Kansas Natural Gas Company were engaged in intrastate commerce was tendered by the receiver and issues formed thereon by the parties to said suit, namely, the Fidelity Title & Trust Co. and John L. McKinney, plaintiffs in said suit, and it was there determined by the court that the receiver, and the Kansas Natural Gas Company through him, were engaged in intrastate commerce subject to the control of the police power of the state of Kansas, 206 Fed. 772 (Rec. 179). That this case was appealed to the circuit court of appeals of the eighth circuit and there affirmed in 209 Fed. 300. (Rec. 180.) (Assignment of Error as to paragraph IX, Rec. 606.)

#### **Want of Equity in the Plaintiff's Bill.**

*Assignments of Error, I, II, III, Rec. 604, 605.*

The appellant Commission and cities of Kansas deny that there was any ground for equitable relief stated in the plaintiff's bill or shown in the evidence in this case.

It was conclusively shown that the plaintiff receiver had an adequate remedy at law in suits pending at the time he began his case in this court and that he secured the dismissal of the cases in the law courts by misrepresentation of facts and want of good faith.

#### **The Rates Provided by the Kansas Commission December 10, 1915, Attacked by the Plaintiff's Bill, Were Compensatory and Not Subject to the Plaintiff's Charge That They Were Confiscatory or Unconstitutional.**

(a) That the rates in effect under the rate order of the Commission of December 10, 1915, were higher than those provided for in the franchises under which the Gas Company began business, except in the city of Topeka, and produced a larger income on the system as a whole, including Topeka, than would the franchise rates. That the company could not, therefore, complain in equity that such rates were confiscatory or unreasonable. (Assignment of Error XI. Rec. 607.)

(b) That allowances for betterments or extensions of the pipe lines of the company should not have been charged to

maintenance or allowed for in the usual annual operating expenses of the receiver. (Assignment of Error IX, Rec. 607.)

(c) That the findings as to the life of the property should not have been based upon the probable life of the gas field in Kansas or Oklahoma. (Assignment of Error VIII, Rec. 606.)

(d) That the findings of the Commission as to the price of gas purchased in Oklahoma by the receiver and the rate of income to which he was fairly entitled on the property employed in the business by him were supported by the evidence, and the conclusions of the district court thereon are erroneous. (Assignment of Error VII, Rec. 606. Assignment of Error XI, Rec. 607.)

## ASSIGNMENTS OF ERRORS.

No. 817.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS—FIRST DIVISION.

In Equity. No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
*Plaintiff,*

*vs.*

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS  
*et al., Defendants.*

**Assignment of Errors on Behalf of the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel, and C. F. Foley, Members of the Public Utilities Commission for the State of Kansas, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-general of the State of Kansas.**

And now come Joseph L. Bristow, John M. Kinkel and C. F. Foley, commissioners of the Public Utilities Commission for the state of Kansas, for the Public Utilities Commission for the state of Kansas, and H. O. Caster, attorney for said Commission, and S. M. Brewster, attorney-general of the state of Kansas, appellants, and make and file this their assignment of errors in their appeal herein :



## I.

The district court of the United States for the district of Kansas erred in holding that the sale and distribution of gas in the manner in which the complainant receiver was engaged therein within the states of Kansas and Missouri constituted interstate commerce and the engagement therein by the complainant receiver in the transactions involved in said case, and that the acts and conduct of said receiver involved in the transportation and sale of said natural gas to his patrons in the towns and cities of the states of Kansas and Missouri, and in other places therein, constituted interstate business, and that the said business of transporting and selling natural gas to his patrons in the states of Kansas and Missouri was not subject to the control of the Public Utilities Commission of the state of Kansas or the Public Service Commission of the state of Missouri within their respective states and under the local laws of the said states.

## II.

That the said United States district court for the district of Kansas erred in the court below in holding that the contracts entered into between the various distributing companies located in Kansas were not binding upon the complainant receiver.

## III

The United States district court for the district of Kansas erred in the court below in enjoining the Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as the Public Utilities Commission for the state of Kansas, and H. O. Caster as attorney for the Public Utilities Commission for the state of Kansas, and S. M. Brewster as attorney-general of the state of Kansas, and the defendant cities in Kansas, from enforcing the aforesaid supply contracts or rates fixed or referred to therein against said complainant receiver and said distributing companies, and from interfering with the plaintiff or any of said defendant distributing companies in establishing and maintaining such rates as the said court had approved or might thereafter approve for consumers of natural gas in the state of Kansas.

## IV.

The United States district court for the district of Kansas erred in the court below in enjoining the mayors and common council and governing officials, city attorneys, city counselors, or representatives of the defendant cities, and their successors in office from commencing, instituting, or prosecuting in any other court or tribunal any suit or proceeding to litigate any matters determined by the United States district court for the district of Kansas without leave of said court first having been obtained.

F. S. JACKSON,

H. O. CASTER,

*Attorneys for Appellant.*

Filed in the district court this November 8, 1917.—MORTON ALBAUGH, *Clerk.*

No. 817.

**Assignment of Errors on behalf of the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel, and C. F. Foley, Members of the Public Utilities Commission for the State of Kansas, and H. O. Caster, Attorney for the Public Utilities Commission for the State of Kansas.**

And now come Joseph L. Bristow, John M. Kinkel and C. F. Foley, commissioners of the Public Utilities Commission for the state of Kansas, for the Public Utilities Commission for the state of Kansas, and H. O. Caster, attorney for said Commission, appellants, and make and file this their assignment of errors in their appeal herein:

## I.

The district court of the United States for the district of Kansas erred in refusing to dismiss the bill of complaint in this action in said court for the reason that said court had no jurisdiction of said case.

## II.

The said district court erred in refusing to direct the dismissal of said complaint for the reason that it appeared from said complaint and upon the record therein that a suit in which all of the matters sought to be drawn in controversy by said

complaint were involved was pending in the supreme court of the state of Kansas at the time of the filing of said bill of complaint by the complainants therein, and that complainants had not and did not fully pursue the remedies available to them in said suit in the supreme court of the state of Kansas before filing the bill of complaint in the district court of the United States, and that the bill of complaint was defective and void for want of equity for said reasons.

### III.

That the United States district court for the district of Kansas erred in not giving judgment for these defendants in the court below, now appellants, for the reasons mentioned in the foregoing assignment numbered II, upon the evidence adduced by the parties and the record in the final trial of said case.

### IV.

That the United States district court for the district of Kansas erred in the *case* below in granting a temporary injunction in said cause as against these defendants, now appellants, on the ground that the rate fixed by the Public Utilities Commission for the state of Kansas for the distribution of gas by the complainant receiver to its patrons in the cities, towns, or other places in the state of Kansas was confiscatory and in violation of the constitution of the United States, in that the observing and putting into effect of said rate for the distribution of natural gas would amount to the taking of the property of the complainant receiver and the estate under his charge and control without due process of law and without compensation.

### V.

The United States district court for the district of Kansas erred in the court below in giving judgment in favor of the complainants, now appellees, and against the appellants, in the final trial of said cause upon the evidence adduced and the record, for the reason given by the court that the rates fixed by the Public Utilities Commission for the state of Kansas for the distribution of natural gas to the patrons of the complainant receiver in the cities, towns and other places in the state of Kansas were confiscatory and in violation of the constitution of the United States, and that the putting into effect of said rates would amount to the taking of the property of the said com-

plainant receiver without due process of law or compensation, in violation of the constitution of the United States, and that said rates were unreasonable and arbitrary and were unreasonably and arbitrarily fixed by the appellant Commission in violation of law and the constitution of the United States, when judgment should have been rendered in favor of these appellants.

#### VI.

That the said United States district court for the district of Kansas erred in the court below in holding that the sale and distribution of gas in the manner in which the complainant receiver was engaged therein within the state of Kansas constituted interstate commerce and the engagement therein by the complainant receiver in the transactions involved in said case, and that the acts and conduct of said receiver involved in the transportation and sale of said natural gas to his patrons in the towns and cities of the state of Kansas and in other places therein constituted interstate commerce, and that the said business of transporting and selling natural gas to his patrons in the state of Kansas was not subject to the control of the Public Utilities Commission for the state of Kansas within and under the local laws of the state of Kansas.

#### VII.

That the United States district court for the district of Kansas erred in determining that the rates prescribed by the Public Utilities Commission for the state of Kansas for the distribution of natural gas to the patrons of the complainant receiver were arbitrary, unreasonable and confiscatory and in violation of the constitution of the United States, as aforesaid, in that, in addition to other errors herein complained of, the court erroneously held that the cost and price of gas to the complainant receiver, delivered by vendors of the same to him at his pipe lines in Oklahoma and Kansas, was six cents per 1,000 cubic feet of gas, so delivered, whereas such findings were not supported by the evidence.

#### VIII.

The said United States district court for the district of Kansas, in the case below, erred in holding in the final trial of said cause, for the purpose of amortizing the value of the property

of the complainant receiver and hence determining the validity of the rates prescribed by the Public Utilities Commission for the state of Kansas for the transportation, delivery and distribution of gas by the complainant receiver, as aforesaid, that the probable life of the property of the complainant receiver then in his control was of the probable duration of five years, when in truth and in fact the value of said property and the just and legal amortization thereof for the purpose of fixing a return thereon should have been determined by the actual physical value and condition of said property, and the findings of the court were not sustained by the evidence adduced in said cause and the record therein.

#### IX.

The United States district court for the district of Kansas erred in refusing to dismiss the complaint of the complainants in the case below in so far as the question of interstate commerce was involved and material and in refusing to consider said question and to determine said cause against complainants on the questions involved as to interstate commerce, for the reason that said questions of interstate commerce had been fully determined in cases previously brought and prosecuted between the same parties, who were parties to the case below, and because said question of interstate commerce and all the facts and circumstances relating thereto, as it appeared from the evidence adduced in said cause and the record therein, had become *res adjudicata*.

#### X.

That the United States district court for the district of Kansas erred in holding the rates prescribed by the Public Utilities Commission for the state of Kansas for the sale and distribution of gas by the complainant receiver within the state of Kansas to be arbitrary, unreasonable, confiscatory and in violation of the constitution of the United States, as aforesaid, in addition to the other errors complained of herein, in that said court held and considered the cost of making extensions to the property owned by and in control of the complainant receiver for the purpose of improving the supply of gas to be chargeable as operating expenses in the maintenance of said property, whereas such expenses and cost of extensions of the pipe lines of the complainant receiver and other permanent im-

provements were properly and legally chargeable to the capital account of the said property and should not have been charged in the estimates made by the said court as against said property and its patrons as operating expenses.

# XI.

That the United States district court for the district of Kansas erred in the case below in that it appeared from the evidence adduced by the parties in said case and the record therein that the rates in controversy in said suit and complained of by the complainant receiver were voluntarily put into effect by said receiver, and that the receiver did not exact from his patrons within the state of Kansas as high a rate for the transportation and distribution of natural gas to them as he was entitled to charge for such services, and that for said reason the said complainant receiver should not have been permitted by the court in the case below to have contended that said rates were arbitrary, unreasonable, or confiscatory, or in violation of the constitution of the United States, and that the evidence in said case showed that said rates were reasonable, legal, and were not confiscatory or unconstitutional, but were fair and just to said complainant receiver and his patrons throughout the state of Kansas.

F. S. JACKSON,

H. O. CASTER,

*Attorneys for the Appellants.*

Kansas State Capitol, Topeka, Kan. Filed in the district court July 5, 1917.—MORTON ALBAUGH, *Clerk*.

No. 856.

## IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.—FIRST DIVISION.

In Equity. No. 136-N.

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Company,  
*Plaintiff,*

*vs.*

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS *et al.*, *Defendants.*

**Assignment of Errors on behalf of the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, Members of the Public Utilities Commission for the State of Kansas, and H. O. Caster, At-**

**torney for the Public Utilities Commission for the State of Kansas, and S. M. Brewster, Attorney-general of the State of Kansas.**

And now come Joseph L. Bristow, John M. Kinkel and C. F. Foley, commissioners of the Public Utilities Commission for the state of Kansas, and H. O. Caster, attorney for said Commission, and S. M. Brewster, attorney-general of the state of Kansas, appellants, and make and file this their assignment of errors in their appeal herein.

### I.

The district court of the United States for the district of Kansas erred in holding that the sale and distribution of gas in the manner in which the complainant receiver was engaged therein within the states of Kansas and Missouri constituted interstate commerce and the engagement therein by the complainant receiver in the transactions involved in said case, and that the acts and conduct of said receiver involved in the transportation and sale of said natural gas to his patrons in the towns and cities of the states of Kansas and Missouri, and in other places therein, constituted interstate business, and that the said business of transporting and selling natural gas to his patrons in the states of Kansas and Missouri was not subject to the control of the Public Utilities Commission of the state of Kansas or the Public Service Commission of the state of Missouri within their respective states and under the local laws of the said states.

### II.

That the said United States district court for the district of Kansas erred in the court below in holding that the contracts entered into between the various distributing companies located in Kansas were not binding upon the complainant receiver.

### III.

The United States district court for the district of Kansas erred in the court below in enjoining the Public Utilities Commission for the state of Kansas, Joseph L. Bristow, John M. Kinkel and C. F. Foley, as the Public Utilities Commission for the state of Kansas, and H. O. Caster as attorney for the Pub-



lic Utilities Commission for the state of Kansas, and S. M. Brewster as attorney-general of the state of Kansas, and the defendant cities in Kansas, from enforcing the aforesaid supply contracts or rates fixed or referred to therein against said complainant receiver and said distributing companies, and from interfering with the plaintiff or any of said defendant distributing companies in establishing and maintaining such rates as the said court had approved or might thereafter approve for consumers of natural gas in the state of Kansas.

IV.

The United States district court for the district of Kansas erred in the court below in enjoining the mayors and common council and governing officials, city attorneys, city counselors, or representatives of the defendant cities, and their successors in office, from commencing, instituting, or prosecuting in any other court or tribunal any suit or proceeding to litigate any matters determined by the United States district court for the district of Kansas without leave of said court first having been obtained.

F. S. JACKSON,

H. O. CASTER,

*Attorneys for Appellant.*

Filed in the district court this 8th day of November, 1917.—  
MORTON ALBAUGH, *Clerk.*

## ARGUMENT.

### INTERSTATE COMMERCE.

#### (a) The Transportation, Sale and Distribution of Gas by the Receiver is Not Interstate Commerce.

On this general subject of the nature of plaintiff's business, the facts as heretofore set forth were adopted from a former decision of the Kansas supreme court in the Flannelly case, 96 Kan. 372, *infra*—in reality this case—and we can use no stronger argument than to repeat the reasons given by that court for its conclusions.

#### STATE V. FLANNELLY, 96 KAN. 372.

"It is contended that the receivers are engaged in interstate commerce, and for that reason are beyond the control of the Public Utilities Commission. That the transportation of natural gas from one state to another is interstate commerce must be conceded. (*West v. Kansas Natural Gas Co.*, 221 U. S. 229, 55 L. Ed. 716, 31 Sup. Ct. Rep. 564, 35 L. R. A., n. s., 1193; *Haskell v. Cocham*, 109 C. C. A. 235, 187 Fed. 403.) Numerous other cases might be cited. However, that is not the question we have to determine. Our question is, When does the natural gas that is sold by the receivers in the several cities in this state cease to be an article of interstate commerce? In 7 Encycl. of U. S. Sup. Ct. Rep. 298, we find a clear and condensed statement of the rules to be deduced from the decisions of the United States supreme court, as follows:

"The general rule is that as long as an article imported remains in the hands of the importer in the original and unbroken package in which it was imported, it is protected by the commerce clause of the constitution from the interference of state laws, and that it is only when the original package has been sold by the importer or has been broken up by him or has otherwise become mixed with the common mass of property in the state, that it becomes subject to state legislation."

"The original package rules will be of some assistance in determining whether or not the receivers' sale of gas in this state is interstate commerce. The original package of gas is broken when the first gas is taken out of the pipe lines and sold in this state. Thereafter the gas ceases to be an article of interstate commerce. The gas, when sold, had become mixed with the common mass of property in this state by being so commingled with gas produced here as to completely lose its identity. It is a matter of common knowledge that service pipes from the pipe lines of the distributing companies to private residences and other buildings belong to the owners of the property served, and installations are made at their expense. If the analogy of original packages or importation of property in bulk applies to gas in the mains, it ceases to apply when thousands of service pipes are filled with gas to be drawn off at such times and in such quantities as the individual consumer desires. Interstate commerce is at an end when the bulk of the imported gas is broken up for indiscriminate distribution to individual purchasers at retail sale. The gas then becomes mixed with the common mass of property in the state. To exclude the power of the state from control over an article imported into it, it is necessary that the article be capable of being pointed out and identified, and the owner be able to say, 'This came from another state, and has not yet become commingled with the mass of property in this state so as to make it a part of that property.'

"All property now owned in this state, and not produced here, was at one time a part of interstate commerce. The goods on the merchant's shelf, the wagons and plows in the farmer's field, the horses and cattle that he has imported from another state, were all a part of interstate commerce at one time, but have ceased to be such, although they have not been sold and are still owned by the persons who imported them. These ceased to be under the protection of the interstate commerce clause of the constitution when they became a part of the property of this state. The farmer who imports a wagon, a horse, a carload of corn, or a piano, may or may not intend to sell the article imported. Does the interstate commerce character of this property attach until it is sold? It does not. It can not. A carload or a trainload of wheat may be shipped from this state to Kansas City, Mo., and be there placed in an

elevator and mixed with another carload or trainload of wheat from some county in Missouri, and may be held for delivery to some one who has ordered it, or be held for sale to any one who will buy it. Will that wheat from Kansas, after being commingled with the wheat from Missouri, be under the protection of the interstate commerce clause of the federal constitution and outside the control of Missouri, under laws legally enacted by its legislature? If this question is answered in the affirmative, it extends interstate commerce much farther than any decision of any court yet rendered of which we have any knowledge or information. Before selling natural gas it became necessary to obtain franchises from the several cities under the laws of this state. These laws provided that in certain classes of cities the franchises might name the price at which gas should be sold. If the business done by the receivers in this state is interstate commerce, and the state has no power to regulate the price at which gas may be sold, the laws providing for fixing rates in franchises were invalid, so far as gas coming from another state is concerned."

The trial court in this case answers this argument by the statement of a number of propositions which, as stated by the court, have a bearing upon the instant case, and authorities cited in support of each of them. They are as follows:

(1) Interstate commerce begins when the goods are delivered to the carrier for transit from a point in one state to a point in another state, or are actually started on their ultimate passage.

(2) Interstate commerce ends when the shipment reaches its intended destination, and except where Congress has expressly otherwise provided, the protection afforded to an interstate shipment includes the right to sell by the person introducing the goods; at least, up to the time when they have become commingled with the general property of the state; and where the goods are introduced in the original packages; commingling does not take place until the original package is broken.

(3) The intent and purpose of the party making the shipment have an important if not controlling bearing upon the question of where the interstate journey ends.

(4) A change of carriers or plurality of carriers does not affect the status of the interstate shipment.

(5) Change of ownership of the property during transit does not necessarily affect the status of the shipment.

(6) Employment of an agent at the point of destination to effect delivery to the ultimate consignee does not destroy the character of the shipment.

(7) The time and place at which the title to the goods passes as between the seller and buyer is not controlling upon the character of the shipment.

(8) The parties, shipper, carrier, and consignee may be three separate parties, or a less number.

(9) Absence of a specific consignee at the time of shipment does not alter the character of the shipment.

(10) The exact destination need not be fixed at the time of the shipment provided the intent and purpose is to continue the journey beyond the limits of the state in which the journey begins.

There is no question about the correctness of any of these propositions of law, and the only difficulty arises in their application to the case, and so far as we are able to see not many of them are of vital importance in the matter.

We note in the statement numbered 3 that the intent and purpose of making shipment is said to be important, if not controlling, upon the question of where the interstate journey ends. We think the intent and purpose of the party as to whether the shipment of goods from one state shall be commingled with the general property of the state into which the shipment is made as a part of the movement of the goods is absolutely controlling as to whether the shipment is state or interstate.

This proposition controls as to the statements made in numbers (7), (9) and (10), because if the shipper intends during the movement of the goods which he ships to sell the goods after they have become commingled with the general property of the state into which he has shipped them, the time and place of the sale is material, as it would necessarily take place after the commingling of the goods and within the state to which the shipment was made; and, 9, the absence of a specific consignee at the time of shipment is material because in most cases it would indicate an intention on the part of the shipper, unless his goods were sold in original packages, to commingle his property with the general mass of property in the receiv-

ing state and hold the same for sale when a buyer could be found.

So, in the case of 10, where the destination is fixed at the time of the shipment, or later, the important point is the intent and purpose of the shipper. In a case of a change of carriers or plurality of carriers, 4, or the employment of an agent at the point of destination and the effect of these matters upon changing the nature of the shipment, depends entirely upon what the additional carrier or the agent is to do with the shipment, as will be seen from the cases hereinafter noted.

In other words, it seems that when it is once definitely shown that the shipper intended at the time of starting the shipment that his goods upon arrival in the receiving state should immediately be commingled with the general property of the state and there subject to local laws, the shipment is immediately intrastate, at least upon its arrival at the point where the commingling takes place, and all other elements of the transaction become immaterial. The trial court, however, in applying the aforesaid principles attempted the following analysis of the transaction involved in the instant case (rec. 593) and there says:

(a) That the shipment is started on its journey from one state to another, (b) with the purpose that it shall be delivered to a customer; (c) that it moves continuously from a point of shipment in one state to the consumer in another state; (d) that it is moved part of the way in the pipe lines of the receiver, and part of the way in the pipe lines of the distributing company; whether as agent of the receiver or as connecting carrier is immaterial. (e) The destination of the shipment is intended at the time of the shipment to be beyond the state, although the name of the particular consumer for any specific portion of the gas shipped is not known. (f) There is no stoppage in transportation. (g) The title to the gas remains in the receiver until delivery to the ultimate consumer.

And concludes with the statement, in substance and effect: "There are continuing orders by the consumer to the receiver through the distributing company to supply them with gas from the Oklahoma fields." Such transactions have the character of interstate commerce at their inception and this character continues until final delivery."

The fundamental errors in this reasoning of the court may be pointed out as follows: In the first place (*a*), (*b*) and (*c*) are all one and the same thing, but the shipment is not intended for delivery to the consumer, but it is intended that the residue of the gas, after being transported through the lines of the transportation company, commingled with gas produced in the receiving state, already in the pipe lines of the transporting company and the distributing company, and the part used for the purposes of transportation in condensers, and perhaps other apparatus, the remainder, then, to repeat, is held for the purpose of sale to whomsoever shall pay for it, in such quantities and at such times as the party shall apply to the local agent who holds the same for sale.

So, too, statements (*f*) and (*d*) apply to the same thing, but are inconsistent with each other when the nature of the business is fully understood, for there *is stoppage in transportation*, at least when the gas brought through the trunk lines reaches the pipe lines of the distributing company. There, many times, a mixture with gas locally produced takes place; but, more important than this, it is necessary that the gas be held at a certain pressure ready for delivery upon the local demands of the consumers. The testimony shows that the gas comes in at one pressure over the lines of the transporting company, but it then must be held, its pressure changed, sometimes more than once, as it is distributed out to the smaller lines for delivery through the meters of the consumers. These are elements, as is stated by the Kansas supreme court, which would render the delivery of this gas a transaction local in its nature. There is no elevator, warehouse or holder, in most cases, in which gas can be stored and held for its final step of delivery, but it is held in the pipe lines of either the distributing or transporting company for delivery in just the same manner as delivery of any other commodity from a warehouse would take place, and the commingling of the foreign gas with the local gas has already taken place within these pipe lines.

It is apparent that the discussion of this phase of the case, that is, as to the manner in which the gas is handled, is in reality an attempt to apply the doctrines usually referred to as the original package theory, as distinguished from the fact of commingling the property imported with the general property of the state into which the import is made. The reason for



these rules has been well considered and many times expressed by this court, but it is apparent that the reason for the original package doctrine is that where goods are imported in their original package and the sale takes place at the destination of that package as an incident of the sale (*Leisy v. Hardin*, 135 U. S. 100) such circumstances absolutely preclude the intention of the importer to mingle his goods with the common mass of property in the import state.

Gas is not transported in original packages. There is nothing about its delivery that can resemble in the slightest degree an order except that the consumer has established a meter and a permanent connection with the pipe line through the local agent of the receiver or transporting company, but there is no order because he takes the gas or refuses it as he pleases and in such quantities as he pleases. Indeed, it is proposed that he should pay a different price according as he shall use much or little of the gas consumed.

We understand, of course, that in the case of pipe lines like those used for the transportation of oil that perhaps upon an order for a stated amount delivered at the end of the pipe line, and in a case where the pipe line was used for interstate transportation, that the company operating the same as an interstate carrier might maintain the identity of the oil, and that such pipe lines have been placed within the control of the Interstate Commerce Commission. The fact that Congress declined to take control of pipe lines transmitting gas must have been based upon some reason, sounding in the very nature of the transaction, which made such business different from that of the transportation of oil in pipe lines. The case is different, too, from that of a railroad and other carriers engaged in interstate commerce, for there is no commingling of property in that case. Each interstate shipment is separate and distinct from each intrastate shipment. It is only the operating agency itself which is engaged in both services.

What is the reason underlying the principle that goods imported into a state and commingled with the general property of that state lose their interstate character? There can be but one answer to this, and that is the difficulty of identifying what is state and what is interstate, and the further fact that the police power of the state is one of its sovereign powers and cannot be destroyed by the individual who sets up a claim that

he is engaging in interstate commerce and therefore not subject to the control of the state's local laws.

What is the original package in which gas is imported? The only answer which has been given to this question has been the suggestion of the supreme court of Kansas that it was the pipe line itself. Then, surely, no sale is made in the original package, for the sale is made by metering the gas into the pipe line of the consumer. He does not buy the pipe line of the Gas Company, nor even all of the gas in it, and "return the package"; but he does break the package and take a part, what he desires at the moment, from the contents of "the package."

The case under these circumstances becomes very much like the cigaret case (*Austin v. Tennessee*, 179 U. S. 343), in which the court said:

"Paper packages of cigarettes, each 3 inches in length and 1½ inches in width, containing ten cigarettes, without any shipping address on such packages, when they are taken from a loose pile of such packages at the factory by an express company, in a basket which it furnishes, in which it carries them and from which it empties them on the counter of a consignee in another state, do not constitute original packages of interstate commerce, *but, if there is any original package in the shipment, it is the basket.*"

The court further said:

"The size of the package in which the importation is actually made does not govern; but the size of the package in which *bona fide* transactions are carried on between the manufacturer and the wholesale dealer residing in different states. We hold to the latter view. The whole theory of the exemption of the original package from the operation of state laws is based upon the idea that the property is imported in the ordinary form in which, from time immemorial, foreign goods have been brought into the country." *Austin v. Tennessee*, 179 U. S. 343, 359, 45 L. Ed. 224; *Cook v. Marshall County*, 196 U. S. 261, 271, 49 L. Ed. 471.

And again:

"It is sufficient for the present to say, generally that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has perhaps lost its distinctive character as

an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the constitution.' This sentence contains in a nutshell the whole doctrine upon the subject of original packages, upon which so formidable a structure has been attempted to be erected in subsequent cases. Whether the decision would have been the same if the original packages in that case, instead of being bales of dry goods or hogsheads, barrels or tierces of liquors, had been so minute in size as to permit of their sale directly to consumers, may admit of considerable doubt. Obviously the doctrine of the case is directly applicable only to those large packages in which from time immemorial it has been customary to import goods from foreign countries. It is safe to assume that it did not occur to the chief justice that, by a skillful alteration of the size of the packages, the decision might be used to force upon a reluctant people the use of articles denounced as noxious by the legislatures of the several states."

We think it fairly appears that there is no package at all in the transportation of gas, as a pipe line is only the means of transportation. It is the railroad track of the railroad, the bottom of the ship in water transportation, the automobile or truck in the transportation of goods over public highways. Wherever the pipe lines are tapped and the gas contained therein offered for sale to whosoever will buy, then a veritable retail store exists for the commodity contained in the pipe lines. The case is similar to that in which goods are imported by the train load and then offered for sale in separate carloads without unloading or changing the cars. Or again, cases in which goods are shipped in cars and the cars held upon the track while sales are made indiscriminately from the cars.

In these cases the railroad track or the railroad car respectively becomes a warehouse within the meaning of the law, and the seller of such goods has expressed his intention by his method of business of engaging in the local business in the state where the sales are made. A number of cases carrying out this theory follow, including the interpretation placed upon such transactions by the Interstate Commerce Commission in the administration of law applicable to interstate carriers.

We call the attention of the court, first, to cases passed upon by the state courts, and among them one by the supreme court of Iowa, *State v. C. C. Taft*, 167 N. W. 467, where it was held:

"Where cigarettes in the original packages come to rest in the hands of a dealer whose custom has been and whose intent is to break the packages and sell them, they are no longer interstate commerce and are subject to seizure under Code, section 5006, etc."

The supreme court of Oregon said, in an *ex parte* case:

"Relator under an agency contract for the sale of vehicles for an Iowa corporation, passed through the country from house to house with a catalogue and took an order for the sale of a vehicle to H., which order relator sent to the corporation's superintendent within the state, who, after satisfying himself as to the buyer's responsibility, delivered the vehicle from a stock kept in storage, shipped, knocked down, in carloads. *Held*, that interstate commerce involved in the shipment of the vehicles from Iowa to Oregon ended when the vehicles were placed in storage before sale, when they became part of the general mass of property in the state, and hence relator was not relieved from liability for violating the statute regulating peddlers on the theory that he was engaged in interstate commerce." (135 Pac. 881.)

The court in the opinion said:

"It was one of a number of vehicles shipped from Iowa in car lot, knocked down, and was put together in the warehouse at Roseburg, Ore. This sale or the delivery of the goods did not in any way depend upon interstate commerce. When the goods were unpacked at Roseburg they became a part of the general mass of property in the state and were subject to the state laws as other property within the state. They lost their character as interstate shipments when delivered at their destination and offered for sale."

In *Nernse Lamp Co. v. Conrad*, 131 N. W. 120, the syllabus reads as follows:

"Plaintiff, a foreign corporation, engaged in manufacturing lamps had a sales office in the state, and sold defendant a number of lamps; the contract providing for renewal of the parts and the maintenance of an agency by plaintiff within the state,

to repair and replace the goods sold, for an indefinite period. *Held*, that the business conducted by plaintiff, as shown by the contract, in selling the lamps and in furnishing the repair parts was not interstate commerce.

"In an action for the price of certain lamps, to be used as a part of an electric lighting system, evidence *held* to show that the contract between plaintiff and defendant contemplated plaintiff's maintenance within the state of an agency to examine, repair, and replace the goods sold, for an indefinite period."

*State v. Chicago, M. & St. P. Ry. Co.*, 130 N. W. 802, the supreme court of Iowa, in the first paragraph of the syllabus, said:

"A wholesale coal dealer in Iowa procured shipment of coal from Illinois to himself as consignee. The coal was there held until sales were made, when he paid the freight to the initial carrier, and had the cars placed on the interchange track, and tendered a written billing of the coal to carriers for shipment to other points. *Held*, that there was a delivery of the coal to the wholesaler at his place of business, and the transportation of the coal under another billing was intrastate transportation governed by the laws of Iowa."

*Locerin & Brown Co. v. Tansil*, 102 S. W. 77:

"A salesman representing a foreign mercantile corporation solicited orders for merchandise, to be paid for on delivery if found as represented. When the canvass of the community was completed, the salesman classified the merchandise called for in the several individual orders obtained, ascertained the quantity of each article, and sent to his employer one general order covering the aggregate number or quantity of articles of each class. The goods thus ordered were packed in large boxes and barrels and shipped by a common carrier to a point designated by the salesman, to whom the bill of lading was sent. Upon receipt of the goods the salesman opened the boxes and arranged the goods for delivery to the purchasers on payment of the purchase price. The money received on delivery of the goods was remitted to the employer. *Held*, that the corporation was not engaged in interstate commerce, but in the business of a retail merchant in the community in which the transactions were made, rendering it liable for the privilege tax imposed upon local merchants."

In the opinion it said:

"When the boxes and barrels containing the aggregate order arrive at the place of delivery, the salesman receives and opens them at some convenient place, and separates and arranges the goods for delivery, by placing all articles of a kind together.

"When a customer appears, the written order given by him is examined, and the articles therein called for are taken out of the several piles of merchandise and delivered to him. When all the goods are delivered, the money received by the salesman is remitted to his employer at the home office in Chicago. No goods are to be ordered by the salesman unless he has procured individual orders for them, and all goods ordered and shipped, but not accepted, are returned or given away.

"This was the manner in which complainant did business in Sharon and Weakley counties. The orders obtained in Sharon were for family groceries, and aggregated about \$300.

"We are of the opinion that this was commerce within the state, and not interstate commerce. The boxes and barrels in which this merchandise was packed by complainant and delivered to the carrier in Chicago, to be transported to Sharon, Tenn., there to be delivered to its salesman, were original packages within the meaning of the commerce clause of the constitution of the United States, and when complainant's salesman broke them, and classified and assorted the contents, they became commingled with and a part of the common mass of the property of the state, and were subject to its police regulations and revenue laws."

The Iowa case quoted above, *State v. Chicago, M. & St. P. Ry. Co.*, was appealed to and affirmed by the supreme court of the United States in 233 U. S. 334, 58 L. Ed. 988. The opinion was by Justice Hughes, and is absolutely decisive of every question presented in this case so far as interstate commerce is concerned. In that case, as stated in the syllabus quoted from the state case above, the consignee, a wholesale dealer in Iowa, procured a shipment of coal from another state to himself, and the coal was there held until resold and shipment made to intrastate points. The question arose over an order issued by the Iowa State Railway Commission requiring the local railroads to accept the coal so shipped in the cars in which the shipment was made and to deliver it therein at

the destination of the intrastate shipment and to make application thereto of the intrastate rates. The syllabus of the supreme court is in part as follows:

"The reshipment by the consignee to other points within the state of coal consigned to it on interstate shipments to a distributing point within the state, although such reshipments are in the cars in which the coal was received, does not establish such continuity of transportation as to place such reshipments outside the pale of state regulation, where the consignee paid the freight to the point of reshipment to the initial carrier, which placed the cars on an interchange track, where they were held by the consignee until sales were made, when bills of lading were tendered to another railway company for the further transportation.

"An order of a state railroad commission requiring a railway company to accept without unloading and reloading into its own cars reshipments of coal in carload lots when tendered in the cars of other railway companies by which the coal had been brought into the state does not interfere with interstate commerce where there is such a termination of the interstate transportation at the point of reshipment that the further transportation is a purely intrastate service."

It was also determined that such an order did not deny due process of law, liberty of contract, or equal protection of the laws to such railroad companies affected by such orders. These questions are argued out in full in the briefs in said cause and the questions comprehensively considered and finally determined by the court. The facts of this particular case were also carefully considered by the Interstate Commerce Commission, and its determination may be of interest to the court upon a question of so much importance and one upon which this Commission is especially qualified and authorized to speak. We therefore adopt as a part of our brief the discussion of this question contained in a letter dated February 18, 1915, by Commissioner Clark of the I. C. C. to Mr. O. F. Bell, secretary of the National Industrial Traffic League, of Chicago, Ill., referred by Commissioner Clements to the Kansas Commission, as expressing the views of the Interstate Commerce Commission upon this question.



"Your letter of the 8th has been considered by the Commission, and I am directed to say:

"We think that the supreme court has decided the question which you present in the following cases:

"In *Gulf, Colorado & Santa Fe Railroad Co. v. Texas*, 204 U. S. 403, the shipment involved actually originated in Dakota. It was treated in transit at Kansas City, and finally reached Texarkana as an interstate shipment. It was not removed from the car, but was later forwarded to Goldthwaite, Texas. The carrier demanded for that movement charges as for an interstate shipment which were higher than the local state charges. The supreme court held that the movement from Texarkana to Goldthwaite was a state movement, and made it quite clear that this holding was based upon the fact that when the shipment was forwarded to Texarkana as an interstate shipment its final destination was not known; it might be consumed at Texarkana; it might be forwarded intrastate to another Texas point; or it might be forwarded to some other point as an interstate shipment. It did not move to Texarkana with any definite intention or purpose of any other final destination. The interstate transportation therefore, ended at Texarkana.

"In *Texas & New Orleans Railroad Co. v. Sabine Tram Company*, 227 U. S. 111, the shipments were lumber which had been sold for export to a foreign country, which was hauled to Sabine for the purpose of exportation; was handled in all respects as for export and without any purpose or intent to use it or reship it other than as per the original plan of exporting to a foreign destination. The court held that the tariff rates for foreign shipments were lawfully applicable, although they were higher than the rates between the same points for local state shipments, and clearly differentiated that case from the *Gulf, Colorado & Santa Fe v. Texas* case, above referred to.

"In *Chicago, Milwaukee & St. Paul Railway v. Iowa*, 233 U. S. 334, the shipments involved were coal shipped to Davenport interstate and later forwarded, without being unloaded, intrastate to other points in Iowa. When the shipments were made to Davenport it was not known whether they would or would not go farther, or whether they would go farther as state or interstate shipments. The court held that where the

further shipment was to another Iowa point and within the state of Iowa, it was an intrastate movement subject to the jurisdiction of the Iowa Commission, this holding being clearly in line with the previous decision in the *Gulf, Colorado & Santa Fe v. Texas* case.

"From these decisions it seems to be well established that where shipments are made interstate to a point and without knowledge or definite purpose as to any other final destination, the further shipment wholly within one state is intrastate; but where the original purpose is to forward the shipment interstate to a previously determined and known destination, it is a through shipment from point of origin to such further destination and must be so recognized and treated, and the lawfully established interstate or foreign rates are applicable to the movement, despite the fact that there may be lower intrastate rates between certain intermediate points or from some intermediate point to the final destination.

"If a shipment is forwarded interstate to an intended destination and for some reason it later becomes necessary to forward to some other point upon a new contract of shipment and a new bill of lading, the transactions would apparently be separate and distinct from each other, provided they were conceived and carried out in perfect good faith and not for the purpose of defeating the lawfully established and otherwise applicable through interstate rate.

"We do not think that we can make this situation any clearer than it seems to be made in the supreme court decisions above referred to."

Comment upon other cases of the supreme court of the United States in the foregoing letter makes further mention by us unnecessary. We call attention of the court, however, to a few additional cases, which are of interest on this question:

*Brown v. Houston*, 114 U. S. 622, was a case very similar to the Iowa case from which we have just quoted. The fifth paragraph of the headnotes of that case is as follows:

"Coal, sent by the owners in Pennsylvania to their agents in New Orleans, to be there sold for their account, upon its arrival, becomes a part of the general mass of property of Louisiana,

and is subject to taxation in common with all other property, and in precisely the same manner. The fact that some of it is subsequently sold for exportation does not alter the case."

In the opinion the court said:

"This being the recognized law, the question then arises whether the assessment of the tax in question amounted to any interference with or restriction upon the free introduction of the plaintiffs' coal from the state of Pennsylvania into the state of Louisiana, and the free disposal of the same in commerce in the latter state; in other words, whether the tax amounted to a regulation of, or restriction upon, commerce among the states; or only to an exercise of local administration under the general taxing power, which, though it may incidentally affect the subjects of commerce, is entirely within the power of the state until Congress shall see fit to interfere and make express regulations on the subject.

"As to the character and mode of the assessment, little need be added to what has already been said. It was not a tax imposed upon the coal as a foreign product, or as the product of another state than Louisiana, nor tax imposed whilst it was in a state of transit through that state to some other place of destination. It was imposed after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year or two years, or only for a day. It had become a part of the general mass of property in the state, and as such it was taxed for the current year (1880), as all other property in the city of New Orleans was taxed. Under the law, it could not be taxed again until the following year. It was subjected to no discrimination in favor of goods which were the product of Louisiana, or goods which were the property of citizens of Louisiana. It was treated in exactly the same manner as such goods were treated."

Another case directly in point is the case of *Armour Packing Co. v. Lacy*, 200 U. S. 226, 50 L. Ed. 451. The question here presented is whether the Armour Packing Company was transacting local or interstate business and whether such local business was in conflict with the local laws of North Carolina.

The statement of fact by the state court, which was affirmed by the supreme court of the United States, is as follows:

"If the business of the defendant was solely that of shipping food products into this state, consigned directly to purchasers, on orders previously obtained, it is clear that this would be interstate commerce, and a tax laid by the state upon such business would be illegal. But the defendant does a large business within the state—the selling of products already stored here on orders received after these products are thus stored. The tax is laid upon every meat-packing house 'doing business in this state.' The evident meaning of the legislature is to tax the agency 'doing business' within this state, and not to lay any tax upon the interstate commerce of shipping products into the state, to be directly or indirectly delivered to purchasers whose orders were obtained before the goods were shipped."

We call attention also to the case of *Hopkins v. The United States*, 171 U. S. 577, a case of special interest, in view of the fact that the respondents seem to rely upon the Swift case, in which it was held that the Swift company had violated the antitrust laws of the United States. The case is of further interest because of the fact that the business was transacted upon the Kansas City stockyards by means of agents who received the property for the consignee and sold it for his account. The headnotes in the case which are deemed to be in point are as follows:

"The business of buying and selling live stock at stockyards in a city by members of a stock exchange as commission merchants is not interstate commerce, although most of the purchases and sales are of live stock sent from other states, and the members of the stock exchange are employed to sell by letter from the owners of the stock in other states, and send agents to other states to solicit business, and advance money to the cattle owners, and pay their drafts, and aid them in making the cattle fit for market.

"A commission agent who sells cattle at their place of destination, which are sent from another state to be sold, is not engaged in interstate commerce; nor is his agreement with others in the same business, as to the commissions to be

charged for such sales, void as a contract in restraint of that commerce."

As the Swift case (196 U. S. 375) relied upon by plaintiff involves transactions upon the Kansas City stockyards and by the meat packers, we call attention of the court to the fact that the controversy in that case was largely one of pleading, in which the court was called upon to sustain or set aside an indictment drawn on the antitrust law of 1890, and it was there held that although some of the sales upon the stockyards might pass title to the buyers of the stock in question, and therefore be in their nature intrastate, that such transactions might still be considered a part of interstate commerce if the purchases were made with intent that the fresh meats manufactured from such sales were to become a part of interstate commerce. But the real decisive point of the case was that the indictment fairly showed that some at least of such meat was sold in other states in original packages.

It is clear that the characterizing principle of the foregoing cases is that the shipper designed to have his shipment become a part of the general property of the state to which they were shipped and subject to all its laws, either by directly commingling them with such state property and losing thereby the identity of the goods in the shipment, or by holding them for sale at retail, or rather in detail, thus distributing them throughout the state with other common property subject to its jurisdiction.

It is immaterial in such a case whether the interstate character of the shipment is lost at the state line or later, in so far as the instant case is concerned, as distribution of the gas begins at or near the state line. It is the antithesis of sale in the original package or holding for sale by original package. There the exclusiveness of the interstate goods is protected by the package until its delivery to the person for whom it was shipped or the person to whom it was sold "as incident of the importation."

It is probably true, as stated by the trial court, that the employment of an agent to effect delivery does not affect the situation; it is rather what the agent does as reflecting the will of the shipper that counts in the determination of the nature of the shipment.

As illustrating this proposition, we call the attention of the court to the recent case of *Dalton Adding Machine Co. v. Commonwealth of Virginia, ex rel. State Corporation Commission*, decided April 15, 1918, 38 Sup. Ct. Rep. 361. In that case the court said:

"Plaintiff in error, an Ohio corporation, complains that the supreme court of appeals of Virginia improperly affirmed an order by the corporation commission assessing a fine against it for transacting business in the state without certificate of authority required by law. (118 Va. 563, 88 S. E. 167.) That court adopted and approved the commission's opinion, which, among other things, declared:

" 'We are of the opinion that the facts of this case demonstrate beyond a peradventure that the Dalton Adding Machine Company is doing a substantial part of its business in this state in the following particulars:

" '(a) In bringing its machines into this state before selling them, and in maintaining a stock of machines for exhibition and trial, and in selling such machines in this state, after their transportation in interstate commerce has been concluded and they have become mingled with the general mass of property in this state;

" '(b) In renting such machines and collecting rents therefor from its customers in this state at will;

" '(c) In buying and exchanging machines for machines made by other manufacturers, and in selling such machines so received in exchange at will;

" '(d) In employing a mechanic in this state and entering into contracts for repairing of machines owned by persons in this state from time to time and collecting the charges therefor:

" '(e) In keeping on hand in this state certain parts of machines and a stock of paper and ribbons suitable for use upon the machines, which are freely sold from time to time by its agent in Richmond to its customers.

" 'We think it perfectly apparent that in these particulars the business of the company in this state is

not "commerce among the states," the freedom of which is guaranteed by the United States constitution, but that such business, in every essential particular, is business which has been transacted by the company in this state in violation of the statutes referred to.'

"Beyond serious doubt the above specifications concerning the business carried on in Virginia are supported by the record. A material part of it was intrastate."

Referring to the opinion of the state supreme court, which, by the foregoing opinion is stamped with approval by the opinion of this court, we find the following in reference to the first paragraph of the opinion of the state court quoted above:

"The machine is left with the desired customer for trial for a reasonable time, and afterwards, if he concludes to buy, he signs an order for that identical machine, which had been previously put in his possession, which order is sent to the Dalton Adding Machine Company at its home office, now in Ohio, and the sale is then said to be consummated with the approval of the company.

"That this method of transacting business by the Dalton Adding Machine Company is a mere device for the purpose of avoiding the state statutes is apparent when the contention is made that, even in case of a cash transaction, when a machine previously in the possession of the purchaser is sold by a local agent to that purchaser for cash, strictly in accordance with the previous instructions given to the local agent, such a transaction needs confirmation by the company at its home office. The price is fixed, the property delivered, the terms complied with, and nothing is left of such a transaction except for the local agent to send the check or the currency to the selling company. Inasmuch as the purchaser has complied with every substantial term of the contract, it is not believed that the selling company could refuse to accept the purchase price, notwithstanding the device referred to. It can only be resorted to in case of such cash transaction for the purpose of attempting to convert 'into a form resembling interstate commerce that which in its intrinsic substance is local business subject to state control.' A similar effort has been



vainly essayed and condemned by the Supreme Court of the United States. *Browning v. City of Waycross*, 233 U. S. 16, 34 Sup. Ct. 578, 58 L. Ed. 828.

"The sales of such machines thus in the state, mingled with the other property in the state and subject to local taxation, cannot be distinguished from the sales of any other property thus located in the state. If the mere intention of the seller, a citizen of another state, to sell such machines before having shipped them into this state and his necessary confirmation of such sales stamps such transactions interstate commerce, then the shield which the constitution intended for commerce between the states will, by a strained and unnatural construction, become a sword for the destruction of commerce in the states. Commercial transactions in this state involving the bargain and sale of specific commodities sold in competition with local dealers may escape all state exactions by the mere device of having the nonresident owner ship them into this state and say that (even when they are sold for cash) all sales are subject to his approval outside of the state. It seems to us that the mere statement of the results which would follow if this admittedly new doctrine is established would be so revolutionary as to condemn it as unsound."

See, also, the case of *Marconi Wireless Telegraph Company v. Commonwealth*, 218 Mass. 558.

The above authorities not only fully sustain the proposition in support of which they were cited, but in addition thereto it seems beyond controversy that the assumption of the trial court that the manner in which local gas consumers purchase gas amounts to standing orders would be wholly immaterial. The character of the transaction cannot be changed by simply calling it an order. There is no certain quantity of gas contracted for, and certainly no particular or specified quantity set aside in the course of shipment for the purchaser. On both the proposition of the acts of the agent in completing delivery and the necessary nature of orders to protect the interstate character of the shipment we believe the opinion of this court in *Browning v. Waycross*, 233 U. S. 16, is controlling. The syllabus of that case is as follows:

"The business of erecting lightning rods within the corporate limits as the agent of a nonresident manufacturer on

whose behalf such agent had solicited orders for the sale of such rods, and from whom he had received the rods when shipped into the state on such orders, may be subjected to a municipal license tax without violating the commerce clause of the Federal constitution, although the contracts under which the rods were shipped bound the seller at his own expense to attach them to the houses of the persons who ordered them."

Commenting on the cases of *Caldwell v. North Carolina*, 187 U. S. 622, *Rearick v. Pa.*, 203 U. S. 507, and *Dozier v. Alabama*, 218 U. S. 124, the court, speaking by Mr. Chief Justice White, said:

"It is evident that these cases when rightly considered instead of sustaining, serve to refute, the claim of protection under the interstate commerce clause which is here relied upon, since the cases were concerned only with merchandise which had moved in interstate commerce, and where the transactions which it was asserted amounted to the doing of local business consisted only of acts concerning interstate commerce goods, disassociated from any attempt to connect them with or make them a part in the state of property which had not and could not have been the subject of interstate commerce. Thus, in *Caldwell v. North Carolina*, the court laid emphasis upon the fact that the shipment of the pictures in interstate commerce in one package and the frames in another was not essential but accidental, for the two could have been united at the point of shipment before interstate commerce began as well as be brought together after delivery at the point of destination. And this was also the condition in the *Rearick* case. Indeed, it is apparent in all three cases that there was not the slightest purpose to enlarge the scope of interstate commerce so as to cause it to embrace acts and transactions theretofore confessedly local, but simply to prevent the recognized local limitations from being used to put the conceded interstate commerce power in a straight jacket so as to destroy the possibilities of its being adapted to meet mere changes in the form by which business of an inherently interstate commerce character could be carried on.

"We are of the opinion that the court below was right in holding that the business of erecting lightning rods under the circumstances disclosed was within the regulating power of the state, and not the subject of interstate commerce, for the fol-

lowing reasons: (a) *Because the affixing of lightning rods to houses was the carrying on of a business of strictly local character, peculiarly within the exclusive control of state authority.* (b) *Because, besides, such business was wholly separate from interstate commerce, involved no question of the delivery of property shipped in interstate commerce, or of the right to complete an interstate commerce transaction, but concerned merely the doing of a local act after interstate commerce had completely terminated.* It is true that it was shown that the contract under which the rods were shipped bound the seller, at his own expense, to attach the rods to the houses of the persons who ordered rods, *but it was not within the power of the parties by the form of their contract to convert what was exclusively a local business, subject to state control, into an interstate commerce business, protected by the commerce clause.* It is manifest that if the right here asserted were recognized, or the power to accomplish by contract what is here claimed were to be upheld, all lines of demarcation between national and state authority would become obliterated, since it would necessarily follow that every kind or form of material shipped from one state to the other, and intended to be used after delivery in the construction of buildings or in the making of improvements in any form, would or could be made interstate commerce."

See, also, the case of *American Steel & Wire Co. v. Speed*, 192 U. S. 508, where the court, again speaking by Mr. Chief Justice White, held:

"With these facts in hand we are of opinion that the court below was right in deciding that the goods were not in transit, but, on the contrary, had reached their destination at Memphis, and were there held in store at the risk of the steel company, to be sold and delivered as contracts for that purpose were completely consummated. All question, therefore, as to the power of the state to levy the merchants' tax based on the contrary contention, being without merit, may be put out of view. The other propositions pressed upon our attention require consideration. They relate to two subjects: First, the asserted want of power of the state of Tennessee to tax because the goods were imported from another state, and were yet, it is contended, in the original packages; and, second, because of the

alleged discrimination asserted to result from the provision of the state constitution exempting goods manufactured from the produce of the state."

Construing *General Oil Co. v. Crain*, 209 U. S. 211, and *The Western Oil Refinery Co. v. Lipscomb*, 244 U. S. 345, as in accord with each other, we believe that both cases fully sustain the views expressed above to the effect that there is a holding of the gas for distribution within the state of Kansas to anyone who will come and buy, and in such quantities as they may wish, which, under these decisions, constitutes an intermingling of the property with the property of the state. It will be noted that in the *Lipscomb* case there were definite and certain orders taken by a traveling salesman before the shipment, which called for a definite amount of oil to be delivered to the person who had ordered, while in the *Crain* case the oil was held at a distributing point maintained by the shipper and from this place it was distributed in such quantities as the purchaser might desire. In the latter case it was held that when oil reached this point of distribution its interstate character ceased and it became a part of the general property of the state. In this case the court, speaking by Mr. Justice McKenna, said:

"Like comment is applicable to plaintiff in error and its oil. The company was doing business in the state, and its property was receiving the protection of the state. Its oil was not in movement through the state. It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in *State, Detnold, Prosecutor, v. Engle*, supra, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation. It required storage there—the maintenance of the means of storage; of putting it in and taking it from storage. The bill takes pains to allege this. 'Complainant shows that it is impossible, in the coal oil business, such as complainant carries on, to fill separately each of these small orders directly from the railroad tank cars, because of the great delay and expense in the way of freight charges incident to such a plan, and for the further

reason that an extensive plant and apparatus is necessary in order to properly and conveniently unload and receive the oil from said tank cars, and it would be impracticable, if not impossible, to have such apparatus and machinery at every point to which complainant ships said oil.'

"This certainly describes a business—describes a purpose for which the oil is taken from transportation, brought to rest in the state, and for which the protection of the state is necessary—a purpose outside of the mere transportation of the oil. The case, therefore, comes under the principle announced in *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365.

"We have considered this case so far in view of the cases which involve the power of taxation. It may be that such power is more limited than the power to enact inspection laws. *Patapsco Guano Co. v. Board of Agriculture*, 171 U. S. 356, 43 L. Ed. 195, 18 Sup. Ct. Rep. 862. The difference, if any exists, it is not necessary to observe. The cases based on the taxing power show the contentions of plaintiff in error are without merit; in other words, show that its oil was not property in interstate commerce."

See *Gulf, C. & S. F. R. Co. v. Texas*, 204 U. S. 403.

Concluding this division of our brief, let us sum up the analysis given by the trial court in the light of the foregoing decisions and in view of what the testimony in the case fairly shows and we have that, as to the trial court's (a) and (b), all shipments intended for sale, start on their journey for the purpose of being delivered to a consumer at some point in the course of the journey.

(c) The gas *does not move continuously* from the point of shipment in one state to the consumer in another state. Much of it moves only within the state of Kansas. Most of the remaining part comes to a complete rest in the pipe lines of the receiver or those of the transporting company at each of the usual places of distribution of the gas; that is, every city which the distributing and transporting companies supply jointly becomes a regular depot or station from which the gas, completely at rest, is distributed under different pressures and processes, in different sized pipes, from that which is employed in the transportation lines.

(c) The destination of a part of the gas is intended at the time of the shipment to be beyond the state, that part produced in Oklahoma is intended to be actually commingled with domestic gas in Kansas, where about half of the entire bulk transported is consumed, and it is true that the name of the purchaser or the quantity that the purchaser will require in any case is not known and much of the gas will be consumed by the transporter himself in the process of transportation.

(f) There is a stoppage in transportation, as has been shown in (c). *The gas for each city is definitely set out by meters to each distributing plant and no part of this ever returned to the trunk lines.*

(g) The title does not remain in the name of the transporter, but is owned as much by the distributing company as the importer after the passage of the gas into the distributing company's lines at the ratio of one-third to two-thirds. While the distributing company does not account for any gas lost from its own lines to the transporting company, the fact that settlement is made on the basis of the actual sales results in the distributing company bearing its proportion of the loss throughout the transportation lines as well as in its own. The two elements of the transaction—transportation and distribution—seem to be elements of partnership rather than that of principal and agent in the sense that one of the parties is master of the other or enjoys a greater right to control.

Considered, then, wholly upon the point of whether there is a quantity of the commodity transported at rest and whether local distribution or commingling of that product with the general mass of the property of the state, we assert that it cannot be doubted that the distribution and sale of the gas to local consumers through the properties of the distributing companies is a separate and distinct function and process from that of the transportation through the pipe lines of the company, and, therefore, so far as the production, transportation, sale and distribution of gas is susceptible at all of being compared with other commodities, the court must say that the process is local and one wholly destitute of the principles of interstate commerce.

These matters all become plainer, if such is possible, by the discussion of our following propositions, which, for convenience, we have lettered (b) and (c), and have to do with the

acceptance and use of local franchises by the transporting and distributing companies in furnishing gas and contracts made by them in consideration of the use of the streets and alleys of the cities, contracts in some cases authorized by the state laws and in others not forbidden or disapproved by them. The fact that there is an actual commingling of gas imported with the domestic product in the pipe lines has been mentioned several times, and will also be discussed in connection with the remaining propositions.

**The gas business carried on under a local franchise (b) originally intended to apply wholly to local gas (c) estops the importer from claiming immunity from local control. The imported gas is still mingled with local gas, constituting a substantial proportion of the whole (d), and such commodities, even if not wholly deprived of their interstate character, are so connected with local or intrastate commerce as to be subject to state control, Congress having neglected and refused to legislate upon the subject. (e), (f).**

As stated in the paragraphs preceding this heading, the discussion of the following questions makes our contention and the application of the authorities cited in support of them clearer, and for these reasons and the further one that the whole subject is difficult of division into elements and parts, we discuss the remaining propositions of our statement together.

The Kansas Natural Gas Company, through its receiver, is virtually operating under the local franchises of the cities granted by the governing bodies of those cities in 1906, or prior thereto, by means of local ordinances. These ordinances in some cases recognize the Kansas Natural Gas Company as a joint worker with the distributing company. The statement made by the supreme court of Kansas (rec. 1113), adopted by the trial court and all the parties to the suit as correct and fair, assumes that the receiver is acting under local franchises. The consideration for these franchises moving from the city was the right of the gas company to occupy the streets and alleys of the cities with its mains or other pipe lines, and the consideration flowing from the gas company was the promise of service to the people of the cities. The franchises thus entered into constituted valid and subsisting contracts, as we shall see,



both as to rates and the other terms and considerations of the franchises. See as typical, supply contract between the Kansas City Pipe Line Company and Wyandotte County Gas Company (rec. 829, 830), ordinance No. 6051, Kansas City, Kansas, for the supply of gas by the Wyandotte County Gas Company (rec. 821). See, also, exhibit B to plaintiff's bill (rec. 47), setting forth a synopsis, including rates contained in the franchises under which the Kansas Natural operated.

The gas company was bound as to the rates to the extent that such rates could not be changed without the consent of the cities, even though the cities had no specific legislative authority to enter into such contracts. *Wyandotte County Gas Co. v. Kansas*, 231 U. S. 622, 88 Kan. 165; *Emporia Telephone Case*, 90 Kan. 118 and 88 Kan. 454. The gas company desired permission to transact its business in the Kansas cities. Indeed, the gas companies could not have transacted business, state or interstate, without mains on the city streets or alleys, and pipes leading therefrom, with which to make the meter connections.

As illustrating this point and the necessities of the Kansas Natural Gas Company, referred to herein often as the transporting company, the averments of the bill of John L. McKinney versus that company, a part of the record in this case (872, 873) will be found interesting. It should be mentioned here that this defendant, in addition to being the plaintiff in the equity suit to which this one is ancillary, has also specifically joined with the plaintiff, adopted the averments of his bill, and prays for the same relief. The parts of the bill referred to are as follows:

"*Eighth.* That at the time the Kansas Natural Gas Company proposed building its system of pipe lines mentioned in the sixth paragraph hereof, it was not considered advisable to itself distribute and market its gas in the said cities for the following, among other, reasons:

"(a) The expense thereof would have been enormous and burdensome, approaching, if not exceeding, twenty millions of dollars, and it was impossible for the company to finance the same, it being only able to finance the building of its main system of pipe lines.

"(b) The time necessary to build its distributing plants in the said several cities would have greatly delayed the com-

pletion of its system and the delivery of its gas to the waiting public, and also any return to the company on its investment.

"(c) It would have necessitated the tearing up of the street pavement in the said cities and the trenching of the streets and other public places with the consequent annoyance to the traveling public and the abutting owners.

"(d) It would have resulted in duplicate gas systems in each of the said towns, the natural gas lines paralleling those of the manufacturing gas plants, and, as it is a fact that a manufactured gas plant cannot compete with a natural gas plant, the business of the manufactured gas plants in the said cities would have been totally taken away from them and the investment in such plants wholly lost, excepting only the junking value thereof, and even as to that it could not be realized except by tearing up the streets and pavements of the cities, with the consequent annoyance to the traveling public and abutting owners.

"That it was for the public good as well as for the mutual benefit of both the Kansas Natural Gas Company and the several manufactured gas companies, that the plants of the latter in each of the said cities be utilized for the distribution and marketing of the natural gas therein, and to that end the Kansas Natural Gas Company contracted with each of the manufactured gas companies in the said several cities by which the Kansas Natural Gas Company should pipe its natural gas to the limits of the said cities and there deliver the same into the local manufactured gas system or plant, and that the local manufactured gas company should there take and receive the said gas and through and by means of its manufactured gas plant or system of pipes distribute, market and sell the same to consumers thereof in the said city, and that the proceeds from domestic sales should be divided in the percentage of sixty-six and two-thirds percent to the Kansas Natural Gas Company and thirty-three and one-third percent to the local distributing company, except in the two Kansas Citys in which the Kansas Natural Gas Company received only sixty percent for the first two years and sixty-two and one-half percent thereafter, the local distributing companies receiving forty percent for the first two years and thirty-seven and one-half percent thereafter"; etc.

When the contracts were made all parties contemplated that the gas should be produced in Kansas, transported in Kansas to the cities in Kansas and the consumers therein residing. It was natural, therefore, that the ordinances and contracts executed to the accomplishment of this purpose should contemplate local regulation both as to rates and service under the police power of the state. Congress having failed to legislate as to the control of the subject, would not the contract entered into between the local cities and a company intending to transact interstate business have become binding upon the corporation obtaining permission to transact a local business in each city? It goes without saying that the business is essentially local in its nature. It is such a business as has been described by the courts as peculiarly subject to local control.

Now we say that under these conditions, whether the business be state or interstate, the company which entered upon such arrangements and contracts should not be permitted to say that it will withdraw from all local control and contest the efficacy of the police power of the state to direct or control its activities. This proposition, we think, comes with peculiar force in view of the fact that the parties intended in the first place that all the business should be intra-Kansas, and from the further fact that to revoke this rule would be to destroy the police power of the state over the very matters where it was intended that that power should be supreme and where its exercise is necessary for the safety and protection of its people, and especially where, in all probability, the entire subject is under the rulings of this court subject to local control in any event. We can illustrate exactly what we mean by reference to the argument of the appellees in the trial of the case in the court below. There they said, referring to the decision of the supreme court of Kansas that the property of the receiver had become localized on passing through the pipe lines of the state for the purpose of local distribution, that, "Fortunately this view of the Kansas supreme court has been repudiated by the supreme court of the United States. See *Kirmeyer v. Kansas*, 236 U. S. 568."

We think here, as elsewhere, the appellees are greatly in error, but the case mentioned by them is valuable for illustration.

The *Kirmeyer* case, as is stated in plaintiff's brief, was a

straight case of interstate commerce where the testimony showed that orders were accepted in Missouri and the liquors transported across the state line and delivered on the orders to the consignees.

It was distinctly found by the courts that Kirmeyer had no Kansas license; that he did have a federal license to transact business in Missouri and paid merchants' and *ad valorem* taxes in Missouri. There was no pretense that he conducted only local business in Kansas except by device. In fact, his advertisements and his entire contention was that he was doing a purely interstate business and not a domestic business.

However, the plaintiff says, with an assurance that seems to settle the whole proposition: "No one in that case contended that by the delivery of one package from the wagon, all of the remaining packages in the wagon were subject to state regulation." No, we suppose the law of that case was settled upon the facts as they stand, and could not be changed by any one "supposing" or "contending"; but inasmuch as it was an injunction suit by the state, if it had been shown that even one package, or at least if occasional packages, were sold and delivered by Kirmeyer from his wagons on their trips through the streets of Leavenworth, the injunction would have issued and Kirmeyer's business been stopped. It was distinctly found by the court that no such packages were delivered, and that no such sales were made.

However, this case is not like the Kirmeyer case in any respect. To make the cases comparable, we should imagine that instead of the employment of wagons and trains and telephones for the purpose of sending, accepting and filling orders in Missouri and transporting the commodities into Kansas, Kirmeyer had maintained a pipe line across the Missouri river from his warehouses at Stillings, Missouri, into Leavenworth, Kansas, and that he advertised that he would supply all persons who applied at the Kansas end of the pipe line at so much per drink. Would it then be contended that Kirmeyer was engaged in interstate commerce and not running a saloon in violation of Kansas laws?

We have no doubt if the plaintiff's comment on the Kirmeyer case should fall within the attention of Mr. Kirmeyer he would regret sincerely that he had not known that by the employment of so simple a device as a pipe line he could have

set aside all the local regulations of the state of Kansas and maintained his saloon on the Leavenworth side of the river, without let or hindrance from the state authorities.

But let us make the case still plainer by taking one that exactly compares with the present case: Let us suppose that Mr. Kirmeyer was endeavoring to deal in liquors in a state which did not prevent the sale under local laws, and that instead of having his pipe line at Stillings, he had started it at some point in northern Missouri opposite the state of Nebraska; and that he had then projected the pipe line across the Missouri river into that state. That being a citizen of Missouri he could not obtain a license to run a saloon in Nebraska, but had gone into partnership with a citizen of that state who had a license, and supplied the saloon by pipe line, making the sales by the drink or distributing the liquor in such quantities as the daily customers of the saloon desired it.

Would it be supposed that Kirmeyer and his partner were not engaged in business in Nebraska? Would it be contended that they were not subject to all the local regulations of other saloons in the state? If the laws of Nebraska required that all saloons be closed on Sunday could the Kirmeyer saloon hang tin cups on the end of the pipe line and continue to supply its thirsty customers on the Sabbath day in violation of the state law? If not, why is not the Kansas Natural and its partners, agents and joint partners in interest, subject to the same laws and regulations as other utilities in Kansas?

As to the question of orders and the commingling of intrastate and interstate commodities as applied to the Kirmeyer case, there are no orders from customers at the local place of distribution or saloon in Nebraska, and certainly if Kirmeyer attached a small pipe line to the larger one from Missouri, after it passed into Nebraska, and piped the product to the local brewery into the main pipe line, it would make the case of localizing the property so transported even clearer than before.

Now what is the essential difference between Kirmeyer, proprietor of an interstate beer wagon, and Kirmeyer, proprietor of an interstate pipe line delivering intoxicating liquors under the local laws of Nebraska? Manifestly the first difference is in the matter of the original package doctrine. There is no original package where the transportation is conducted

by means of a pipe line. Gas so conducted is not susceptible of delivery in original package. The delivery thus accomplished to customers who demand that the gas be supplied at their meters in such quantities as they may desire for varying necessities of fuel consumption, partakes more of the nature of local delivery by means of a warehouse or the storage within the state of the commodity supplied for the use of the customer.

On the other hand, cases of beer or jugs of whisky, under the *Leisy v. Hardy* decision, are original packages of a commodity recognized in legitimate interstate commerce. Probably this is another way of saying that the intent with which the gas is started on its interstate journey through the pipe line for the purpose of being supplied to all customers who may apply for the same at the end of the pipe line, is entirely different from that with which Kirmeyer, for instance, started his beer or other liquors in original packages upon its interstate journey by wagon or train to be delivered to the consignee who had ordered such original package within the state of Kansas.

Gas is not transported in original packages. There is nothing about its delivery that can resemble in the slightest degree an order, except that the consumer has established a meter and a permanent connection with the pipe line through the local agency of the receiver or transporting company. But there is no order, because he takes the gas or refuses it as he pleases, and in such quantities as he pleases. Indeed, it is proposed that he should pay a different price according as he shall use much or little of the gas consumed. In addition to all this, both the receiver and his agents bind themselves to local regulations by accepting their relation under the laws of the state that amounts to local franchises to distribute gas. This alone should create an estoppel against the Kansas Natural, preventing it from proving that it is not engaged in a local business within the state of Kansas.

We therefore insist that not alone the conduct of the receiver who conducted suit after suit on the theory that the corporation which he represented was engaged in intrastate commerce, but also the very essence and genius of the franchise which gave life to the business of the company in the first place was an admission that the business the company expected to do was intrastate business of a local character, subject to the control and regulation of the state legislature, and this arrange-

ment arose to the dignity of a contract. The obligations of that contract could not be avoided simply because the company found it necessary to obtain a part of its gas supply from another state.

A similar question has recently claimed the attention of the courts of Missouri. The case is *Union Pacific R. R. Co. v. Public Service Commission*, 187 S. W. Rep. (Aug. 16, 1916), p. 827. It was there held that a railroad company, having availed itself of the benefits of a local law, cannot thereafter be allowed to question its constitutionality. Many other authorities to the same effect can be found. The general doctrine is stated in 16 Cyc. 801, as follows:

"If in a particular transaction or course of dealing the authority, capacity, character, or status of one of the parties is recognized as one of the basic facts on which the transaction proceeds, both parties are as a rule estopped to deny that the one occupied that position or sustained that character."

In the case of *Ficklen v. Shelby County*, 145 U. S. 1, it was held that one who takes out a license and gives the bond for the payment of the license tax cannot afterwards be heard to question the constitutionality of the statute on the ground that the tax would be a burden on interstate commerce.

In the case of *Great Falls Mfg. Co. v. Garland*, 124 U. S. 581, it was held that the complainant could not question the constitutionality of a law establishing a court where the plaintiff had previously invoked the jurisdiction of that court.

In the case of *Gans v. Minneapolis, etc., R. Co.*, 166 U. S. 489, it was held that where a railroad company had instituted proceedings under a condemnation statute and joined issues in a trial for the assessment of damages thereunder it could not afterward deny the validity of a provision of that law allowing certain additions to the verdict for damages.

6 Ruling Case Law, pp. 94, 95, states the general rule as follows:

"Where a complaint is made that an act of the legislature or of an administrative body contravenes a constitutional right, the general rule is that it is the duty of the person whose rights are thus invaded to raise the objection at the earliest available opportunity and to exhaust the remedies which may have been



provided for unreasonable and improper orders before he would be permitted to make an attack in the courts on the unconstitutionality of the statute."

In the case of *Shepard v. Barron*, 194 U. S. 553, the court said:

"Provisions of a constitutional nature intended for the protection of the property owner may be waived by him, not only by an instrument in writing upon a good consideration signed by him, but also by a course of conduct which shows an intention to waive such provision, and where it would be unjust to others to permit it to be set up."

We have insisted from the first of this case that the complainant should not be permitted to assume this Dr. Jekyll and Mr. Hyde attitude. It should not be a local concern, subject to local regulation, while it was making money out of the local gas; then be allowed, when it was to its advantage, to cast off the habiliments of a local concern and assume to be so largely engaged in interstate commerce that its business had absorbed and destroyed the character of all local commerce. This is not a case where the state by an unlawful discrimination is requiring the complainant to agree to an unlawful control of interstate commerce or other discriminatory regulation as a condition of its transacting business in the state. The company is free to engage in any interstate business in Kansas which it may desire.

On the other hand, the contract, which was in reality executed by the complainant, was for the purpose of securing to itself a peculiar advantage as a local concern; that is, an advantage which for exactly the same consideration was conferred by the state upon local corporations. The occupation of the streets and alleys by the company, and even the local regulation, including the fixed rates as well as penalties for delinquent payments by its customers, the right to impose minimum charges, etc., were all contained within the provisions of this ordinance. These were advantages and benefits which the company was quick to seize so long as they were redounding to its sole benefit. Such a contract is not a burden upon interstate commerce, but is a benefit and aid to commerce, placing it upon the same basis as local commerce. The city with this franchise allowed the complainant to enter upon the busi-

ness which the city itself was entitled to transact, to the exclusion of every other company, and this regardless of whether the company was engaged in state or interstate business.

Will it be assumed that because a city owns a water plant, where the source of supply is drawn from across the state line, that the city has lost control of the entire regulation of rates and service of that company, and would this be true even though the plant be a municipally owned plant? Would the city be in any worse condition had it contracted for a water supply with a private company, drawing its source of supply from one state, transporting it across the state line, and supplying the city under local ordinances?

The case of *Grand Rapids & Indiana Ry. Co. v. Chase S. Osborn*, 193 U. S. 17, is absolutely decisive of this point. It was there held that:

"A railroad company, by incorporating under a general act, is estopped to contest the validity, under the Federal constitution, of the provisions of that act regulating railroad rates, which formed one of the burdens attached by the statute to the privilege of becoming an incorporated body."

One of the conditions of the incorporation of this road was a limitation upon its rates for carrying passengers. It was alleged there, as it is here, that that rate applied to interstate business and constituted a burden upon the interstate business of the railroad which extended across the state line. But the court held that:

"Having voluntarily accepted the privileges and benefits of the incorporation law of Michigan the company was bound by the provisions of existing laws regulating rates of fares upon railroads, and it is estopped from repudiating the burdens attached by the statute to the privilege of becoming an incorporated body. *Daniels v. Tearney*, 102 U. S. 415, 26 L. Ed. 187, and cases cited. That a railroad corporation may contract with a municipality or with a state to operate a railway at agreed rates of fare is unquestionable. And where the provisions of an accepted statute respecting rates to be charged for transportation are plain and unambiguous, and do not contravene public policy or positive rules of law, it is clear that a railroad company cannot avail of privileges which have

been procured upon stipulated conditions, and repudiate performance of the latter at will."

The case of *Daniels v. Tearney*, 102 U. S. 415, cited in the opinion quoted above, was one where a bond was enforced by this court, although it appeared that the bond was given in pursuance of and under the terms and conditions of a statute passed by a state while in secession and for treasonable purposes, and therefore beyond all question unconstitutional and void.

That an honest difference of opinion may now exist as to whether all of the commerce transacted by the complainant is of a local nature, it seems in all fairness should become immaterial in view of its acceptance of these franchises and its continuance to operate under them. The trial court, however, seems appalled by this view because it involves in a sense a determination of rates according to the local franchises, and therefore the consent of the cities, the state Commission, or other state agency, as to the variation of these rates if they shall at any time during the life of the franchise be discovered to be unreasonably high or low. Hence the court says (rec. 598) :

"Even in the absence of congressional action the exercise of state authority over interstate commerce does not extend to the fixing of rates for the transportation of goods in such commerce. This doctrine was announced before the establishment of the Interstate Commerce Commission and applies not merely to cases where that Commission has jurisdiction in reference to rates, but also in the absence of such jurisdiction."

With due apology to the court, we apprehend that the nature of the commerce involved might have much to do with the application of that rule, and what good reason can there be which would prevent parties seeking to engage in interstate commerce of a more or less local nature, or where combined with other commerce of a local nature, from securing a uniformity of rates and regulations by a binding contract made upon sufficient consideration with a municipal corporation of the state, or any other legal entity capable of contracting?

As to the validity of such contracts, see *Louisville Ry. Co. v. Kentucky*, 183 U. S. 503; *Omaha Water Co. v. Omaha*, 147 Fed. 1; *Allegheny City v. Railroad Co.*, 159 Pa. State, 411-415.

As has already been noted, this commerce in many of its attributes, especially as to distribution and sales, is local in its nature. This undoubtedly furnished the incentive for entering into the contracts referred to above—and while Congress refuses to act in regulating such commerce, assuming it can, there must be some power that controls within this twilight zone hoped to be created by the act of the complainant by withdrawing from his contract; and certainly it must be the power of the state which may act; and if it cannot regulate without contract, surely it may do so when it has one. These views are sustained by the following cases, where the distribution of gas was held to be of a local nature subject to state control:

In the case of *Jamieson v. The Indiana Natural Gas & Oil Co.*, reported in the 12th L. R. A., at page 652, the supreme court of Indiana, on page 658, said:

"Upon this point we affirm that natural gas is characteristically and peculiarly a local product, that its production is confined to a limited territory, that because of its local characteristics and peculiarities, it is a proper subject for state legislation, and can not, so far as regards local protection, be made the subject of general legislation by Congress, or, at all events, that it does 'not require a uniform system as between the states,' for its regulation."

And on pages 659 and 660 it is said:

"We know that the decision in that case affirms that where the whole subject is federal, the states can exercise no power, but that doctrine we neither dispute nor deny; although we do affirm that it is not applicable to such a case as this. In affirming that state police regulations may rightfully operate upon articles of commerce, we do not affirm that commerce may be regulated. If police regulations cannot operate upon articles of commerce, then there are few kinds of personal property upon which they can operate. To deny that state legislation can operate upon commodities that are commercial is to practically annihilate it, for it is difficult, if not impossible, to conceive any species of personal property that is not commercial. But it is by no means only property such as intoxicating liquors upon which the police power of a state may be exercised.

"It is embraced in what Mr. Chief Justice Marshall, in *Gibbons v. Ogden*, calls that 'immense mass of legislation' which can be most advantageously exercised by the states, and over which the national authorities cannot assume supervision or control. 'If the power only extends to a just legislation of rights, with a view to the due protection and enjoyment of all, and does not deprive any one of that which is justly and properly his own, it is obvious that its possession by the state, and its exercise for the regulation of the property and actions of its citizens, cannot well constitute an invasion of national jurisdiction or afford a basis for an appeal to the protection of the national authorities.' "

In the case of the *Manufacturers' Light & Heat Co. v. Ott*, reported in 215 Fed. at page 940, an enlarged district court under the statute, composed of Circuit Judges Pritchard and Woods and District Judge Dayton, held:

"A state regulation, fixing the price to be charged by gas companies for natural gas furnished to consumers within the state, is not an unlawful regulation of interstate commerce, although some of the gas supplied is piped from other states; Congress having taken no action affecting the subject."

On pages 944 and 945 the court discussed the question of the authority of the state to regulate this class of interstate commerce as follows:

"We are unable to agree that the fixing of the rates to be charged by complainants to their customers in West Virginia is an unlawful regulation of interstate commerce. The regulation of companies engaged in the transportation of gas is expressly excluded from the scope of the interstate commerce statute. Neither the West Virginia statute nor the orders of the commission purport to interfere in any manner with the transportation of natural gas from West Virginia to other states. Nothing is attempted except the regulation of the prices of natural gas to the citizens of West Virginia to be charged by corporations operating in West Virginia under state authority. The action of these corporations in uniting their operations with those of like corporations of Ohio and Pennsylvania in pumping gas into a common system of pipes supplying customers in the three states may produce the result that some gas

from Ohio and Pennsylvania comes into West Virginia, although it is undisputed that a much larger quantity of gas goes out of West Virginia into Ohio and Pennsylvania than can possibly come in from these states. But this interflow of gas from one state to another according to the pressure from the main gas pipes as common reservoirs can not affect the power of the state of West Virginia to make reasonable regulations as to rates for gas furnished to its own citizens. *West v. Kansas Gas Co.*, 221 U. S. 229, 31 Sup. Ct. 564, 55 L. Ed. 716, 35 L. R. A., n. s., 1193, relied on by complainants, has no application, for in the present case no effort is made to prevent the transportation and sale of natural gas from West Virginia into other states. It is not necessary to decide whether the Congress may not regulate charges for natural gas under such conditions, and under the well-known rule the court should not anticipate that question. In the present state of the law, the Congress having taken no action, it was clearly within the power of the state legislature to provide for the protection of its own citizens against excessive charges. If it be assumed that interstate commerce will be incidentally affected, yet the regulation of the local charges of a natural gas company as a public-service corporation is within the police power of the state until the Congress sees fit to act. The recent and full review of the subject by the supreme court in the Minnesota Rate Cases, *Simpson v. Shepard*, 230 U. S. 352, 33 Sup. Ct. 729, 57 L. Ed. 1511, 48 L. R. A., n. s., 1151, leaves room for discussion. The statute falls clearly within the principle there laid down by the court after setting out the limitations on state actions:

“ ‘But within these limitations there necessarily remains to the states, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction, although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending federal intervention. . . . Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it can not be regarded

as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the federal power.' "

As to the power of the states to regulate rates, although the same may incidentally affect interstate commerce, in the absence of congressional action, see *Chicago, Milwaukee & St. Paul Ry. Co. v. State Public Utilities Commission of Illinois*, 242 U. S. 333, where state regulation of railroad rates from Galewood to Morton Grove, Ill., a distance of twelve miles, was sustained, although directly affecting interstate rates, Congress having taken no action in the premises. On the authority of the *Minnesota Rate Cases*, 230 U. S. 352, quoting from Mr. Justice Hughes in that case, the court said:

"The fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the states and the agencies created by the states to deal with that subject (*Missouri P. R. Co. v. Larabee Flour Mills Co.*, 211 U. S. 612, 53 L. Ed. 352, 29 Sup. Ct. Rep. 214)," until the authority of the state is limited "through the exertion by Congress of its paramount constitutional power where there may be a blending of interstate and intrastate operations of interstate carriers. But it was decided that Congress had not exerted its power by the enactment of the interstate commerce act."

Yet, in the instant case the trial court holds, in the face of this authority, that the willful and intentional mixing of the gas transported from another state with that produced in this state, where all is delivered and distributed under local regulations imposed by the state, but which the importer had agreed to, became interstate commerce because of the intermingling of the imported gas. Do the courts deal with percentages where the importer has for his own benefit mingled his goods, even in the smallest degree, with the goods found in the state subject to the police power?

On the subject of state control in the absence of Congressional legislation, see also *Kane v. New Jersey*, 242 U. S. 162, where the right of the state is upheld to compel the registration of automobiles and the licensing of drivers, although the driver be a nonresident of the state, engaged in an interstate journey, and this power is placed upon the right of the



state in the absence of congressional action to prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways.

Referring to the case of *Hendrick v. Maryland*, 235 U. S. 610, the authority was based upon the right of the state "to secure some compensation for the use of facilities provided at great cost from the class for whose needs they are essential and whose operations over them are peculiarly injurious."

What reasons can be assigned for sustaining automobile regulation and license taxes and the application of a surplus in money resulting from such acts, over the expense of collecting it, for the benefit of public highways, that cannot be assigned for sustaining regulations permitting the use of public streets by gas companies in the distribution of gas by their pipes and other apparatus necessary to transmit the gas to the dwellings of the patrons? Can it be that the use of automobiles is more damaging to the streets or dangerous to the inhabitants than the piping of gas?

Some of the testimony taken in the instant case indicates that safety to human life itself depended upon the faithful performance of regulations imposed upon the complainant by the ordinances in the piping and distribution of this gas, and if the so-called interstate carriers may invade the public streets and alleys with their pipes, disseminating the gas at their own will, without let or hindrance from state regulations, the cities of Kansas might soon become in a condition similar to the gas-visited districts in the battle fields of Europe. It would purpose little in the meantime that the state might require the registration and licensing of an automobile passing on these very streets, and still be powerless to control locally the matter of so grave an import to the comfort and safety of its people as the distribution of natural gas.

In addition to all this, it appears in this case that the complainant recognized the force of these considerations and agreed before entering upon the business that local regulation was necessary, and acceded to it.

In addition to these authorities, see *Caldwell v. Sioux Falls Stock Yards Co.*, 242 U. S. 559; *Merrick v. M. W. Halsey Co.*, 242 U. S. 568; *Hall v. Geiger-Jones Co.*, 242 U. S. 539; *International & G. N. Ry. Co. v. Anderson Co.*, 38 Sup. Ct. 370 (April 15, 1918); *Interstate Consolidated Street Car Co. v. Mass.*, 207 U. S. 79.

The proposition of the importer using state agencies for the purpose of distributing his property, especially where the same constitute a part of the local government or an exercise of the police power, is touched upon in the great fountainhead case of constitutional law, *Brown v. Maryland*, 12 Wheaton, 419, where the court, speaking by Mr. Chief Justice Marshall, said:

"This indictment is against the importer, for selling a package of dry goods in the form in which it was imported, without a license. This state of things is changed if he sells them, or otherwise mixes them with the general property of the state, by breaking up his packages, and traveling with them as an itinerant peddler. In the first case the tax intercepts the import, as an import, in its way to become incorporated with the general mass of property, and denies it the privilege of becoming so incorporated until it shall have contributed to the revenue of the state. It denies to the importer the right of using the privilege which he has purchased from the United States, until he shall have also purchased it from the state. In the last cases the tax finds the article already incorporated with the mass of property by the act of the importer. He has used the privilege he had purchased, and has himself mixed them up with the common mass, and the law may treat them as it finds them. The same observations apply to plate or other furniture used by the importer.

"So, if he sells by auction. Auctioneers are persons licensed by the state, and if the importer chooses to employ them, he can as little object to paying for their service as for any other for which he may apply to an officer of the state. The right of sale may very well be annexed to importation, without annexing to it also the privilege of using the officers licensed by the state to make sales in a peculiar way.

"The power to direct the removal of gunpowder is a branch of the police power, which unquestionably remains, and ought to remain, with the states. If the possessor stores it himself out of town, the removal cannot be a duty on imports, because it contributes nothing to the revenue. If he prefers placing it in a public magazine it is because he stores it there, in his own opinion, more advantageously than elsewhere."

The doctrine was also relied upon in the case of *Ficklin v. Shelby*, 145 U. S. 1, already referred to. The case, however, in which the widest attention was given to the influence of local

agencies in the distribution of property imported into a state is probably the Hopkins case, which has already been cited and quotations made therefrom. In this case it appears that the participation of the importer in a contract of a local nature, with individuals wholly disconnected from any part of the state government, will be equivalent to a mixing of his property with the general property of the state, and will deprive his shipments of their interstate character.

So, too, in another great case in which this court was called upon to trace the dividing line between state and federal control of commerce, and the consequent power of the state to regulate or fix rates, this question now under discussion was considered, and here we think is found sufficient answer to the opinion of the trial court to the effect that the commingling of the Oklahoma-produced gas with that found in Kansas does not affect or change the character of the importation. In *Munn v. Illinois*, 94 U. S. 113, the court said, *l. c.* 135:

"It was very properly said in the case of the *State Tax on R. Gross Receipts*, 15 Wall. 293, 21 L. Ed. 167, that 'It is not everything that affects commerce that amounts to a regulation of it, within the meaning of the constitution.' The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the state of Illinois. They are used as instruments by those engaged in state as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern, and certainly, until Congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a state, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to interstate commerce, but we do say that, upon the facts as they are represented to us in this record, that has not been done."

It is clear that the reason for this holding is that where matters are within the concern of local government, the state may assume control in the absence of congressional action, although such state action may affect interstate commerce, and where such affairs are within the legitimate police powers of the state, action necessary to the protection of its people, interstate commerce shipments are localized by accepting the benefits of state regulation or aids to commerce.

Now the gas situation is this: The distribution and sale of gas for domestic purposes is a business clothed with public interest. It is a business fraught with danger to the inhabitants of the state when carelessly conducted, and it is necessary that the conveyor of the same for sale must have the use of the streets and alleys in municipalities in the conduct of his business. When so conducted it becomes both a natural and an actual monopoly. It follows, then, that the acceptance of a franchise to transact this business under the control of the state is an actual submission on the part of the utility, whether the supply comes from beyond the state line or not, to the local control of the state's police power.

This view of the case was taken by the Circuit Court for this circuit in the McKinney case, which, as has been said, is for all intents and purposes the same case as the instant case. While in other parts of this brief and in our pleadings we have relied upon the fact that this case is an adjudication of this very question, binding as a final judgment upon the parties to this suit, and in certain other parts of the brief that it has settled "the law of the case," we here assert that at least this decision has the force of an authority upon this question, and that the decision being that of the circuit court of appeals of the circuit, the district court should have been bound by the law declared by the court. Passing upon the questions involved the court said, speaking by Circuit Judge Wm. C. Hook, 209 Fed. 300:

"A foreign corporation engaged in interstate and local commerce may be adjudged guilty of a violation of the antitrust laws of the state, its license to do business in the state may be canceled, and a receiver for all its property therein appointed under the general laws in aid of the enforcement of the judgment; and it is no defense that such property included

instrumentalities used by it in conducting its interstate business, or that the corporation by the same course of conduct has also violated the similar laws of the United States."

And again, at pages 306 and 307:

"There remains for consideration the contention that, as applied to this case, the antitrust statutes of the state conflict with the Sherman act (act July 2, 1890, c. 647, 26 Stat. 209 [U. S. Comp. St. 1901, p. 3200]), and hence must give way. In this connection it is unimportant that the Kansas Natural Gas Company is a Delaware corporation instead of a corporation of Kansas. The character of its trade and commerce, interstate or local, determines the applicability of the antitrust laws of the nation or state and not the origin of its corporate existence. The term 'interstate corporation' is a convenient colloquialism but hardly accurate. In respect of the contention now being considered, the case would not be different had that company been organized under the laws of Kansas. Nor is it material that it transports some of the gas it deals in from Oklahoma into Kansas and from Kansas into Missouri by pipe lines. By express exemption it is not a common carrier subject to the interstate commerce act (act June 29, 1906, c. 3591 [U. S. Comp. St. Supp. 1911, p. 1284], 34 Stat. 584), sec. 1, even would it matter were it otherwise. The point urged by counsel rests on the fact that the company is engaged in both interstate and local commerce and upon the assertion that the two are so intricately interwoven as to be inseparable. The claim of inseparable intricacy is not tenable. The two kinds of commerce are no more interinvolved than with most railroads of the country and many manufacturing and mercantile concerns. Whatever may be the origin and admixture of the commodity dealt in or the common use of the same plant, equipment, and instrumentalities, the two kinds of commerce are distinguishable. The company is in no better position than if it were an ordinary industrial and mercantile concern of Kansas, producing, buying, shipping, and selling, locally and in other states, grains, oils, or other commodities which lose their particular identity in the mass of that which is dealt in. Again the property and business of the company which are wholly within the state of Kansas are not negligible incidents to which the state antitrust statutes are being forced; much of

its property, including that obtained from the other corporations, is located there and much of its business is there transacted. The action of the state of Kansas was directed to the violation of the state statutes. The decree of the state court was expressly confined to the matters within its jurisdiction and subject to the local laws. There was no attempt to enforce the Sherman act."

In the same case, 206 Fed. 777, it was held, District Judge J. A. Marshall sitting in the case and delivering the opinion, as follows:

"Under the Kansas antitrust act (Gen. St. 1909, sec. 5146), which provides that every person or corporation within or without the state, violating its provisions within the state, shall be denied the right to do business in the state, and authorizes the enforcement of such provision 'by injunction or other proceeding,' a state court has power to appoint receivers of the property within the state of a foreign corporation charged with violation of the act, and under the state practice such remedy is not precluded because the legal relief of ouster is sought in the action.

"The appointment by a state court of a receiver of the property within the state of a foreign corporation engaged in interstate commerce does not amount to an unlawful interference with the right of such corporation to transact interstate commerce."

Considering the question of incidental effect of state control upon classes of interstate commerce upon which Congress had not acted, it was held by the court of errors and appeals in New Jersey, in chancery, in the case of *Benedict v. Columbus Const. Co.*, 23 Atl. 485, that:

"Until the national Congress regulates the transportation of natural gas from state to state, it being admittedly a dangerous commodity, the several states may make reasonable regulation for the protection of the life and health of its citizens against it, and such regulations when not directed against interstate commerce, but only incidentally affecting it, will be necessarily upheld as valid."

In the case of *City of Keokuk v. The Keokuk Northern Line Packet Co.*, 45 Iowa, 196, it is held that:

"Municipal corporations in the exercise of their police power may prescribe wharfage fees and control the landing of boats, designating the places at which they shall receive and discharge passengers."

We earnestly contend, therefore, that there is no basis at all from any view of the transactions in this case for holding that the commerce engaged in by the gas company in the sale and distribution of gas within the cities under local franchises constitutes interstate commerce, over which the state has no supervising control and in which the state has no right to regulate rates.

(g) Interstate Commerce Res Adjudicata.

The trial court in its opinion on this subject said (rec. 588) :

"It is further claimed on the part of the Commission that the question in interstate commerce is *res adjudicata*, having been passed upon by the supreme court of the state of Kansas in the case of *The State, ex rel., v. Flannelly*, 96 Kan. 372.

"This contention on the part of the defendant that the question of interstate commerce is *res adjudicata* was presented to the enlarged court, and argued at length, upon the application for a preliminary injunction. That court in its opinion took occasion to discuss the matter, and reached the conclusion that the question was not *res adjudicata*. It is not necessary to repeat what was then said, but it will be sufficient simply to make reference thereto. See 234 Fed. 152.

"It is earnestly contended however, by counsel for the Commission that sufficient consideration was not given by the court to the fact that the state supreme court of Kansas upon the first hearing in the mandamus matter, No. 21324, though denying the writ, nevertheless retained jurisdiction. The position of counsel for the Commission seems to be that the retention of jurisdiction by the state supreme court involved necessarily a finding on the question of interstate commerce, and rendered that question *res adjudicata*.

"There are at least two answers to this contention. First, the retention of jurisdiction by the state supreme court in the mandamus matter was not necessarily based upon such a



finding as is now claimed, for there was in the mandamus proceeding another independent matter which did not necessarily involve the question of interstate commerce, namely, the character of the service which the receiver should be compelled to furnish. The mandamus petition contained a distinct prayer for relief in regard to this latter matter. On the first hearing the court could grant no relief in respect to this matter for the same reason that it could grant no relief in regard to the rate matter, namely, that there was before it no order made by the Commission. That the supreme court retained jurisdiction in the mandamus proceeding, partly at least on account of this matter of service, is apparent from the opinion of the court rendered on the second hearing. At this time also it appeared that the Commission had made no order in regard to the character of the service. The supreme court said:

“ ‘Since it is now conceded that the Public Utilities Commission has made no order requiring the defendants to furnish better or more efficient service the court would not be justified in granting the writ nor in longer retaining the proceeding.’

“Second, there was in the mandamus proceeding no ‘final judgment’ entered of such a character as would render any question in the proceedings *res adjudicata*, or which could be carried by the receiver to the supreme court for review.

“See *Louisiana Nav. Co. v. Oyster Commission*, 226 U. S. 99; *McLish v. Roff*, 141 U. S. 661.”

While there is much in this statement that would seem a fair determination of the questions involved, a closer examination of the state of the record shows that the court was in error on both of the propositions discussed in the opinion. We call attention to the last one first. While the judgment in mandamus was that the proceeding be dismissed, the judgment was in no way comparable to a suit in which the petition had failed to state a cause of action or in which the case had failed to proceed to final judgment. The suit was dismissed because there was nothing against which to direct the writ of mandamus, and this was so because the defendants in that case, plaintiffs in this, had in open court confessed and guaranteed obedience to the writ about to issue. The court had previously held that it had jurisdiction, that it would enforce a reasonable

order of the Commission, that it retained jurisdiction for that purpose, and while the record was in this state the defendants, plaintiffs in this case, confessed judgment by agreeing to perform the commands of the writ asked for.

Besides this, the defendants had filed a pleading for affirmative relief and the issue raised by this pleading had been decided against them, and the very issue raised by that pleading was the issue of interstate commerce. This was a virtual abandonment of its cause in the nature of a retraxit or dismissal of a cause of action in equity. See 1 Van Fleet's Former Adjudication, sec. 37, and following:

"A voluntary renunciation by a plaintiff in open court of his suit or causes of action and a judgment entered thereon is a bar to any further suit upon the same cause of action."—23 Cyc. 1138.

It needs no argument to show that the same doctrine would apply to affirmative defenses, counter claims, and cross claims of a defendant in view of the rules stated above. One of the cases cited in support of the above text is *United States v. Parker*, 120 U. S. 89, where it is said:

"It appearing that the subject of this suit has been adjusted and settled by the parties, it is therefore ordered that this cause be and the same is hereby dismissed. Is held to be a judgment on the merits, final in form and nature, being in the nature of a retraxit, and therefore a bar to a subsequent suit against defendant on the same cause of action."

In the present case the situation is even stronger than in the cases referred to above, for here there was a virtual carrying out or satisfaction of the judgment which was about to be rendered against them. It was more in the nature of a proceeding where the court had found the facts, or a jury had reached a verdict, and the defendant had satisfied the same before judgment had been rendered thereon. On this proposition see 23 Cyc. 1227, note 35:

"A verdict which has been paid without entry of judgment is conclusive."—*Willcocks v. Howell*, 8 Ont. 576.

"The record of a verdict for damages, to be released in the performance of a certain act by defendant, where no motion for a new trial or in arrest of judgment is made, but judg-

ment is not entered on the verdict in consequence of the performance of such act, is conclusive as to the same matter coming directly in question in another suit, unless obtained by fraud or collusion."—*Estep v. Hutchman*, 14 Serg. & R. 435.

This last case is particularly instructive on this point. It seems that in the state of Pennsylvania there was a statute authorizing the guardians to convey property which was under contract of sale at the decease of parents or other testators of minor heirs.

A suit was brought to compel such a conveyance and for damages, with the result as stated above; that is, a verdict for damages to be released in case of the execution of the deed. The defendant guardians immediately complied by conveying the property in question.

In a subsequent suit the court held the former verdict binding and as conclusive as a judgment rendered thereon. In the opinion it is stated:

"Instead of a suit in chancery, and a decree, we have in this case an act vesting the power to convey in the guardians; and, instead of the feigned issue, a real one. No judgment entered, because the acquiescence of the guardians, and their execution of the deed, rendered one unnecessary. *And the want of a judgment of the court comes badly from those who prevented it by instantly conveying. On principle, then, I would consider this as what it was, in fact, a legal determination of the matter now contested, and which would be evidence for the guardians in a suit by the heirs against them; and is evidence for those claiming under Patrick M. Gready. It was once litigated, and determined by proper authority, and with proper parties, and ought not again to be disputed.*"

We contend, therefore, that the judgment in the Flannelly case was conclusive; that it was made on the finding that the receivers were not engaged in interstate commerce, but were engaged in business in Kansas, subject to the control of the Commission.

If the plaintiffs in this case, defendants in the Kansas supreme court, were unable to appeal from the decision of that court on the constitutional question to the supreme court of the United States, it was because of this confession of judgment or their willingness to comply with the order of the Commission

and the court. This did not prevent the questions determined from becoming finally adjudicated. If they had waited and the court had gone further in the proceedings and sustained the Commission's order an appeal could have been had. Instead of doing this they agreed to so much of the judgment as the court had found against them up to date and promised to abide by the order of the Commission.

Recurring to the other point made by the court, that the issue of interstate commerce in the case was immaterial and that the case could have been decided without its consideration, it is impossible for us to see how, if the question of interstate commerce is material in this case it was not material in that. They were exactly the same kind of cases, in fact the same case, except that the so-called Flannelly case was begun before Judge Flannelly in the district court of Montgomery county and this case in the United States district court. Judge Flannelly issued an injunction against the Commission based upon the confiscatory character of the rate as he found it, and in addition thereto enjoined the Commission from further considering the matter because the plaintiffs were engaged in interstate commerce. It was not alone the reversal of this case by the supreme court of Kansas which raised the estoppel, but a mandamus case was brought at the same time on the relation of the state against Judge Flannelly, and the receiver was joined with him in the action as a respondent. The receiver's return to this writ was a plea for affirmative relief on the ground of interstate commerce.

The supreme court, while reversing the case on appeal from Judge Flannelly's court and declaring the law, assumed that Judge Flannelly would act in accordance therewith, and dismissed the writ of mandamus as to him, but did hold the defendant receivers, and through them the company which they represented. The court specifically found that the defendants were engaged in interstate commerce and that it had jurisdiction to enforce an order of the Commission, and would do so against the plaintiffs in this case, defendants in that one.

It is true that as to the judgment rendered in Judge Flannelly's court the question of jurisdiction was the principal one, as is asserted by the plaintiff. But that question was not involved at all in the mandamus suit; or, if so, only in a collateral manner. The principal question involved in the mandamus

suit was, were the receivers of the Kansas Natural Gas Company, operating the property in controversy, a public utility subject to the control of the Public Utilities Commission for the state of Kansas as to the regulation of rates, and, had the Public Utilities Commission for the state of Kansas the power to enforce its orders made against such receivers?

The receivers answered: "No, because we are engaged solely in interstate commerce and are operating instruments of that commerce, over which the state can exercise no control." The receivers said: "We ask therefore that the mandamus suit against us be dismissed."

The court in its decision said: "You are not engaged in interstate commerce; the suit will not be dismissed against you, but we will retain jurisdiction to enforce such future orders as the Commission may make in this proceeding. We can not enforce any present order of the Commission, because the Commission itself has found that the 25-cent rate put into effect, and observed by you voluntarily for years, is noncompensatory, and you interfered by a pretended injunction to prevent the Commission from making an order in accordance with its opinion rendered in a proceeding begun by you. When the Commission has legally completed that order, it will be enforced, and jurisdiction is retained for that purpose."

In order that the court may more fully understand the force of this decision, we desire to call attention to particular parts of the opinion showing just what was adjudicated and the view the supreme court took of this question.

In the statement of the case, at page 276, the court says:

"To this petition R. S. Litchfield and John M. Landon filed their answer September 22, 1915, in which they allege that the business in which they are engaged—that of producing, transporting and selling natural gas—is interstate commerce, and is therefore not under control of the Public Utilities Commission; . . . that unless a reasonable, proper advance is made in the price of gas it will be impossible to continue the operation of business; and that the rates and regulations prescribed in the opinion of the Commission rendered July 16 are unreasonable, unremunerative, noncompensatory and confiscatory, unlawful and void, and will deprive the receivers of the property in their possession and under their control without due process of law, in violation of the fourteenth amendment of the constitution of the United States."

In the syllabus of the case occurs the following paragraph:

"It is no part of interstate commerce to sell natural gas to the consumers thereof in this state, where the gas sold is produced in both Kansas and Oklahoma, and that produced in Oklahoma, after being conveyed in pipe lines to this state, is so commingled, in the pipe lines conveying the same, with the gas produced in this state, that it is impossible to separate or distinguish that produced in Oklahoma from that produced in Kansas, and after being so commingled it is conveyed from city to city throughout the state, and is there sold to the consumers thereof."

And again, in paragraph 5, the court said:

"Assuming that the sale of natural gas produced in Oklahoma, from there transported into this state through pipe lines and here sold to consumers throughout the state, is interstate commerce, it is not national in its nature, it does not admit of one uniform system of regulation, it is not that kind of interstate commerce which requires exclusive legislation by Congress, and until Congress acts it is under the control of this state."

In paragraph 6 of the syllabus, the court said:

"A writ of mandamus will not issue to enforce an order of the Public Utilities Commission before it is fully, finally and completely made."

The final words of the opinion, directing the decree or order of the court, were as follows:

"The demurrer of the Public Utilities Commission to the receivers' petition is sustained, and the injunction against the Commission is set aside. *No writ of mandamus will issue at this time. The action in this court is dismissed as to the Hon. Thomas J. Flannelly, but is retained as to defendants John M. Landon and R. S. Litchfield, for such orders and judgments as may be hereafter made.*"

At pages 384, 385, the court found that the sale of natural gas, under the circumstances disclosed, is not national in its nature, does not require exclusive legislation by Congress, and is subject to state control until Congress acts, and cited in support of this contention *Jamieson v. The Indiana Natural Gas*

*and Oil Company et al.*, 128 Ind. 555, 12 L. R. A. 652, and *Manufacturers' Light & Heat Company v. Ott*, 215 Fed. 940.

Concerning the attempted case sought to be prosecuted by the receivers in Judge Flannelly's court, the court said :

"The receivers asked the court to fix and determine a fair, lawful, reasonable and compensatory rate to be paid for natural gas supplied by the receivers in the state of Kansas. The court fixed a rate of thirty cents. That was not a judicial act. It was legislative, and the legislature has placed the power to fix the rate with the Public Utilities Commission."

Upon the whole, then, the court retained jurisdiction and decided that the Public Utilities Commission has the sole jurisdiction to fix rates. If the Public Utilities Commission did not have jurisdiction because the plaintiff in this suit was then engaged in interstate commerce, this judgment was the denial of a federal right to the receivers and an interference with interstate commerce.

See *Western Union v. Kansas*, 216 U. S. 1.

In the second opinion of the court in the Flannelly case, 96 Kan. 833, it is said :

"The court at that time (of the previous decision) also held that the district court of Montgomery county obtained no jurisdiction over the Commission and that its orders restraining the Commission from enforcing a rate should be vacated and set aside. The court at that time also held that the receivers of the gas company are under the control of the Utilities Commission; that the Commission has the exclusive power to fix the rates to be charged for the service rendered by the gas company while it is being operated by the receivers; *that the receivers are not engaged in interstate commerce, at least that kind of interstate commerce which takes the business from the control of the state.* It was held, however, that no writ of mandamus should issue, for two reasons: *First*, because the Public Utilities Commission had not in fact made a final order establishing a rate to be charged for gas; *second*, because the old rate of twenty-five cents was shown by the findings of the Utilities Commission itself to be unreasonable and confiscatory. *In the opinion it was held that the court would retain jurisdiction of the cause as to the defendant receivers 'for such orders and judgments as may be hereafter made.'*" (Page 834.)



The following quotations from the opinion are important upon this question:

*"This court saw no necessity for prolonging the litigation over rates, and believed that the interests of the public and the parties would be best served by making it unnecessary to go over much of the ground a second time or to thresh out old straw, and therefore retained the cause, so that when the Public Utilities Commission should make such orders as it saw proper to make, either of the parties might in this proceeding have any questions as to rights or duties arising thereon promptly and speedily considered and judicially determined.*

"But it was conceded at the hearing of the petition for removal that the only order issued against the receivers by the Utilities Commission is the order of December 10, 1915, fixing rates, and that this order has been obeyed and enforced by the defendants. . . .

"Since it is conceded that the defendants have obeyed all the orders thus far made by the plaintiff, it is apparent that nothing substantial is left of the original proceeding in mandamus." . . . (Page 838.)

"We have, then, an action pending here in mandamus which is not removable, but the averments of the petition are vague and general; and since it is now conceded that the Public Utilities Commission has made no order requiring defendants to furnish better or more efficient service, the court would not be justified in granting the writ nor in longer retaining the proceeding. It follows, too, that there is no reason why the court should issue an injunction to protect its jurisdiction, and therefore the plaintiff's application for an order to restrain the defendants from prosecuting the suit begun in the federal court will be denied, and the proceeding in mandamus is dismissed." (Page 839.)

It will thus be seen that the judgment of the supreme court satisfies every requirement that the matter adjudicated should be a part of the judgment pleaded as an estoppel. How, then, can it be said that the judgment of the court retaining jurisdiction of the cause and of the receivership for the control of the Commission is not an abiding part of that judgment?

Will it be said that there is no judgment now existing in the supreme court of Kansas in the Flannelly case, or rather the

two cases, *Landon v. The State Commission*, appealed from the district court of Wyandotte county, and the case of *State v. Flannelly et al.*, which was consolidated and heard with it?

Our reply is, there is such a judgment reversing the decision of Judge Flannelly in the district court, to the effect that the order of the Commission was confiscatory, that it was in violation of the interstate commerce clause of the constitution, and enjoining the Commission from proceeding further to fix rates or exercise control over the business of the receiver, and an additional judgment to the effect that the supreme court had jurisdiction to enforce an order of the Commission, that the order in this case had not yet been completed because of the injunction mentioned above, and that the court retained jurisdiction of the subject of the action and of the receivers for the purpose of enforcing this order, and later, on the amended and supplemental petition upon confession of the receivers that they were complying with this order, the suit was dismissed. This is a judgment to the effect that the Commission has jurisdiction to make the order and the court jurisdiction to enforce it, and that it has been enforced because of the voluntary action of the receiver in pleading that he is carrying the order into effect.

Why, then, should the receiver be allowed to play at hide-and-seek between the state and federal courts on a pretended cause for equitable relief? The court records of the country will scarcely reveal a case where the interests of the parties litigant, economy, and the interest of the public all agree in demanding that the litigation should have ceased.

But the trial court says that reasons given for a decree are no part of the decree and the judgment is not conclusive on the proposition of interstate commerce because the question was not necessary to a decision of the case—that it could have been decided on another proposition.

This principle of law has no application where the "reasons" of law or fact enter into and become an essential part, or basis, of the judgment. The estoppel is not confined to the judgment, but extends to all facts involved in it as necessary steps, or the groundwork on which it must have been founded. (10 Encl. of U. S. Sup. Ct. Rep. 758, 759, 761.)

The point of the matter here is to determine what was really

decided in the former cases. It is elementary that this must be decided on the issues made by the pleadings.

(a) In the Flannelly case in the Kansas supreme court the issues were, first, the jurisdiction of the Commission over the subject matter based on inter- or intrastate commerce.

(b) Whether the rate fixed by the opinion of the Commission and interrupted from going into effect by the injunction issued by Judge Flannelly was compensatory.

In the case of *Landon et al. v. The Commission*, attempted to be commenced in the district court of Montgomery county, the issues were the same, except that in this case the question of the validity of the service on the defendant Commission in the Montgomery county court was involved. These two cases were heard together and decided in favor of the state Commission's authority.

In the McKinney case, of which the instant case is a part, under the averments of the intervening petition the issue raised was whether the receiver appointed in the state court on a petition alleging violations of the state and interstate anti-trust law was entitled to the possession of the property as against a receiver in the McKinney case subsequently begun. The plaintiff in that case alleged the negative because the Kansas Natural Gas Company was engaged solely in interstate commerce and the state court had no authority to inflict penalties for the violation of that statute. All of these issues were decided in favor of state Commission or the receiver of the state court on the ground that the Kansas Natural Gas Company was engaged in intrastate commerce. The case is exactly like one where the defendant interposes two or more defenses to one cause of action stated in the petition and is defeated generally on the trial of the case. In such a case are the parties to the suit foreclosed as to the matters determined in each defense, or on only one of them, or on neither? The elementary rule in such a case is that evidence must be taken to show which issue was actually determined, and if both were actually determined against either of the parties to the suit that the determination is final and binding as to each of the issues. The opinion of the court in such a case is competent evidence to show what really was determined by the court. In First Foster's Federal Practice, sec. 132, p. 523, it is said:

"In determining what was decided, the pleadings may be examined. It seems also that the opinion may be considered. It

has been held, however, that the questions concluded by a decree in equity which has been appealed are determined by the opinion of the appellate court and that the parties are not concluded as to questions left open by such opinion, although they were passed upon by the court below."

*National Foundry and Pipe Works v. Oconto Water Supply Co.*, 183 U. S. 216; *Mack v. Levy*, 60 Fed. 51; *United States v. Norfolk & W. Ry. Co.*, 114 Fed. 682; *Russell v. Russell*, 129 Fed. 434.

The opinion in all the cases referred to, and particularly in the *Flannelly* case in the Kansas supreme court, were received in evidence, accepted by the court without objection from the complainants, and at all stages of the proceedings accepted as evidence of what was found by the court, as well as to what proceedings were had in the former trials. The trial court itself treated the opinion as the decree and bases its findings on what is stated therein. (See rec. 588-589.)

In *New Orleans v. Citizens Bank*, 167 U. S. 371, p. 391, the court said:

"Now, to say that this judgment may have proceeded upon other issues or may have been rendered because of some presumed irregularity, without considering the asserted exemption, is to substitute conjecture for the facts unequivocally and conclusively established by the record itself. Under the pleadings only two issues were presented, that the tax was void because under the charter the bank could not be taxed, and that it was excessive; but the judgment did not reduce the amount of the tax—it decreed it to be void."

In *Van Fleet's Res Judicata*, sec. 277, p. 611, it is said:

"If an issue is necessarily decided in reaching the adjudication made, of course it is settled. In an action to recover an installment of interest upon a note, if the sole plea is a denial of its execution and if evidence is given in support of this plea, a judgment on the merits will necessarily settle that issue and bar further controversy concerning it in a new suit for another installment. So, if the defendant, in the case supposed, also pleads payment, and gives evidence to support both issues, a recovery by the plaintiff necessarily adjudicates the falsity of both; while, on the contrary, a recovery by the defendant does

not necessarily show the truthfulness of either, because the record will not show upon which one the finding was made, *unless it was special.*"

If any ambiguity in a decree exists the opinion of the court may be consulted and will govern. (*New Orleans M. C. & R. Co. v. City of New Orleans*, 14 Fed. 373, citing *McDonough's Succession*, 98 U. S. 424, 24 Howard 333; *Smith v. Kernochen*, 7 Howard, 199. See, also, *Van Fleet*, p. 616.)

In *Farwell Co. v. Lykins*, 59 Kan. 96, it was held:

"*Res judicata*—though special findings against notes are silent as to account constituting their consideration, and sued on herewith, judgment for defendant for costs bars subsequent action on account."

In *Washington Gas Light Co. v. District of Columbia*, 161 U. S. 329, it was held that:

"The elementary rule is that for the purpose of ascertaining the subject matter of a controversy in fixing the scope of the thing adjudged, the entire record, including the testimony offered in the suit, may be examined."

*Russell v. Place*, 94 U. S. 606; *Cromwell v. Sac County*, 94 U. S. 351.

It was held in *Naugle v. Naugle*, 89 Kan. 622:

"The same reason which precludes splitting a cause of action forbids its repeated use to obtain different kinds of relief which could have been had in the first action, and that where the plaintiff was defeated in a suit to compel specific performance of a contract he could not later maintain an action for damages on the same contract, for while in fact the question of damages was not litigated or determined in the former suit, still as such relief was possible and inhered in the cause of action therein set up, the same cause of action cannot be again used to obtain the use which might have been had in such prior proceeding."

For all intents and purposes in this case, the decree of the supreme court in the Flannelly case and the opinion are treated as one and the same thing. This is true as to all the pleadings and averments of the parties, as well as the court in passing upon them. In fact, the opinion is the decree and the order of

the court, and if the decretal part of this order or opinion is ambiguous, certainly all of the opinion must be considered together as evidence of what the court decided. This proposition is certainly sustained by the foregoing authorities.

#### WAS THE FIDELITY TITLE AND TRUST COMPANY BOUND?

Again, the trial court says that "the Fidelity Title and Trust Company, trustee, under the mortgage made by the Kansas Natural Gas Company, was not a party to the mandamus proceeding and is not bound by the judgment therein," etc. (Rec. 589.) This is true as to the parties of record in the mandamus case in the supreme court, but the defendant in the case was the receiver who represented the Fidelity Title and Trust Company, as well as the bondholders and other creditors whom the Fidelity Title and Trust Company itself represented. By virtue of the notable "creditors' agreement," so-called, the receiver in the state court was at the time of the mandamus suit, and for several months before, holding the property, not only as receiver, but as a specific trustee of all the creditors of the Kansas Natural (rec. 1009), the language of the stipulation being "in the interest, first, of the public service; second, of the creditors; and third, of the stockholders and the company."

It is true that the Fidelity Title and Trust Company did not sign this agreement, but its attorney, Charles Blood Smith, Esq., signed the agreement as counsel "for 75 percent of the Kansas Natural first-mortgage bondholders." These were the same bonds, or at least the larger part of them, represented by the Fidelity Title and Trust Company. But inasmuch as the so-called creditors' agreement was approved by the court and made a part of its decree, the receiver from that time on represented all of the creditors, whether parties or not to that proceeding, and such creditors were bound by suits prosecuted in the name of or against the receiver. There should be no dispute about this proposition of law. The rule, as stated in 23 Cyc. 1248, is as follows:

"It is also generally held that the assignee or receiver represents the whole body of creditors, so that all of them are bound by the results of proceedings by or against him, whether joined as parties or not."

See, also, *Atlantic Trust Co. v. Dana*, circuit court of appeals, eighth circuit, 128 Fed. 209. This case settles the law

in this circuit in harmony with the general rule stated in Cyc. As to the effect of the appearance of counsel of the Fidelity Title and Trust Company and his participation in executing and making effective the creditors' agreement, see Cyc. 1268.

Moreover, the same state of facts upon the same issues as to interstate commerce were tried in the McKinney and the Fidelity Title and Trust Company cases, and this is stated in our answer and relied upon both as an adjudication of the issue of interstate commerce and as a decision declaring the law of the case which bound both McKinney and the Fidelity Title and Trust Company. (Rec. 124-125.) In this case all of the parties to the present suit were parties to the proceedings—the plaintiff receivers, the trustees, John L. McKinney, the defendant Commission, and the State of Kansas through its attorney-general, and also the receiver of the state court himself, who was then holding the property in the district court of Montgomery county at the suit of the state, and therefore representing the public generally, including all state officers. (See I Foster Fed. Prac., sec. 132, p. 519, citing *Compton v. Jesups*, 68 Fed. 263, per Taft, Jr., also on appeal, 167 U.S. 1.)

In any event the receiver was bound by the judgment in the state case in which he was appointed and by the judgment in the Flannelly case, and McKinney and the Fidelity Title and Trust Company were bound both by adjudication and the law of the case as declared by the court of appeals in the cases brought by them.

It thus appears that each and all of the defendants in some proceedings connected with the main suit, to which this suit is alleged to be ancillary, have been concluded by a judgment resulting from actual litigation by issues made on this question of interstate commerce, and in each and every case the courts have found that the business of selling and distributing gas to the consumers at the meter tips was not interstate commerce.

**The Law of the Case.** The plaintiff is estopped, because the propositions of law contended for by him as to interstate commerce and the consequent authority of the defendant Commission have been settled in this suit.

We plead in our answer in paragraph six R that it has been held in this same suit, on appeal and otherwise, as a matter of



law, that the plaintiff and the property under his control as instruments of domestic commerce within the state of Kansas are under the control of the defendant Commission.

As stated in a previous division of this brief, it is not claimed that there is any change of conditions of fact. There is no application to amend or modify the previous pleadings or statements of fact, or to apologize for them in any way.

We assert that if it be true, as alleged by the plaintiff, that this suit is dependent upon, ancillary to and really a part of the original suit of *John L. McKinney et al. v. The Kansas Natural Gas Company*, No. 1351, etc. (plaintiffs bill, p. 3), then it follows that this question of whether the Kansas Natural Gas Company is engaged in interstate commerce was decided upon appeal in this same case by the circuit court of appeals against the present contention of the receiver, as well as in the Flannelly case appealed from the district court of Montgomery county, and that he is now estopped to assert a different theory of law as applied to these facts, and the court is bound to adhere to its previous decision.

It was argued by the plaintiff, and approved by the trial court, that the reasons given for the prior decision are not a part of the judgment and do not bind the parties; but under the doctrine termed "the law of the case," the reasons of the decision, or in other words the statement of the law thereof, are binding upon the court and all parties to the proceedings in the subsequent course of the case.

Necessarily, this proposition is dependent upon the proposition that the various suits referred to in the pleadings herein constitute one action, or suit, in equity; but we understand this proposition is conceded by the plaintiff, indeed, it is pleaded by him. The statement, therefore, by the plaintiff in his brief of the modifications and limitations of the doctrine of *res adjudicata* has no application to the doctrine of "the law of the case."

Perhaps the most recent statement of this doctrine by the supreme court of the United States is found in the case of *Messinger v. Anderson*, 225 U. S. 436, 56 L. Ed. 1152. It is there stated in the syllabus of the case:

"The phrase 'the law of the case,' as applied to the effect of a decision of an appellate court in an earlier appeal in the same case, merely expresses, in the absence of statute, the

practice of courts generally to refuse to reopen what has been decided, and not a limit to their power."

This does not mean, however, as it is clearly shown from the decisions following, that where a question has been fairly and fully presented to a court on appeal and decided that the parties may thereafter act in contradiction of the rule of law declared by the court on the prior appeal.

A very clear statement of the rule is also made by the circuit court of appeals of this circuit in the case of *Brown v. Lanyon Zinc Company*, 179 Fed. 309, Judges Sanborn and Van Devanter and District Judge Munger sitting. The court, speaking through Judge Van Devanter, in the syllabus, said:

"Propositions of law once considered and decided by an appellate court in a given case are not open to reconsideration in that court, upon a subsequent appeal in the same case, and this, although the first appeal was from an interlocutory decree."

The United States circuit court of appeals of the sixth circuit in *Western Union Telegraph Company v. City of Toledo*, 121 Fed. 734, considered as a case similar to the present case. There the controversy arose over the right of a public utility to act without the consent of a municipality of the state of Ohio. The utility in that case, the Western Union Telegraph Company, applied to the circuit court for an injunction to prevent the city from interfering with it in placing certain poles and boxes, necessary to the construction of its telegraph system, upon the streets of the city.

On appeal from this injunction, the circuit court of appeals reversed the case and held that it was necessary for the telegraph company to procure the consent of the city as to the location of the parts of its plant sought to be erected. The telegraph company then appealed to subordinate city officers for a permit, but these officers refused to act, because of lack of authority. On a second appeal, the court held that the determination of the legal questions, made upon reversing an order granting a preliminary injunction, became the law of the case, and refused to consider a second appeal.

We call the attention of the court, also, to the case of the *People of the State of Illinois, ex rel., v. Illinois Central Rail-*

*road Company*, 184 U. S. 77, 46 L. Ed. 440. In this case is summarized the somewhat famous litigation over the lake front at Chicago, and, like the present case, involved various proceedings in different courts. The statement of the rule of "the law of the case" is as follows:

"Every matter embraced by a decree of a United States circuit court, and not left open by a decree of the United States supreme court affirming the former decree in all respects but one, and as to that one remanding the case for further investigation of the facts upon which it depended, is conclusively determined, as between the parties, by such affirmance, and is not subject to reëxamination on a second appeal."

In the opinion of the court it was said:

"In *Sibbald v. United States*, 12 Pet. 488, 492, 9 L. Ed. 1167, this court said: 'A final decree in chancery is as conclusive as a judgment at law. (1 Wheat. 355, 4 L. Ed. 110; 6 Wheat. 113, 116, 5 L. Ed. 219, 220.) Both are conclusive on the rights of the parties thereby adjudicated. No principle is better settled, or of more universal application, than that no court can reverse or annul its own final decrees or judgments, for errors of fact or law, after the term in which they have been rendered, unless for clerical mistakes (3 Wheat. 591, 4 L. Ed. 467; 3 Pet. 431, 7 L. Ed. 731); or to reinstate a cause dismissed by mistake (12 Wheat. 10, 6 L. Ed. 534); from which it follows that no change or modification can be made which may substantially vary or affect it in any material thing. . . . Whatever was before the court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree as the law of the case, and must carry it into execution, according to the mandate. They can not vary it, or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided upon appeal for error apparent, or intermeddle with it, further than to settle so much as has been remanded. . . . After a mandate, no rehearing will be granted, . . . and on a subsequent appeal nothing is brought up but the proceeding subsequent to the mandate. (5 Cranch, 316, 3 L. Ed. 112; 7 Wheat. 58, 59, 5 L. Ed. 397; 10 Wheat. 443, 6 L. Ed. 362.)'

"In *Roberts v. Cooper*, 20 How. 467, 481, 15 L. Ed. 969, 973,

the court said: 'On the last trial the circuit court was requested to give instructions to the jury contrary to the principles established by this court on the first trial, and nearly all the exceptions now urged against the charge are founded on such refusal. But we can not be compelled on a second writ of error in the same case to review our own decision on the first. It has been settled by the decisions of this court, that after a case has been brought here and decided, and a mandate issued to the court below, if a second writ of error is sued out it brings up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the court on the first writ of error can be reheard or examined upon the second. To allow a second writ of error or appeal to a court of last resort on the same questions which were open to dispute on the first would lead to endless litigation. In chancery a bill of review is sometimes allowed on petition to the court; but there would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions, or speculate of chances from changes in its members. . . . We can notice, therefore, only such errors as are alleged to have occurred in the decisions of questions which were peculiar to the second trial.' To the same effect are numerous cases cited in the margin."

In the case of *District of Columbia v. Brewer*, circuit court of appeals, District of Columbia, 37 Washington L. R. 65, it was held that where there was a reversal of an appeal and a new trial, the trial court erred in following an intervening decision of the highest court inconsistent with the ruling of the reversing court.

Perhaps no other authorities are necessary to establish the rule we contend for, that the courts and all the parties therein are bound in a subsequent proceeding by a declaration of the law on appeal, which we have already cited in previous divisions of this brief, and which is binding applicable here.

The whole theory of the plaintiff's case, from first to last, prior to the filing of this proceeding, has been that the facts and circumstances of the business of the Kansas Natural Gas Company constitute the transaction of domestic trade within the state of Kansas. The proposition was squarely submitted to the circuit court of appeals in this case, 209 Fed. 300; and the court there held that the contention of the receivers was

then correct, and we can think of no possible reason why every syllable of the decision of the supreme court of the United States in the Illinois Central case, *supra*, is not applicable here.

There is no excuse why this receiver should be allowed to continue endless litigation over a question that has been finally settled in this same litigation years ago at the expense of an alleged bankrupt estate.

We urge, therefore, upon the question of estoppel, that we have shown that there is a binding judgment both in the United States courts in this suit and in the supreme court of the state of Kansas against the defendants, determining that they were subject to the control and jurisdiction of the defendant Commission.

That the plaintiff is estopped by his own pleadings and representations of fact previously made in this case on the same proposition; and that he is bound by the doctrine of "the law of the case" to every application of the law necessary to sustain these conclusions.

### **WANT OF EQUITY IN THE PLAINTIFF'S BILL.**

The appellant Commission and cities of Kansas deny that there was any ground for equitable relief stated in the plaintiff's bill or shown in the evidence in this case.

It was conclusively shown that the plaintiff receiver had an adequate remedy at law in suits pending at the time he began his case in this court, and that he secured the dismissal of the cases in the law courts by misrepresentation of facts and want of good faith.

Under this heading will be discussed the want of equity as shown by the plaintiff's bill of complaint. The question of equity as shown by the evidence will be discussed in connection with the merits of the case upon the rate order of the Commission. (See this brief, page 117.) The court in its opinion in the Kansas case (rec. 570) said:

"At the hearing upon the application for a preliminary injunction before the enlarged court, the jurisdiction of the court was challenged by the Public Utilities Commission as well as by other defendants, upon various grounds set forth at length either in their answers or in separate motion papers. The court held that it had jurisdiction; its opinion upon that ques-

tion is found in vol. 234 Fed. 152, 154. Upon the final hearing the jurisdiction of the court has again been challenged, largely upon the same grounds. So far as the grounds are the same, I do not deem it necessary to make any statement, except the reference to the prior decision already mentioned."

As this opinion refers to the opinion upon the temporary injunction, we quote from that as follows:

"It is insisted that the fact that the receiver put in force the 28-cent rate fixed by the Kansas Commission is a bar to its application to this court to consider whether or not the rate is compensatory, or confiscatory, or violative of or an interference with interstate commerce, and that for that reason he may not apply to this court. But it has frequently been the practice of the courts, when one came to it to ask such equitable relief as is here sought, to require as a condition to listening to the application that the rates fixed by the Commission should be first tested, and then the matter should be determined as to whether or not they were confiscatory. And it cannot be that a course that has become so common with the courts, and an act which they have frequently required a litigant to do before he should be heard in his appeal to them, can deprive a litigant of the right to appeal for relief."

In neither of these opinions is it considered that the rates were put into effect voluntarily. The opinions proceed on the theory that the defendants were objecting because the plaintiff had put the rates into effect pending this litigation. It is entirely a different matter to put rates into effect voluntarily than to put them into effect with the consent of the court after the litigation has been begun over them.

Our objection goes to the point that there can be no confiscation of the property of a utility by the operation of rates which it itself put into effect. The essentiality of the constitutional provision against confiscation of property is that "property shall not be taken without due process of law." There cannot be said to be want of due process of law where the rate-making body took action by and with the consent of the party proposing the rates, or where the rates were put into effect by consent. It is true that rates put into effect voluntarily may later become too low, and it will then be proper for the utility

to apply for permission to raise them. But such application must needs be made to a legislative and not a judicial body.

We repeat that the only order, by which these rates became the legal rates, was made upon the application of the plaintiff itself for permission of the defendant Commission to put these rates into effect. The Commission granted all that he requested, and this order cannot be the cause for complaint in a judicial controversy until it is shown that the plaintiff in this case has presented his case to the proper local authority for relief and been refused.

The plaintiff, however, seeks to justify his observance of these rates on the ground that they were put into effect under protest. As was said in our former brief, this is little short of absurd. Protest, as used in such a proceeding, means restraint or duress. It is only allowed under the law of Kansas where there is immediate or probable cause for believing that unless the person claiming such privilege makes a payment or does some other act, he will be subjected to penalties against which he has no legal relief and no opportunity to protest legally in due course of law. *Ottawa University v. Stratton*, 85 Kan. 246.

That no duress existed here is shown conclusively by the fact that the statute under which the mandamus proceeding was being prosecuted—section 38 of chapter 286, Laws of 1901, 7227 G. S. 1909, and section 39 of the same chapter, 7228 G. S. 1909—provides that when a suit has been brought under either of these sections, no penalties or forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the regulations or orders sought to be vacated or modified in such action, until the validity of such regulation or order shall have been finally determined in such action, or shall have been finally determined by the supreme court of Kansas in any proceeding to which said railroad company is a party. *Alabama R. Co. v. R. R. Commission*, 203 U. S. 496.

These sections will be referred to hereafter, but this is sufficient to show that plaintiff in this case was under no compulsion whatsoever to obey these orders for at least thirty days after they were made, that the rates proposed by him were adopted by the Commission, and, indeed, as is hereafter shown, the suit was then pending in which the reasonableness of the order could have been determined.



Under these circumstances the act of the receiver in putting into effect these rates was purely voluntary and it cannot be said that it was done without due process of law.

**Plaintiff has not pursued the legal remedies provided by the statute of Kansas for the injury complained of, and has full relief in due course of law.**

Here the court, rendering its final opinion, again refers to and adopts the opinion of the court on the temporary injunction, and on this matter the court there said:

"It is said that the receiver had a remedy at law in the mandamus case in Kansas, in the state court, and that consequently there is no jurisdiction of this court in equity, because one may not apply to a court of chancery where he has a plain and adequate remedy at law. The answer is: First, the remedy at law, which will prevent the appeal to a national court of equity, must be a remedy at law in a national court. A remedy at law in a state court will not ordinarily have that effect. And, second, in order to bar the remedy in equity, the remedy at law must be as prompt, complete, efficient and adequate as the remedy in equity which the court of equity may grant. The remedy at law which might have been obtained in the mandamus case is neither of these, and for that reason it does not bar the remedy in equity in this court, if there are facts to sustain the application."

Of course it was not contended by the defendants in the court below, and is not now contended, that under ordinary circumstances the federal court would not be a court of competent jurisdiction to try the constitutional question of whether plaintiff's property was being confiscated by an unreasonable rate. The statutes of Kansas, and the statutes of every other state, recognize the right of citizens of the state to appeal to the federal courts to redress rights guaranteed by the federal constitution, and these citizens would have such right regardless of such statutes.

*The question sought to be presented in the court below was that the plaintiff was not free to pursue his remedy in the federal court because of the fact that the statutes of Kansas provided him a remedy for the wrong he complained of, and that this process had been started and was still in progress when he*

abandoned it and appealed to the federal courts. We said then, and we still affirm, that having availed himself of this procedure the plaintiff cannot leave the state court before final judgment is reached and appeal to the federal courts. All that was said in the prior part of this brief concerning the character of the judgment in the Flannelly case, and the manner by which the plaintiff extricated himself from that jurisdiction, is applicable here. Indeed, it might be well argued that by his conduct in assuring the supreme court of Kansas that he was obeying the order; that he had submitted himself to the jurisdiction of the Commission; that he refused to raise the defenses which were open to him in that suit; that the defendant has estopped himself from raising any defense whatsoever upon this cause of action in another court. We have not urged this, as it seems to us that the want of equity in his bill arising out of the consideration of the comity of the courts is more reasonable and more in accord with the practice and decisions of the federal courts. We quote from the opinion of the supreme court of Kansas, describing the nature of its judgment on the first hearing in the Flannelly case and what it deemed its jurisdiction to be in the second hearing. This language is found in 96 Kan., p. 833:

*"The court saw no necessity for prolonging the litigation over rates, and believed that the interests of the public and the parties would be best served by making it unnecessary to go over much of the ground a second time or to thresh out old straw, and therefore retained the cause, so that when the Public Utilities Commission should make such orders as it saw proper to make, either of the parties might in this proceeding have any questions as to rights or duties arising thereon promptly and speedily considered and judicially determined.*

*"But it was conceded at the hearing of the petition for removal that the only order issued against the receivers by the Utilities Commission is the order of December 10, 1915, fixing rates, and that this order has been obeyed and enforced by the defendants."*

Here, then, is the view of the supreme court of Kansas of the legal proceeding then pending before it, and in which the defendant Commission and the receivers who begun this action were parties. The action was not only pending in this way, but the receivers were brought into court and confronted

with the proposition that the court had jurisdiction to settle whether the order of December 10, 1915, or any previous order of the Commission, was a legal one. But the receivers waived this right, declined to accept relief from the court, by pleading affirmatively that they were complying with the order of the Commission. Can they thus spurn the jurisdiction of the highest court provided under the state law and then successfully allege in a court of equity that they are and have been without due process of law for redress of their alleged injuries? We think such a course destroys the comity and the usual doctrine of equitable relief.

While under the constitution the supreme court has original jurisdiction in mandamus, it has been held that this means jurisdiction in mandamus as it existed at common law; but it has also been held that the legislature may create new causes of action in mandamus and that the court has jurisdiction in suits involving such causes of action.

Early in the history of the regulatory statutes of the state relating to common carriers and other utilities, it was provided, section 38, chapter 286, Laws of 1901, paragraph 7227,\*

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\*NOTE: Section 38, chapter 286, Laws of 1901, is as follows:

"It shall be the duty of every railroad company, and each and every officer, agent and employee of any railroad company, and of each and every person engaged in any capacity in the conduct of the business of a common carrier, to obey all reasonable orders of the Board of Railroad Commissioners made under the authority conferred by this act. In case any railroad company, or any such officer, agent, employee, or person, shall violate or shall refuse or fail to obey any such order lawfully made by said Board of Railroad Commissioners, any person aggrieved thereby may institute and prosecute mandamus proceedings in the supreme court, in the name of the state on the relation of such person, to compel compliance with and obedience to such order; and in any case where in the opinion of the Board of Railroad Commissioners the interest of the public requires it, such board shall require such proceeding to be brought, and such proceeding shall then be brought by the attorney-general in the name of the state. The practice in such proceedings shall be as in other cases of mandamus, but the court may control the time of trial without regard to the time the issues are joined. Cases instituted under the provisions of this section may have precedence as to the time of hearing over all other classes of cases except criminal cases. The supreme court shall have discretionary authority to refer any of the issues in any such proceeding to a referee or referees to be appointed by the court for such hearing and findings, and under such rules as the court may direct. In any hearing under the provisions of this section, the orders and determinations of the Board of Railroad Commissioners

G. S. 1909, that the Railroad Commissioners could compel the compliance and obedience of any order made by them by an action in the name of the state, brought by the attorney-general, or by the said board, and that such proceeding or order of the board should be *prima facie* evidence of its reasonableness; but the court could hold the same or any part thereof unreasonable and refuse to enforce such part without affecting the part found to be reasonable or just.

It was provided that cases instituted under that section of the law should have precedence over all other classes of cases except criminal cases, and that the court (section 39) should have power to stay all proceedings brought in the district courts of the state to test the reasonableness of such order during the pendency of the suit in the supreme court.

These provisions of the law were adopted and made part of the public utilities statute, chapter 238 of the Laws of 1911. See, also, section 39 of that law.†

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shall be deemed *prima facie* evidence of the matters therein stated and found. In such action the court may direct the railroad company affected thereby to comply with any part of any rule, order or regulation of the board, and may hold any part of the same unreasonable, and refuse to enforce such part, without affecting the part found to be reasonable and just. Disobedience of any judgment, order or writ of the supreme court in any such proceedings shall be punished as in other cases of contempt. The proceedings in cases of contempt shall be summary in their nature, under such rules as the court shall adopt, and no jury trial shall be required or had therein. In addition to the general powers of the court to punish for contempt, the court shall have power to punish any refusal or failure to obey its orders, made under the provisions of this section by a fine of not to exceed one thousand dollars for each day after a day to be fixed by the court that such obedience shall continue, or by imprisonment not exceeding one year, or by both such fine and imprisonment. In any proceeding instituted under the provisions of this section by the attorney-general, the costs and expenses on the part of the plaintiff shall be paid out of the general fund of the state, upon approval by the governor, attorney-general, and auditor of state. The remedies provided by this section shall not be deemed to exclude or limit any other remedies provided in this act or existing in virtue of any other statutes or common law, but shall be additional thereto." (Sec. 8446, G. S. 1915; L. 1901, ch. 286, sec. 38; March 29.)

†NOTE: Section 39, chapter 286, Laws of 1901, is as follows:

"Said Board of Railroad Commissioners shall not make any regulation or order against any railroad company or enter into any investigation affecting any railroad company without giving such railroad company reasonable notice thereof and an opportunity to appear and be

Section 39 of this chapter provided that when a suit was brought by the railroad company (or public utility) in a district court of the state, that the supreme court should have power to stay the proceeding in the district court until the suit in mandamus brought under section 38 of that chapter should be concluded, if one had been so brought and was being so prosecuted at the time. *Not only this, but the section provided that when suit had been brought by a railroad company or was pending in the supreme court in which a railroad company was interested, that no penalty should accrue under the law for disobedience of an order made by the board (Public Utilities Commission). These provisions of the law were carried forward into the new public utility law of 1911. See sec. 2, chap. 238, Laws of 1911.* The supreme court has construed this to mean that all of the powers possessed by the railroad board

heard in respect to the same, except as is provided by section 10, chapter 286, Session Laws of 1901, as amended; and if any railroad company shall be dissatisfied with any regulation or order adopted by said Board of Railroad Commissioners such dissatisfied railroad company shall have the right, within thirty days after the making or entering thereof, to bring an action against said Board of Railroad Commissioners as defendants, in any court of competent jurisdiction, to have such regulation or order vacated, and shall set forth in the petition the particular regulation or order complained of and the particular cause or causes of objection to any or all of them, and a summons shall be served upon the secretary of said board as in other cases. Issues shall be formed and the controversy tried and determined as in other civil cases of an equitable nature; and the court may set aside, vacate or annul one or more or any part of any of the regulations or orders adopted by the said board which shall be found to be unreasonable, unjust, oppressive or unlawful, without disturbing others; provided, that no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the commission shall be granted except on hearing, after not less than five days' notice to the commissioners. Either party to said cause, if dissatisfied with the judgment or decree of said court, may institute proceedings in error in the supreme court as in other civil cases, and said court shall examine the record, including the evidence, and render such judgment as shall be just and proper in the premises. In all litigation under this section, the said board shall be entitled to the services of the attorney-general in its behalf, as well as those of the attorney for the board, and the costs incurred by them shall be paid by the state. All actions brought under this section shall be advanced, upon application of either party thereto, and in the hearing thereof shall have precedence over all other causes except criminal cases, to the end that the same may be speedily heard and finally determined. The institution of any such action by any railroad company shall in no manner interfere with or prejudice the

over railroads have now been given to the Public Utilities Commission over all public utilities. *Kansas v. Kansas Postal Telegraph Co.*, 96 Kan. 298.

True it is that the Public Utilities Commission law also provided that the Commission might enforce its orders by a mandamus in the supreme court, and that public utilities aggrieved on account of the unreasonableness and confiscatory nature of an order or regulation might bring suit to set aside the same in a court of competent jurisdiction, but these provisions added nothing to the law as it then existed, and as stated heretofore, they were wholly unnecessary, and at least conferred no powers upon a utility or a railroad not possessed by either of them under general law or by these provisions of the constitution. These general provisions did not repeal, modify, or limit the effect of the specific provisions of the statute which provided for a logical procedure by which the Commission itself could procure a decree of the court as to the reasonableness of its order.

Therefore, to hold that this court, the district court of the United States for the district of Kansas, was included within

rights of said board or any other party in interest from availing itself of the remedies provided in section 38 of this act; but whenever action shall be brought by any railroad company under the provisions of this section within the said period of thirty days, no penalties or forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the regulations or orders sought to be vacated or modified in such action until the validity of such regulation or orders shall have been finally determined in such action, or shall have been finally determined by the supreme court of Kansas in any proceeding to which said railroad company is a party. When ever a proceeding brought in the supreme court under section 38 of this act by the attorney for the board, or the attorney-general, upon the direction of the Board of Railroad Commissioners against any railroad company to compel the compliance with any order of said Board of Railroad Commissioners, shall be pending at the same time with an action brought in any district court of the state by such railroad company to vacate such order, the supreme court, upon such fact being made to appear, may stay all proceedings in said district court in said cause, so far as relates to the subject matter involved in such proceeding in the supreme court, until the final determination thereof by the supreme court; and, if said proceeding in the supreme court result in a final decision upon the merits, determining the question of the validity of such order, said district court, upon the facts being made to appear shall render judgment in accordance with such decision of the supreme court." (Sec. 8447, G. S. 1915; L. 1901, ch. 286, sec. 39, as amended by L. 1907, ch. 268, sec. 8; March 20.)

the term "competent court of jurisdiction" as used in section 39, chapter 238, Laws of 1901, would mean that the supreme court of Kansas would have power to stay a suit brought in this court until the supreme court had determined any suit in mandamus brought to enforce an order of the Commission either before or subsequent to the commencement of the suit in the federal court. This, of course, could not be the law. It should rather be held that a suit having been begun in the supreme court of Kansas by the Commission to enforce its order, that the federal courts, through comity, would not entertain another suit for the same cause until the highest court of the state had concluded its determination.

It is certain, under the provisions of section 266 of the judicial code, that had the case in the supreme court of Kansas continued, and the defendant there, now the appellee, had chosen to present the reasonableness of the order complained of to that court, that the action in the federal court would have been stayed pending the final determination of the suit in the state court. Moreover, the court itself in this very suit held in accordance with these views, in a controversy arising over the rates between the gas company of St. Joseph and the Missouri commission, which was made a part of the original bill of complaint; the temporary injunction was at first denied without prejudice to another application. The Missouri commission immediately began a mandamus suit in the state court to enforce the rate. Thereupon the St. Joseph Gas Company renewed its application for a temporary injunction, and the same was heard by Circuit Judge Smith and District Judges Booth and Campbell, at Council Bluffs, Iowa, on July 28, 1916, and the application was denied, for the reason that a suit was pending in the state court and that the federal court was without jurisdiction to issue an injunction against the state officers preventing them from enforcing the order of the commission while a suit was pending in the state court to test the validity of such order. We understand that no opinion was written on this order.

Was it not the duty of the receiver to have applied to the supreme court in this pending suit for relief before filing his petition of December 28, if he believed the Commission's refusal of its petition of April 9, 1915, was illegal and confiscatory of his property? The plaintiff certainly cannot be allowed



to refuse to litigate the reasonableness of the orders of the Commission in a law proceeding in the highest court of the state, thereby inferentially admitting the legality of the Commission's order, and then fly away to a court of equity for an injunctive order. Such conduct not only condemns his cause of action as lacking equity, but flies in the face of the doctrine of the comity of courts which, in previous proceedings in this suit, the plaintiff has relied upon as important indeed.

We believe this matter has been well settled by the federal courts, and that if precedents be followed, this case should be reversed.

The case of *Boston and M. R. R. v. Niles*, 218 Federal, 944, was a proceeding in the United States district court under the act of March 3, 1911, for a temporary injunction, as this one was. The case was heard before Circuit Judges Dodge and Bingham and District Judge Aldrich, and it was there determined by the two circuit judges and one district judge, under facts almost identical with this, that the injunction should be denied.

For the purpose of getting the facts in this case we quote the second paragraph of the syllabus, as follows:

"A statute of New Hampshire dealing with the subject of railroad fares also created a public service commission, with judicial powers to carry out its provisions. The act provided that, in case a petition for rehearing on any matter should be denied by the commission, an appeal should lie to the supreme court of the state. A railroad company filed a petition for a rehearing after a decision by the commission, raising the issue of the constitutionality of the statute, which petition was denied. Thereupon the company commenced a suit in the federal district court, alleging that certain provisions of the statute were discriminatory on their face and unconstitutional. *Held*, that having first invoked the jurisdiction of the state tribunals, the federal court would not pass on the constitutionality of the statute, or grant an injunction restraining its enforcement, until the company had exhausted its remedies in the state courts, but that until such time the cause should be held in abeyance."

It will be noted here that while the supreme court sustained the circuit court in refusing an injunction in the familiar case of *Prentis v. The Atlantic Coast Lines*, 211 U. S. 210, the court

there based its decision upon the fact that the matter pending in the state court was legislative and not judicial, and that a court of equity could not interfere before the legislative machinery provided for by the state constitutional law had been fully carried out. But in this case the court holds that although the matter pending or begun in the state courts was purely a judicial question, the federal court of equity, or for that matter any other court of equity, should not take jurisdiction to grant an injunction until the jurisdiction of the state court (court of law) had exhausted its jurisdiction.

It certainly follows that the party could not confess judgment in the state court or by any act of his own thwart the jurisdiction of that court and then apply to another court for relief. This would be the plainest kind of a case where a party had waived his rights in a court of law and then claimed in an equity court that he was without adequate remedy at law.

The first paragraph of the syllabus in the above case is as follows:

"The rules of comity existing between the federal and state courts mean something more than rules of convenience, and, while a federal court has undoubted jurisdiction of a suit to determine the constitutionality of a state statute, except in extreme and exceptional cases, the state court, which has concurrent jurisdiction and on which the constitution and laws of the United States are equally binding, is the appropriate court to deal with the question in the first instance."

For the convenience of the court we reprint the entire decision of the court on this question:

"(1) While we do not doubt the jurisdiction of the United States courts, or their power to entertain questions like these here, in an original and independent proceeding instituted for the purpose of testing the constitutionality of state statutes, which it is claimed conflict with the federal constitution, we do think that such a proceeding in certain circumstances is subject to being controlled or influenced by preliminary considerations involved in rules of comity existing under our judicial system, and these rules are now accepted as meaning something more than rules of convenience.

"It was pointed out in the Houseman case, 93 U. S. 130, 136,

137, 23 L. Ed. 833, that, while the jurisdiction of the federal courts was the jurisdiction of a paramount sovereignty, the laws of the United States are laws in the several states, and just as much binding on the citizens and courts thereof as the state laws; that legal and equitable rights acquired under either system may be enforced in any court of either sovereignty competent to hear and determine; that in respect to matters, though federal, unless otherwise provided, a remedy may be had upon proper proceedings in the state court, because, though the state courts derive their existence and functions from the state laws, such courts are subject also to the laws of the United States and just as much bound to recognize these as operative within the state as they are to recognize the state laws; that the two together form one system of jurisprudence, which constitutes the law of the land for the state; and that there is no reason why the state courts should not be open for the prosecution of rights growing out of the laws of the United States to which their jurisdiction is competent and not denied. It has come to be pretty generally understood, we think, that state courts, in respect to federal rights involved in a proper proceeding before them, are under the same duty to enforce the federal law as that which imposes itself upon the federal courts. This is because the federal law is a part of their own system, and the state courts have gone as far in saying this as the federal courts.

"Still, in respect to the question as to where remedy shall be had for supposed invaded rights, which depend upon the federal constitution or upon a state constitution, or partly upon both, as well as in respect to other rights about which jurisdiction is concurrent, much depends upon the question as to where the proceeding to establish the right is first instituted.

"In the case of *Covell v. Heyman*, 111 U. S., at page 182, 4 Sup. Ct. 358, 28 L. Ed. 390, the supreme court said:

"The forbearance which courts of coördinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity, with perhaps no higher sanction than the utility which comes from concord; but between state courts and those of the

United States, it is something more. It is a principle of right and of law, and therefore of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and, although they coexist in the same space, they are independent, and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty.'

"The reasoning to which we have referred is very general, and has reference to all rights in respect to which there is concurrent jurisdiction. The results of the reasoning of this case, and others, is that when rights have been put at issue in a state court, even though the right of ultimate review may reside with the court of paramount sovereignty, rules of comity require that the state court whose process has been first invoked shall have a free hand under the presumption that the right will be suitably established, and this view is understood to hold good until the reasonable remedies in the state courts have been exhausted and a decision reached which aggrieves one of the parties, and then, if the supposed grievance is based upon the idea that the decision conflicts with the paramount federal law, he may have his review upon writ of error from the supreme court to the state court, and perhaps in exceptional circumstances, through independent proceedings instituted in the lower federal courts.

"We make no suggestion as to the proper remedy in case of a result adverse to the railroad before the state court or upon this phase of the case, further than to say that the petitioner would be at liberty to renew his application in the federal courts without fear of being met by a plea of *res judicata*. *Prentis v. Atlantic Coast Line*, 211 U. S. 210, 230, 29 Sup. Ct. 68, 53 L. Ed. 150.

"In the *Smith* case, to which reference has been made (173 U. S. 684, 19 Sup. Ct. 565, 43 L. Ed. 858), the defendant in error started the litigation in the state courts, and after the law had been sustained by the supreme court of Michigan

the railroad raised the question for the supreme court of the United States by writ of error, and that court passed upon the rights, not as rights involved in legislation in respect to matters about which the state legislature had the power to act, but as rights safeguarded by the federal constitution which were out of the sphere of legislative power and which were infringed by the statute upon its face. Reference is made to the character of the question in that case, to distinguish it from the questions involved in the case of *Bacon v. Rutland R. Co.*, 232 U. S. 134, 34 Sup. Ct. 283, 58 L. Ed. 538, upon which the petitioner in this case greatly relies. In the *Bacon* case, where the supreme court sustained the view of going forward in the federal courts under an independent bill, the questions involved, if we read the case correctly, were in a very substantial sense legislative questions, and the right to go forward at once in the federal courts was sustained upon the ground that the right of appeal from the Vermont public service commission in respect to these questions was not adequate, because the supreme court of Vermont has no legislative powers.

"The question before us being the concrete question whether the mileage-book statute is discriminatory upon its face, it is one to be controlled through judicial function, and as the right of appeal to the state supreme court given by the state statute requires that a rehearing by the commission must first be asked, and that the ground of appeal shall be stated, and the question having been limited to the single one which we have stated, we think the remedy through the statutory right of appeal is entirely adequate, and that all reasonable considerations of comity and of public policy require that the statute, against which objection was first raised before the New Hampshire tribunals, should first receive attention from the state courts. By such a course the petitioner loses no substantive right, because the law furnishes him a perfect safeguard through resort to the United States courts for review in respect to questions covered by the federal constitution.

"The question as to where a grievance of this kind should first be entertained is more a question of desirability, convenience, and comity than a question of right, and we are not disposed to follow the proposition of the right of way through priority of jurisdiction further than to cite a note, containing

authorities, which appears in 22 C. C. A. at page 358. It must be said, however, that aside from the force resulting from priority of jurisdiction is the further consideration that United States courts are reluctant to deal with state statutes with a view to sustaining or overthrowing them before the state courts have first had an opportunity to do that. The supreme court has repeatedly said that. It is said by Mr. Justice Hughes in *Louis. & Nash, R. R. Co. v. Garrett*, 231 U. S. 298, 305, 34 Sup. Ct. 48, 58 L. Ed. 229. It is said in effect by Mr. Justice Holmes in the *Prentis* case, 211 U. S. 230, 29 Sup. Ct. 67, 53 L. Ed. 150, in which both Chief Justice Fuller and Mr. Justice Harlan, though concurring in the result, dissent from the opinion because it does not go far enough on lines of comity. It has more recently been said in an opinion by Mr. Justice Holmes, handed down November 2, 1914, in *Pullman Co. v. Knott*, 235 U. S. 23, 35 Sup. Ct. 2, 59 L. Ed. —. It is true that these cases have reference to statutes which it is claimed offend state constitutions, but it is not perceived that the reason of its being a state constitution instead of the federal constitution was the controlling reason. As has already been said, the federal constitution is a part of the system under which the state courts operate, and it is because the state courts recognize the federal system as a part of their own that rules of comity require, and particularly in cases first pending before them, that they should first have an opportunity to pass upon the statutes of their own state. It is incumbent upon the federal courts, in such a situation as this, to presume that, if the supreme court of the United States has declared a statute like the one involved here to be in contravention of the federal constitution, the supreme court of New Hampshire will give the force of such a decision its proper consideration and scope. Such a presumption results in a large measure because of the strong expressions by state courts like those of Mr. Justice Cullen in *Beardsley v. New York, L. E. & W. R. R. Co.*, 162 N. Y. 230, 56 L. Ed. 488, that 'in obedience to the law, as declared by the supreme court of the United States, we must hold the statute of 1895 is invalid,' that of the supreme court of appeals of Virginia in the *Coast Line Ry. Co.* case, 106 Va. 61, 67, 55 S. E. 572, 574 (7 L. R. A., n. s., 1086, 117 Am. St. Rep. 983, 9 Ann. Cas. 1124), that 'we are bound by this decision, as it emanates from the highest tribunal in the coun-

try, and numerous like expressions which could be cited, if deemed necessary.

"Holding this view as to where this statute should first receive consideration, there are two courses open—one, to deny the injunction and dismiss the bill, and leave the parties to resort, if necessary, to remedy through writ of error, or possibly through a new and independent proceeding in the district court; and, second, to hold the proceeding here, together with the application for an injunction, in abeyance, as was done by the supreme court in the Prentis case. There Mr. Justice Holmes said (211 U. S. 232, 29 Sup. Ct. 72, 53 L. Ed. 150) :

" 'As our decision does not go upon a denial of power to entertain the bills at the present stage, but upon our views as to what is the most proper and orderly course in cases of this sort when practicable, it seems to us that the bills should be retained for the present to await the result of the appeals if the companies see fit to take them.'

"We are disposed to adopt the course suggested by Mr. Justice Holmes, and hold this proceeding in abeyance pending results in the state courts; and it is so ordered."

We call attention of the court to the similarity of the cases. The jurisdiction of the supreme court of Kansas in mandamus is constitutional. The case found its way into the supreme court in regular course of law by statutory and constitutional provisions provided by the legislature for the Commission to enforce its orders. The only difference between the proceedings had in the New Hampshire case and the present one is that the proceedings in the New Hampshire case were had by direct appeal from the commission's order, while here one of the cases considered in the proceedings, entitled *State, ex rel., v. Flannelly*, was begun by the Commission itself to enforce its order. It must not be forgotten, however, that the receivers filed an answer in that proceeding, praying for affirmative relief. They asked that the court determine they were not within the jurisdiction of the Commission because engaged in interstate commerce, as they do here, and that the opinion of the Commission, which was not then a completed order, because of the injunction issued by Judge Flannelly, intermediate the issuance of the Commission's opinion and the issuance of the order (rec. 117), be declared confiscatory. The judgment of the



court was that the order of the Commission was not completed, and that it would hold jurisdiction of the case until the Commission had made its final order, and would then determine whether it should be enforced. In other words, as is said by the court, speaking through Mr. Justice Porter, in the opinion, "the case was still open to both parties for any relief that might be asked after the order was completed by the Commission."

In the New Hampshire case the plaintiff railroad company neglected to take its appeal from the order of the commission refusing it a rehearing back to the supreme court. In the present case the receivers specifically and affirmatively refused the supreme court the possibility of passing upon the reasonableness of the order made by the Commission on its own petition for a rehearing.

The proceedings are essentially the same. The only possible difference is one of statutory machinery.

We call attention of the court also to the still later case of *Trenton and Mercer County Traction Corporation et al. v. The City of Trenton*, 227 Fed. 502. This was also a proceeding under the act of March 3, 1911, before Circuit Judge Woolley and District Judges Rellsbad and Haight. It was there determined that a federal court would not enjoin the enforcement of a state statute or the action of a board thereon, on account of alleged contracts as to rates, where a proceeding had been instituted before a public board and that board had a right to fix rates and enforce the same until the action so instituted before the board had been finally completed.

We insist that there is a want of equity where it is admitted, as it is in this case, that the affirmative action of the plaintiff in the suit deprived a court of law of jurisdiction, and where it must also be admitted that that court had concurrent jurisdiction with this one to determine the reasonableness of the order.

We repeat that the receivers had, and probably the surviving receiver still has, a right to appeal from the decision of the supreme court of Kansas on the question of interstate commerce to the supreme court of the United States, and that by asking for a ruling of the supreme court of the state on the reasonableness of this order, or of any order of which they complain, whether based upon the petition of April 9, 1915, or of December 28, an appeal could also have been had directly to the supreme court of the United States.

**THE RATES PROVIDED BY THE KANSAS COMMISSION  
DECEMBER 10, 1915, ATTACKED BY THE PLAINTIFF'S  
BILL WERE COMPENSATORY AND NOT SUBJECT TO THE  
PLAINTIFF'S CHARGE THAT THEY WERE CONFISCATORY  
OR UNCONSTITUTIONAL.**

Introducing the division of his opinion dealing with this question the trial court says:

"Passing to the merits. Thousands of pages of testimony and hundreds of exhibits have been introduced, covering almost every possible question that could arise in a rate controversy. Questions involved in the valuation of the plant; questions as to the character and extent of the business, including the available supply of gas, and the life of the gas fields; questions as to extensions; questions touching the cost of operation and maintenance; the rate of return proper to be allowed; and the amount of income necessary to meet requirements, have all been covered with great fullness and particularity, both in the evidence and in the arguments of counsel.

"It must be borne in mind, however, that this suit is not one for the fixing of a rate to be charged by the plaintiffs for natural gas, but it is a suit to determine whether the 28-cent rate already fixed by the Commission is confiscatory. Bearing this in mind, it becomes apparent that it is not necessary to discuss or determine many of the questions investigated before the Commission and upon which evidence and argument have been offered in this suit. It will not be necessary to determine whether the Commission adopted the best and most scientific method in fixing the 28-cent rate; if that rate is not confiscatory, the method by which it was determined is immaterial here. After determining the value of the plant for rate-making purposes the Commission allocated this value between the states of Missouri and Kansas on a certain percentage basis. The Commission also adopted a flat rate as distinguished from a distance rate, to cover a great many cities in Kansas. The Commission further divided the valuation of the property into two parts, one covering that portion used for production purposes, and the other that portion used for transportation purposes. Without passing specifically upon the conclusions of the Commission with respect to these several matters, it may be assumed for the purposes of the present discussion that

they were justified, but mention of certain matters in connection with some of them will be made later. It will be necessary, however, to consider briefly certain of the matters passed upon by the Commission in fixing the 28-cent rate."

Following this the trial court reaches the conclusion that \$7,000,000 is a fair value for the property at the time the suit was tried, which was somewhat less than the value fixed upon the property by the Commission. This, of course, did not include the valuation of the distributing properties and did include all of the transportation and producing property in the control of the receiver. The court agreed with the Commission in eliminating the element of going value, considered as a separate element of value, and in the separation of the producing and transportation properties. The Commission in treating this matter had eliminated any value for the remaining gas leaseholds, and in lieu thereof had given the company credit for all the gas produced at the price the Commission found the company had been compelled to pay for gas; that is, the producing property had been allowed to stand on its own basis and to pay the same return to the company that it would have made in the hands of third parties.

This narrows the controversy to the propositions of: (a) What should be allowed from annual revenue for annual depreciation of the property? (b) What should be allowed from annual revenue, if anything, for extensions? (c) The rate of return, the Commission fixing six percent as sufficient, although allowing much more than that; while the court finds that eight percent should be allowed on account of the hazardous nature of the business of producing, transporting and distributing gas.

The amount allowed for annual depreciation and for extensions is dependent to a large extent upon the life of the field, from the viewpoint of the trial court, and we think this will prove to be one, if not the principal turning point in the case. Therefore, we have conceived that the differences between the trial court and the Commission, and hence the validity of the so-called 28-cent order of the Commission, may be analyzed as in our statement of claims (brief, 117), which for the convenience of the court we now repeat:

(a) That the rates in effect under the rate order of the Commission of December 10, 1915, were higher than those provided for in the franchises under which the Gas Company began

business, except in the city of Topeka, and produced a larger income on the system as a whole, including Topeka, than would the franchise rates. That company could not, therefore, complain in equity that such rates were confiscatory or unreasonable. (Assignment of Error XI, Rec. 607.)

(b) That allowances for betterments or extensions of the pipe lines of the company should not have been charged to maintenance or allowed for in the usual annual operating expenses of the receiver. (Assignment of Error IX, Rec. 607.)

(c) That the findings as to the life of the property should not have been based upon the probable life of the gas field in Kansas or Oklahoma. (Assignment of Error VIII, Rec. 606.)

(d) That the findings of the Commission as to the price of gas purchased in Oklahoma by the receiver and the rate of income to which he was fairly entitled on the property employed in the business by him were supported by the evidence, and the conclusions of the district court thereon are erroneous. (Assignment of Error VII, Rec. 606; Assignment of Error XI, Rec. 607.)

We have already discussed the proposition that the rates as a whole were put into effect voluntarily by the company.

In all of the discussions of the sufficiency of the 28-cent rate, Table No. 5, prepared and presented in the opinion of the Commission, seems to have been the pivot upon which were hinged all the differences of opinion, and as the starting point, for the convenience of the court, we again reproduce this table:

TABLE NO. 5. KANSAS NATURAL GAS COMPANY.

STATEMENT of Estimated Revenue and Requirements for the Ensuing Year Based on 1914 Figures, Revised as Previously Explained, for the State of Kansas.

<i>Requirements.</i>	<i>Transportation.</i>	<i>Kansas.</i>
25,671,445 M. cubic feet gas at 4c.....	\$1,026,857.80	\$514,045.01
Operating expenses and taxes assigned to transportation..	510,536.14	223,245.11
Receivership expenses .....	32,228.00	14,093.30
Uncollectible gas accounts.....	12,555.07	6,359.14
Taxes, Kansas City Pipe Line.....	32,288.27	16,860.51
Taxes, Marnet Mining Company.....	10,497.35	5,916.91
Maintaining organization, Marnet Mining Company.....	690.20	349.59
Total .....	\$1,626,652.83	\$780,269.57
* Present value of transportation property, \$7,083,605.64; depreciation on basis of twelve years.....	590,300.00	268,468.44
Requirement, exclusive of a return on property investment.	\$2,216,952.83	\$1,048,738.01
° Return on present value..... \$7,083,605.64		
Add for working capital..... 200,000.00		
Total .....	\$7,283,605.64 at 6%.	\$437,016.35
		\$198,755.00
		\$2,653,969.18
		\$1,247,493.01

\* The division of these items between Kansas and Missouri has been made on the basis of the use of the property as shown in Table 1.

*Estimated Revenue.*

Gas sales, 1914.....	\$1,192,089.82
† Gas used in compressor stations (on basis of use).....	31,737.76
Total .....	\$1,223,827.52
Estimated revenue from proposed increased rates.....	171,513.63
Total estimated revenue from Kansas.....	\$1,395,341.15
Deduct requirements as above.....	1,048,738.01
Estimated net revenue.....	\$346,603.14
Which is equal to a return of 10.46% on the present value, \$3,312,583.83, which is 45.48% to Kansas of the total of \$7,283,605.64, or—	
Total estimated revenue for Kansas.....	\$1,395,341.15
Less requirements, including a 6% return.....	1,247,493.01
Surplus .....	147,848.14

- (a) The rates in effect under the rate order of the Commission of December 10, 1915, were higher than those provided for in the franchises under which the Gas Company began business, except in the city of Topeka, and produced a larger income on the system as a whole, including Topeka, than would the franchise rates. That the company could not, therefore, complain in equity that such rates were confiscatory or unreasonable. (Assignment of Error XI, Rec. 607.)

The so-called 28-cent order of the Commission fixed 28 cents as the rate in all cities except in Montgomery county and those supplied by the Gunn Pipe Line, where, on this pipe line, the rate was allowed to remain at 30 cents. In Montgomery county the rates were raised from 20 cents to 23 cents, except at Elk City, where the former rate of 25 cents was allowed to remain. The rate for boiler gas and other industrial purposes was 10 cents per thousand feet in Montgomery county and 12½ cents in all other Kansas territory. As stated in the heading, this rate produced a larger amount of revenue than the franchise rates would have produced—rates under which the company began business. We call the attention of the court to exhibit B of plaintiff's bill, which sets out a synopsis of the franchise rates agreed to by the company at the beginning of business. (Rec. 47, 48, 49.)

## EXHIBIT B.

*Rates Provided by Franchises in Principal Cities Supplied by Kansas Natural Gas Company and Rates in Effect Prior to December 10, 1915.*

† This item is placed here to balance an equal sum included in the expenditures. It is a bookkeeping entry solely.

Kansas City, Missouri, franchise No. 33887, dated September 27, 1906, provides for the following rates:

- 25 cents from December 1, 1906, to December 1, 1911.
- 27 cents from December 1, 1911, to December 1, 1916.
- 30 cents from December 1, 1916, to October 1, 1936.

With the privilege of adding a penalty of 10 percent to delinquent bills, and of making a minimum charge when amount consumed is less than 50 cents.

The 27-cent rate has been in effect since December 1, 1911.

Kansas City, Kansas, franchise No. 6051, dated December 14, 1904, provides for the following rates:

- 25 cents from October 1, 1905, to October 1, 1907.
- 28 cents from October 1, 1907, to October 1, 1908.
- 29 cents from October 1, 1908, to October 1, 1909.
- 30 cents from October 1, 1909, to October 1, 1910.
- 35 cents from October 1, 1910, to October 1, 1925.

With the privilege of adding a penalty of 2 cents per 1,000 cubic feet to delinquent bills, and of making a minimum charge when amount consumed is less than 50 cents.

This franchise also contains a provision that the rates shall not be higher at any time than the rates in Kansas City, Missouri.

The 25-cent rate is still in effect in Kansas City, Kansas.

Leavenworth, Kansas, agreement of May 16, 1905, provides for the following rates:

- 25 cents from January 1, 1906, to January 1, 1908.
- 30 cents from January 1, 1908, to January 1, 1911.
- 35 cents from January 1, 1911, to January 1, 1926.

Letter of October 10, 1907, provides that they may sell gas at the rates prevailing in Kansas City, Missouri.

The 25-cent rate is still in effect in Leavenworth.

Atchison, Kansas, franchise No. 2527, dated June 10, 1905, provides for the following rates:

- 30 cents from April 1, 1906, to April 1, 1911.
- 35 cents from April 1, 1911, to April 1, 1936.

With privilege of adding 10 percent to delinquent bills, and of making a minimum charge when amount consumed is less than 50 cents.

The agreement of July 12, 1905, provides that gas shall not be sold at any time at rates higher than in Leavenworth, Kansas, and St. Joseph, Missouri.

The 25-cent rate is still in effect in Atchison.

Tonganoxie, Kansas, agreement of November 2, 1905, provides for the following rates:

- 25 cents from November 1, 1905, to November 1, 1907.
- 40 cents from November 1, 1907, to November 1, 1925.

With privilege of adding 10 percent to delinquent bills.

The 25-cent rate is still in effect in Tonganoxie.

Lawrence, Kansas, ordinance No. 95, approved April 8, 1904, provides for the following rates:

- 25 cents from October 16, 1905, to October 16, 1907.
- 30 cents from October 16, 1907, to October 16, 1905.

With privilege of charging a penalty of 3 cents per thousand on delinquent bills.

The 25-cent rate still in effect in Lawrence.

Topeka, Kansas, agreement of January 5, 1905, provides for the following rates:

- 25 cents from December 1, 1905, to December 1, 1907.
- 30 cents from December 1, 1907, to December 1, 1910.
- 35 cents from December 1, 1910, to December 1, 1925.

With privilege of charging a penalty of 3 cents per thousand on delinquent bills.

The 25-cent rate still in effect in Topeka.

Ottawa, Kansas, agreement of September 30, 1905, provides for the following rates:

- 25 cents from December 1, 1905, to December 1, 1910.
- 30 cents from December 1, 1910, to December 1, 1925.

Ten percent penalty allowed on delinquent bills, and may make minimum charge when bills are less than 50 cents.

The 25-cent rate still in effect in Ottawa.

Baldwin, Kansas, agreement of July 10, 1905, provides for the following rates:

- 25 cents from October 1, 1905, to October 1, 1907.
- 30 cents from October 1, 1907, to October 1, 1925.

Ten percent penalty allowed on delinquent bills.

The 25-cent rate still in effect at Baldwin.

The foregoing are the principal towns on our northern system, with the exception of St. Joseph, Missouri. All of the smaller towns which we supply through the Union Gas and Traction Company (Gunn Pipe Line), have franchises which provided for a rate of 25 cents net for the first two years after the gas is turned into the lines, and thereafter 30 cents net, with the privilege of adding a penalty of 10 percent on delinquent bills.

#### CONTRACT RATES NOT CONFISCATORY.

Rates which are higher than the contract rates agreed upon by the parties, or which are the result of contracts, cannot be confiscatory. They are in effect voluntary rates, as they result from the voluntary acts of the parties.

Referring to Exhibit B, bill of complaint, given above, we discover that the 28-cent order allowed one cent per thousand feet more in Kansas City, Kan., than could have been collected under the contract entered into between the Kansas Natural



and the cities at the time the natural-gas business was begun in that city.

If the contracts had been observed the rates at Atchison and Leavenworth would have also been one cent higher under the 28-cent rate than under the contract rate, for in those cities, as in Kansas City and Rosedale, the rate was not to be higher at any time than the rates in Kansas City, Mo.

Topeka, therefore, is the only first-class city where the 28-cent rate did not permit a higher rate than the contract rates at the time the order was made. The amount of gas consumed in these first-class cities, excluding Topeka, was approximately two billion feet, and under the 28-cent rate the receiver collected \$20,000 more than he could have collected under his contracts had they been allowed to remain in force.

But this is not all of the story. The supreme court of the United States, in the case of the *Wyandotte County Gas Company v. City of Kansas City*, 231 U. S. 622, held that the contracts in cities of the second class were binding as to rates. In Lawrence and Ottawa, the principal second-class cities, the company was entitled to 30 cents after 1907. In Exhibit B the complainant makes the following statement:

"All of the smaller towns which were supplied through the Union Gas and Traction Company have franchises which provide for a rate of 25 cents net for the first two years after the gas is turned into the lines, and thereafter 30 cents net."

So that it may be said, speaking generally, that in the cities of the second class under the terms of the contract the receiver was entitled to 30 cents. No application was made to the Commission to put into effect the contract rates, and if these rates are binding, as the supreme court of the United States says, the receiver ought not to be heard to complain of them in equity, or in this kind of a suit. There is nothing to prevent the parties agreeing to a different rate.

The complainant himself thus repudiated his contract rates and sought to establish higher ones. In no sense, then, has he ever attempted to enforce the contract rates in the cities of the second class. The record discloses the contract rates at Fort Scott and other cities supplied by the Gunn Pipe Line, and the 28-cent order permitted an advance to 30 cents in those cities.

Upon the whole, then, we have this situation: That on a property which it is insisted by the plaintiff shall be considered a unit, and operated as a unit, 60 percent of the gas supplied is used in Missouri, where the defendant Commission has no control at all of the rates. As to the supply in Kansas, 45 percent of the product is used in Montgomery county, either for boiler gas or at a rate three cents less than allowed by the Commission for domestic use. In Kansas City, Kar., Leavenworth and Atchison the rate allowed by the Commission is at least one cent higher than the contract rates. This covers at least one-fifth of the Kansas product, and, added to the 45 percent consumed in Montgomery county, leaves only 35 percent which could be sold at less under the 28-cent order than at the contract rates of the plaintiff.

On the Gunn Pipe Line the rates are the contract rates. In cities of the second class the rate allowed by the Commission is only two cents under the contract rates, and the receiver has made no effort to enforce the contract rates. If these rates are valid he has no cause to complain in this suit. This leaves the city of Topeka alone where the receiver can justly claim that he is receiving a less rate under the 28-cent order than he had, either by contract or otherwise, voluntarily put into effect. Against his possible loss in the city of Topeka is to be balanced an advance of three cents per thousand feet on domestic gas in Montgomery county, and one cent in the cities of Kansas City, Atchison and Leavenworth, and the abrogation of the free gas contracts in all of the cities. The abrogation of this clause did not disturb the validity of the contracts in the least, for by the public utilities act the Commission was authorized to act in place of the cities, and the receiver as well as the Kansas Natural Gas Company consented to and was benefited by the change.

Finally it comes to this, that the controversy between the receiver and the Commission is in reality over only the gas delivered in Topeka, or less than 10 percent of what is consumed in the state of Kansas, while the receiver is charging three cents less on 45 percent of the Kansas product than he was authorized to charge under the Commission's order.

If contract rates cannot be attacked as noncompensatory *a fortiori*, higher rates which are granted through the gener-

osity of the state cannot be attacked in equity as noncompensatory.

We have already discussed in the division of this brief on interstate commerce the validity of these franchise contracts and the source of their origin and authority. It will not be necessary to repeat the authorities there given.

In the state of Kansas gas distributing plants could, in 1905, be constructed in cities of the first class only by authority of such cities "under such restrictions as shall protect public and private property and insure proper remunerations for such grants." (Chap. 122, Session Laws 1903, sec. 54. See, also, sec. 51.)

"In cities of the second and third class such consent was not necessary (sec. 1366 of the General Statutes of 1901), but the grant of a franchise by a city even under such circumstances is a sufficient consideration for agreement by the company to whom the grant is made when contained in the franchise." *City of Emporia v. Telephone Co.*, 88 Kan. 443.

Under section 2 of chapter 136 of the Laws of 1903, which were the laws in effect at the time of the granting of these franchises, cities of the second and third class were authorized to make a binding contract with gas companies for the supply of gas to the cities concerned and to fix the rates by contract for a period of twenty years. See *State v. Gas Co.*, 88 Kan. 174, and the same case on appeal, 231 U. S. 622.

There are two quite radically different kinds of contracts which cities may make with public utilities represented by these two classes of cities, cities of the first class falling within one class and cities of the second and third in the other. By one kind of contract there is a mutual stipulation as to rates, and this applies to the latter class given above. The city, by virtue of expressly delegated authority, suspends the general legislative power of the state. It makes an agreement binding upon the state as to rates in favor of the public utility. In the first kind of contract, however, the agreement of the city contains no promise on its part concerning rates. The only thing the city agrees to do is to give to the utility the use of its streets and other local and public benefits flowing naturally from the use and exercise of the franchise. In consideration of the use of the streets and these other benefits the public utility, upon its part, agrees not to charge more than certain stipulated rates.

The power to make this kind of a contract in no way depends upon the authority of the city to waive or suspend the sovereign power of the state in the regulation of rates. See Dillon, 5th edition, *Municipal Corporations*, par. 1326, and numerous authorities there cited.

But we assert that when contracts, through the concession of the city or other state agency—in this case the Public Utilities Commission—representing the cities, grants the utility a rate equal to or greater than the franchise rate, it is estopped to plead the confiscatory character of such rates. *Whether it shall collect three cents more in Montgomery county or two cents less in cities of the second class is an administrative order of the Commission and cannot be interfered with by the courts unless it be shown conclusively that that particular provision of the rate order results in confiscation or in the utility receiving less than it would receive had the franchise rates been strictly adhered to.*

See *Grand Rapids and Indiana Ry. Co. v. Chas. S. Osborn*, 193 U. S. 17, referred to in a previous section of this brief. See, also, *Interstate Consolidated Street Ry. Co. v. Massachusetts*, 207 U. S. 79:

"A street railway company whose charter subjects it to 'all the duties, liabilities, and restrictions set forth in all general laws now or hereafter in force, relating to street railway companies,' is bound by the requirement of a statute previously enacted, that street railway companies shall transport school children at a reduced rate, although such statute may be unconstitutional as to already existing corporations."

From the opinion of the court, *l. c.* 84: "By the latter act the plaintiff in error was 'subject to all the duties, liabilities and restrictions set forth in all general laws now or hereafter in force, relating to street railway companies. There is no doubt that, by the law as understood in Massachusetts, at least, the provisions of Rev. Laws, chap. 112, sec. 72, Stat. 1900, chap. 197, if they had been inserted in the charter in terms, would have bound the corporation, whether such requirements could be made constitutionally of an already existing corporation or not. The railroad company would have come into being and have consented to come into being subject to the liability, and could not be heard to complain. *Rockport Water Co. v. Rockport*, 161 Mass. 279, 37 N. E. 168; *Ashley v. Ryan*, 153 U. S.

436, 443, 38 L. Ed. 773, 777, 4 Inters. Com. Rep. 664, 14 Sup. Ct. Rep. 865; *Wight v. Davidson*, 181 U. S. 371, 377, 45 L. Ed. 900, 903, 21 Sup. Ct. Rep. 616; *Newburyport Water Co. v. Newburyport*, 193 U. S. 561, 579, 48 L. Ed. 795, 800, 24 Sup. Ct. Rep. 553."

See, also, *Knoxville Water Co. v. Knoxville*, 189 U. S. 434.

The law relative to contract rates, the authority of cities and utility corporations to enter upon such contracts fixing rates, the effect of a subsequent enactment of a public utility commission law, and the right of that commission to revoke rates fixed by contract, has been very learnedly considered and fortunately stated in a late decision by the supreme court of the state of Washington, *State v. Home Telephone and Telegraph Co.*, 172 Pac. 899. The court said in part:

"Thus the law is settled that the city of Spokane had the authority to fix in the appellant's franchise the telephone rates to be charged. If it is true that the city had the right to withhold its consent before a telephone company would be allowed to use its streets, and to impose as a condition of granting its consent to the maintenance of certain rates to be charged to users of the telephone service, the telephone company accepting such franchise is, as long as it operates thereunder, bound by its terms, unless relieved therefrom by the public service commission law. And it matters not what nomenclature may be used to describe the obligation of the franchise holder; whether it be called a condition, a contract, or as, in *State, ex rel. Webster, v. Superior Court*, 67 Wash. 37, 120 Pac. 861, L. R. A. 1915C, 287 Ann. Cas. 1913D, 78, a grant, license, or reservation. For, as said in that case, 'the power to fix and determine rates being within the police power, the city might establish rates, but that it could not, under the delegation quoted, contract so as to bind itself or the other party as against the exercise of the police power,' which merely means that the rate established in the franchise is binding until the sovereign police power cuts the bond. A franchise obligation is no less a contract because it may ultimately be abrogated by the state in the exercise of its police power than was the obligation set aside in the case of *Raymond Lumber Co. v. Raymond Light & Water Co.*, 92 Wash. 330, 159 Pac. 133, L. R. A. 1917C, 574, not a contract because revocable. No one would suggest that until the pub-

lic service commission interfered the relation between the two parties to that suit had not been that of two parties to a contract."

It seems to follow clearly from this case and the authorities cited to support the opinion of the Washington supreme court, that the power of the Commission over rates in the instant case was wholly that of revocation of an existing contract rate. This was true as to cities of the first class as well as cities of all other classes. Hence it is beyond all dispute that the action attempted to be taken by the Commission was legislative and administrative and cannot be reversed, in equity, by the court on the ground of unreasonableness. If it be said that the action of the Commission in allowing the contract to be modified amounts to a complete revocation of the contract, the answer is that in order to effect such revocation there must at least be an agreement between both parties to the contract to revoke it and substitute a new contract in its place.

The Kansas Natural Gas Company was therefore bound to furnish the service at the contract rates and apply to the Commission for relief from these rates. The Commission, for example, proposed that 28 cents be substituted for the franchise rates, but the gas company, through its receiver, refuses to accept the proposition. This does not revoke the contract—it leaves the parties where they were before the application was made. The courts cannot compel the Commission to consent to the modification of a legal contract. In doing so, or refusing to do so, the Commission is acting under its governmental power, and the fact that the basis of the rates established in the franchise rested upon contract prevents a court of equity from saying that such rates are, or can be, confiscatory, illegal or unreasonable.

- (b) That allowances for betterments or extensions of the pipe lines of the company should not have been charged to maintenance or allowed for in the usual annual operating expenses of the receiver.**

We regard this point as crucial on the question of the adequacy of the 28-cent rate; that is, if we put out of view the binding force of the franchise rates discussed by us in the former part of this brief. It was the duty of the Kansas Natural Gas Company, as well as of every other utility, to

provide the capital with which to perform the service called for in its franchise. It seems intolerable that it should be allowed to collect money from the public and reinvest it in its plant and then proceed to amortize the investment by an annual charge, in this case one fixed by mere conjecture, as to the probable life of the property, and in addition thereto demand that the public pay a return upon the amount invested; that is to say, the public is required to pay a return upon the property provided for by the public and invested by it. We assert that such a rule is not only illegal and inequitable, but that its application will destroy every element of reasonableness, so far as the public is concerned, and in most cases wreck the utility property itself because of the inability of the patrons to pay the rates made necessary by such a rule.

At every stage of this proceeding we have challenged counsel to produce an authority of court or commission which approved the charging of extensions or betterments to maintenance, as distinguished from capital account. No such authorities have been produced, and the trial court in its opinion produces none, as will be noted hereafter. This method of providing for betterments and extensions is as unusual as it is unauthorized. The very officers of the company themselves testified that such a procedure was unheard of.

Mr. Hays testified before the Commission that the usual way was to make such extensions and charge the same to capital account. (Rec. 1100.)

Mr. Bartlett testified that the usual way of treating extensions was to charge them to capital account. Mr. Doherty testified that the proper and regular way was to charge such expenditures to capital account, but stated that this is an extraordinary situation, that the plaintiff must be assured of a return before the extensions are made. Plaintiff has not cited a single instance where such substantial additions have been made to the property and charged to operating expense. We have not been able to find a single case before any Commission nor in any court where it is held that such additions to the property of the company are a proper operating expense or maintenance charge, but are in fact held to be additions to property, and properly added to capital account.

It may be possible that the Commission would have the



authority to fix a rate which the plaintiff would think would warrant him in making the extensions in the regular way, but if it did so it would depart from the usual and customary way of fixing rates. The Kansas Commission has no legal authority to compel the plaintiff to extend his pipe lines even if it should make such an allowance in the rate. The Commission in 1913 ordered the Kansas Natural to make the extensions to get the gas, and the federal court promptly held that inasmuch as the extensions were to be made in Oklahoma the Commission was powerless to make such an order, and promptly set it aside, so that the Commission was in the further embarrassing position of being asked to fix a rate which would yield what the plaintiff thought to be an adequate return upon an investment which it was powerless to compel the plaintiff to make. Whatever discretion the Commission may have in this respect, the plaintiff has no legal right to demand it. It is the legal duty of the plaintiff to make all necessary expenditures and extensions to furnish the service, and when he has furnished the service it is then the duty of the Commission to fix the rate that will yield an adequate return upon the property used and useful, and the court can give no more to the plaintiff than his legal right; and these defendants contend that the court has no legal right to set aside a rate fixed by a Commission for a utility that confesses to the court that it is not, and will not, furnish the services unless a rate suitable to it is fixed. It is the plain duty of the plaintiff to make such additions and betterments to his plant as are necessary to adequately serve his customers, and he has no standing in a court of equity to complain of the rates fixed for that service until he does.

The only attempted justification of appellees on this position is based on the cry of "hazardous business." In fact, "hazardous business" has proved very expensive to the public in the consideration of this gas case, as the public has borne it at every turn of the calculations. "Hazardous business" was taken care of by fixing the life of the property, and it would seem that that should take all the hazard out of the proposition, for the court fixed the life of the property at a time when it would be certain that the depreciation would return the entire property to the investors, dollar for dollar.

Again, on the amount of interest, 8 percent is allowed instead of 6, on the ground of "hazardous business"; and finally, for the third and last time, the receiver and property owners of the Kansas Natural are permitted to charge approximately \$250,000 per year to maintenance, which is put back into their property in permanent improvements in the name of this same "hazardous business." Truly, it is "hazardous" to the public. The Commission, considering the nature of the business, allowed the enormous depreciation of \$590,000 per year. The court doubled it, permitting the unheard-of depreciation of \$1,080,000 on a property which had already been depreciated out of earnings down to the figure of \$3,005,000, with an admitted salvage of over \$250,000 remaining. The salvage and the depreciation for three years would replace the property and leave the owners \$485,000 to give to the church, donate to the poor, or put in their own pockets, which it is fair to assume they would do.

Was it fair and equitable that in addition to this the cost of these extensions should be amortized over the same period against the consumers without even an allowance for an added salvage value at the end of the six years? The physical value of the extensions at that time would be almost as much as when new. It was suggested by the court in the trial of the cause that when extensions became necessary at a period of time so near the close of business, for example, in the last year of the allotted life of the physical property, that there was no difference between maintenance and capital account. We think the court is in error in this assumption. Capital should never be charged to maintenance. If it became necessary in the operation of a railroad to replace a bridge or other permanent structure within the last year of the estimated life of the property the betterment should be made from accumulated depreciation or the fund provided for that purpose. The capital account would thus be increased and the salvage of the property to be returned at the end of the year to capital account increased in the same sum. So, in fixing the period of five or six years for the remaining life of the property, which we think we have also shown was an error on the part of the court, the betterments should have been made from the depreciation account, and then a return allowed upon the investment when made. The court by allowing these extensions assumes

that they were made at the time of the hearing and proceeds to depreciate them along with the other capital account and physical property of the gas company. This was not only incorrect as a matter of bookkeeping, but assumed something would be done which might never be done, or if done, might add nothing to the value of the service to the consumer. If the life of the property was to be measured upon the life of the field, and depreciated accordingly, as is done by the court, for the six years immediately succeeding the hearing, it should have been done in the same way from the beginning of the property, and the life of the property as a whole from the first considered to be fourteen years. If this had been done the present value of the property would have been considerably reduced and the consumer would have had some benefit of the proposition that the enterprise was "hazardous" or a mining proposition. This was done in the case of the *Goldfield Consol. Water Co.*, 236 Fed. 979, where, in the consideration of this question, the court said:

"The life of Goldfield, as of every mining camp, is uncertain; sooner or later the ore deposits will be exhausted, and the mines abandoned. Complainant avers that when this occurs at the expiration of eight or nine years, its property will have no value. The bulk of this depreciation will have been caused, not by age, use, or action of the elements, but by the failure of the mines; there will be no market in Goldfield for complainant's water, or any considerable demand for its services. If depreciation of this character must be provided for in the rates, as complainant demands, it is no more than just that it should be considered in determining the present reasonable value of the property."

We do not think the receiver should be allowed to eat his cake and have it too. If the company did not provide for depreciation when the rates were voluntary it is not the fault of the public, and it cannot now be charged with that increased depreciation. Calling the attention of the court to the law of allowing betterments to be made out of maintenance or operation costs, no clearer case can be found than that of the *Advance in Rates, Eastern Case*, 20 I. C. C. R-243, 265, 1 Whitten on Valuation, sec. 204. The carriers in those cases contended for the very principle for which the receiver contends in this,

and which was apparently allowed by the court in the temporary injunction opinion. The Interstate Commerce Commission, reviewing the case of *Central Yellow Pine Association*, 10 I. C. C. R.-505, and *Illinois Central R. R. Co. v. I. C. C.*, 206 U. S. 441, said:

"In examining this matter the Commission found that the carriers had charged as a part of their operating expense large sums which had, in fact, been devoted to the purchase of new equipment, to the making of new equipments to their roadway and structures, and held that these items were not properly chargeable as operating expenses, for the reason that the shipper of to-day could not be properly required to pay the entire cost of an improvement or addition which was to be of permanent use."

Again, the Commission said:

"It is evident that until the status of this surplus is determined by legislative action or judicial interpretation this Commission cannot properly permit an advance in rates with the intent to produce an accumulation of surplus for this purpose."

In the *Illinois Central* case, *supra*, the supreme court on this question, said:

"It would seem as if expenditures for additions to construction and equipment, and equipment, should be reimbursed by all of the traffic they accommodate during the period of their duration, and that improvements that will last many years should not be charged wholly against the revenue of a single year."

Again, distinguishing the case of *Union Pacific R. R. Co. v. United States*, 99 U. S. 402:

"But such is not the relation or concern of a shipper of lumber. His right is immediate. He may demand a service. He must pay a toll, but a toll measured by the reasonable value of the service. The elements of that value may be many and complex, not always determinable, as we have seen, with mathematical accuracy, but, we think it is clear that instrumentalities which are to be used for years should not be paid for by the revenues of a day or year; and this is the principle of returns upon capital which exists in durable shape."

**Life of plant not to be depreciated on basis of life of business.**

It is clear from these authorities that the method used by the trial court in charging to the patrons the immediate expense of extensions is not the legal or ordinary one. The answer of the court, already suggested, that the error is immaterial if the cost of the improvement is to be amortized against the consumer during the remaining life of the property involves another fundamental error, that of fixing the life of the property by conjecture—that of making the life of the property coexistent with the result of guessing at the life of the gas field.

In other words, the consumer buys the old plant, or returns its value to the company, and buys another new one in part and adds to his own distress by increasing the amount necessary for amortization of the improved plant. Is not this exactly what the court does when he makes the consumer pay for extensions less the scrap value of the end of an imaginary life of the gas field—in this case only five years? The company is amply compensated for its "hazardous business" when the public is charged the current price for gas in the field or delivered at its trunk line, and again, in higher return than is accorded to other utilities. Why should the consumer for any one year pay more for extensions than a fair return on the amount invested and a depreciation charge sufficient to amortize that value during the *physical life* of the property? The public is not interested in mining—it has not embarked in the venture, and should not voluntarily be charged with that risk.

The public does not, under the law, underwrite the utility's business or guarantee the unfailing source of its supply. The public's obligation is not to take the utility's property without compensation. It does not take what it left when the utility quits business—it should pay the difference between the value put in and the junk value. This is a very simple proposition where the property is purely a purchase and transportation one, and the physical value of the property has a well established percentage or basis of depreciation in use. This was found by the Commission on evidence furnished by the receiver himself at twenty years, based on this percentage of depreciation.

It is a self-evident proposition that it is the same thing to charge the consumer with one-fifth of the cost of an extension each year that it is to put in the extension and depreciate it as

to the extent of its full value in five years. But this does not prove the correctness of the principle involved. It amounts to allowing the company to construct improvements out of surplus and then not only receive income on surplus, but amortize the surplus at the same time.

We insist that amortization for the purpose of returning the investment to the utility owned should be based upon physical value and the probable life of the plant used for the purposes for which it was designed. We insist that obsolescence, or the displacement of property because of inventions or changes in the general science of the business, is a different proposition from applying the same doctrine where the source of supply of the utility fails, or where the person constructing the utility has made a bad business venture and asks the public to take the burden off his shoulders by underwriting the proposition. The right of the utility owner to receive back the capital invested means nothing more than his right to receive the physical property depreciated by the use which the public has made of it, and it should never include the speculative value of a mining proposition such as gas or oil fields. This the court itself finds is unknowable and can only be the result of conjecture, if included within the value which is to be amortized by the application of returns from the property.

Of course it will be noticed that requiring the amortization of the property within a certain assumed time amounts to the same thing as selling the property to the consumer and compelling him to pay for it as an entirety during the assumed life of the plant. The enlarged court found as to the life of the property as follows:

"The life of the company as a going concern is necessarily unknown and unknowable, a matter of opinion, and yet the court must determine what it probably is, and a consideration of the evidence and the history of the gas fields in Kansas and Oklahoma, and the testimony of witnesses familiar with that history, with the fields and with production, purchase, transportation and sale of gas, has brought the minds of all the members of the court to the conclusion that the probable life of the Natural Gas Company as a going concern is approximately six years from this date, June 3, 1916."

It surely will be conceded that equitable remedies should not be based upon mere conjecture or opinion. If the case of complainant is not susceptible of any other proof than conjecture, it is his misfortune and not the misfortune of the defendants or of the public, and it is intolerable that a court of equity should be employed for the purpose of compelling the public to stand and deliver at the demands of someone who has undertaken an impossible and improbable business transaction. Why should such an investor be put so much above his patrons in the consideration of rates?

Whatever a Commission or legislative body might do in the premises is one thing, but certainly a court of equity can not, under the guise of determining the reasonableness of a rate or its compensatory character, act at all unless compelled to do so by the clearest and most satisfactory evidence. On the proposition of the use of surplus for investment in betterments and payment of returns thereon we call attention of the court to the review of that subject by Mr. Whitten in his work on Valuation, sec. 204, where he says:

"In certain cases it has been asserted that the public utility should, in addition to a fair rate of return, be allowed to accumulate sufficient surplus earnings to construct needed betterments. This is primarily a question of rate of return and not of valuation, but it necessarily leads to the question of whether if this is done the investors are entitled to a return on the value of betterments thus constructed. This would be clearly absurd."

Then follows a review of the holdings of the Interstate Commerce Commission and the supreme court of the United States in cases already cited. Mr. Whitten also quotes from the opinion *In re Queensborough Gas and Electric Company*, 2 P. S. C., 1st D. (N. Y.), in which the opinion of the Commission was written by Commissioner Maltbie, as follows:

"Furthermore, it is not reasonable to require consumers to pay higher rates than they otherwise would be required to pay in order that these higher rates may provide funds from which to construct additional plant, which becomes the property of the company. Such plant and property is ordinarily paid for out of capital, but whether this course is followed, or the stockholders voluntarily relinquish a share of their dividends in



order to increase the value of their property, has no relation to this case. Suffice it to say that the consumer should not be required to pay higher rates and thereby make a donation to the company or to its stockholders."

The case of *Fall River Gas Works v. Board of Gas and Electric Light Commissioners*, 214 Mass. 529, was a case where the court reviewed the action of the state board in refusing permission to the company to issue additional stock for betterments or extensions. The action of the board was reversed, the court saying, in part:

"It is the duty of the public service corporation to have its plant large enough to perform the service for which it was established, and it has a corresponding right to have such plant fairly capitalized. It is its duty to keep up the plant, whether by repairs or otherwise, out of its earnings, and this duty is superior to its right to distribute its earnings in dividends. If the time comes when the plant of the corporation is insufficient for the performance of its corporate duties to the public, then it is subject to the same duty and is invested with the same right with reference to the additional plant as in the case of the original plant—the duty to increase the plant and the right to capitalize fairly the value of that increase."

The effect of this holding was that the company could not be compelled to apply surplus earnings to betterments, and, indeed, that such action of the company would be illegal, for it would mean the collection of larger amounts from the public than would be necessary to pay a reasonable return upon the property.

We quote also section 401 from Mr. Whitten, entitled, "Uniform Investment Cost Method of Adjusting Depreciation":

"In even closer conformity to the theory of rate regulation, depreciation may be treated as the adjustment necessary to secure a uniform annual investment cost. By this is meant that the annual charge for interest and profits and for the repairs, renewals and replacements necessary to keep the property in good working order shall be uniform. It is of course much easier to state this principle than to apply it. It seems, upon the whole, the most plausible theory, yet only fragmentary suggestions can be offered as to its application. It will make use in part of the straight-line method and in part of the sinking-

fund method, and will add to these the additional factor of a direct amortization of capital.

"The determination of annual depreciation requirements is largely a matter of cost accounting. The supply of a public service must be considered a continuous process. The problem is to so arrange the depreciation allowance that the investment will be carried and kept intact at a uniform annual cost. The annual investment cost includes not only interest and profits, but also the repairs, renewals and replacements necessary to keep the property permanently in good working condition. If this allowance is adequate, the rights of the investor are safeguarded. If this allowance is determined in the most economical way, the rights of the consumer are safeguarded. A fact of prime importance in the consideration of this question in connection with a public utility is that the real permanent investment must be something less than the cost new. After a start with all new structures and equipment there will never be a return to this condition except in the case of extraordinary total supersession. Total plant supersession should be treated as a hazard rather than a cost (see sec. 452). As the permanent investment must be less than the original investment, it is possible to reduce the permanent annual charge for interest and profits by amortizing a part of the original investment. It is possible to do this with justice to the consumers of the earlier period, because in that period the expenditures for repairs, renewals and replacements are less than will be the later permanent average expenditures for this purpose. Moreover, in view of the fact that such expenditures are ultimately *permanently* greater than during the first period, there must be some *permanent* reduction in the annual charge for interest and profits, as otherwise the total annual investment cost will not be uniform, but will increase. Other conditions remaining the same, this will require an increase in the rates of charge. This would be unfair to the consumers of this period, as they are equitably entitled to the same investment cost and the same relative rate of charge as the consumers of the earlier period.

.....

"Under the uniform annual investment cost method the existing depreciation is the amount of the original investment that has been amortized as a necessary result of the actual or theoretical application of this method from the initiation of the enterprise."

Section 452, referred to in the above text, is as follows:

*"Extraordinary functional depreciation.* But there may be extraordinary supersession for which in particular cases there may have been no opportunity to provide by means of an accumulated reserve. A new invention may so revolutionize methods of production as to require the scrapping of practically the entire plant. This is a possibility that, while recognized, is not provided for by means of a reserve for the amortization of existing capital. The difficulty is that this complete plant supersession may come in five years or in fifty years, or perchance not at all. There is no more telling when it will come than when fire will destroy a particular building. The hazard of complete supersession is greater for some enterprises than for others, just as the fire hazard is greater for some buildings than for others. It is as difficult for a public utility plant to provide against this sort of supersession as it would be for the owner of a single building to carry his own insurance. There are no supersession insurance companies, and there is no probability that they will or could be developed. However, if there were such companies the annual premiums for supersession insurance could be charged to operating expense in the same way that fire insurance premiums are now charged. This would take care of the supersession hazard. As it cannot be thus shifted, it must be borne directly either by the investor or by the consumer. Ultimately, in any case, it must be borne by the consumer, as the investor will not assume the risk unless he has a consideration in the shape of the possibility of higher rate of return.

"In manufacturing and other competitive enterprises it is the investor that assumes the supersession hazard, and he accordingly obtains a higher normal rate of profit than would prevail were it not for this hazard. The consumer, of course, in the long run, pays for all supersession, as it is a necessary part of the cost of manufacture or service. *Unless a different arrangement has been agreed upon in advance, it is natural to assume that the investor in a public utility plant has assumed the supersession hazard, and is entitled to a correspondingly higher rate of return. This higher rate of return accordingly will be based on the present unimpaired investment and not on investment in superseded property.* In competitive business a manufacturer must adopt the newer and cheaper methods,

even to a complete scrapping of his plant, or have his business taken from him by his more progressive competitors. A municipal monopoly, however, is not subjected to the same pressure—and may sometimes be very backward in applying the scrapping process.

"The hazard from extraordinary supersession is real, but for public service industries not so enormous as it is sometimes pictured. There was a time when it was predicted that gas would be entirely superseded by electricity. The steam railroad at present is confronted with the possibility of electrification, but this will doubtless come about gradually, and will mean the addition of new investment rather than the scrapping of any very large proportion of the existing property."

See, also, the comments of Mr. Whitten, in section 424, on the opinion of this court in *Louisiana Railroad Commission v. Cumberland Telephone and Telegraph Company*, 212 U. S. 414. The learned author, in commenting on this case (p. 363), adds:

"This case is not very clear. It seems to point to a treatment of the depreciation reserve as belonging equitably to the business and not subject to diversion in any way to the stockholders in case it is not needed for the purpose for which it was established. *If invested in improvements or extensions it serves in effect to amortize a portion of the fair value for rate purposes.*"

It seems clear that the defendant state Commission in its opinion accepted a view somewhat similar to that expressed by Mr. Whitten in his last sentence, that the Commission allowed the company a very liberal depreciation, \$590,000 per year. The property was already amortized from its original cost of twelve million dollars to a little less than three and one-half million; that is to say, the revenues of the company had been applied to the discharge of its original indebtedness, which belonged to the plant, until only the above amount remained unpaid. The Commission, in effect, said:

We give you this \$559,000 for depreciation (see Table 5), which you can apply on your indebtedness or invest in extensions, as may seem expedient to you. If invested in extensions, and the extensions do not result in an improved supply of gas and a consequent increase in the value of your property, the loss will be yours. Or, if you do not choose to do this, you can

continue with your present supply of gas, the Commission having no authority to compel extensions beyond the state line, and the adjustment of rates for the future will be a matter of after consideration.

The result of this reasoning would have been to have entirely returned the value of the property in about six years, leaving a fair return in the meantime to the investors and the scrap value of the property for the stockholders.

In this matter the Commission may have been guided to some extent by the terms of the so-called "Creditors' Agreement"—a matter not to be overlooked by this court in considering constitutional grounds for setting aside its order. (Rec. 1010, par. 5.) This Creditors' Agreement, when the suit was converted from a regulatory proceeding prosecuted by the state to one in which the rights of the creditors were also to be preserved, and in a measure put above the rights of the public, provided, in plain terms, that the creditors should set aside for the purpose of making these improvements the sum of \$500,000 for the first year and \$200,000 thereafter. The plain intent of this provision was that the creditors should wait for that much of their money, which meant that the annual depreciation which could be applied to the payment of former indebtedness should be used in building extensions. It was self-evident that the return should not be increased above a reasonable return upon the value of the property employed.

On these questions of the building of extensions and betterments from surplus and the resultant depreciation in property due to its failure to carry out its franchise obligations, see the case of *San Diego Land and T. Co. v. Jasper*, 189 U. S. 439. This case involved the status of a water company whose supply had failed, and the consequent valuation of the property for rate-making purposes. The court, speaking by Mr. Justice Holmes, *l. c.* 447, said:

"It hardly can have meant that a system constructed for 6,000 acres should have a full return upon its value from 500, if those were all that it supplied. At all events, we will not be the first to say so. If necessary to avoid that result, we should assume that only a proportionate part of the system was actually used and useful within the meaning of the statute. Upon the whole case we are unable to say that the circuit court should have declared the rates confiscatory. They are the rates which

are fixed by the original company at the start, with prophecies, which the purchasers who believed them think amounted to a contract that they never would be higher. If the original company embarked upon a great speculation which has not turned out as expected, more modest valuations are a result to which it must make up its mind."

Reeder, in his *Validity of Rate Regulations*, section 173, says:

"The cost of maintenance embraces whatever current expenditures are necessary in order to maintain the total value of the property unimpaired; but it does not embrace expenditures which increase the value of that property. It does not seem necessary that the money should be spent only for renewals. If, for instance, upon a new railroad a sum equivalent to the depreciation in property which does not yet require renewal were spent for betterments or extensions, such an expenditure which simply maintained the total value of the property at the original amount should, it seems, be considered legitimate expense of maintenance, although in the case of an older railroad where necessary renewals called for the full amount of the depreciation fund an expenditure for betterments, even though required by the increasing demands for transportation, could not properly be considered an expense for maintenance. So also it seems that the company must be allowed to replace from operating expenditures whatever losses are caused by obsolescence as well as those which are caused by wear and tear or decay. Whatever maintains the total value of the property should be regarded as legitimate expense of maintenance; whatever increases that value should be accounted for under another head."

Wyman on *Public Service Corporations*, in section 1164, says:

"The rule will be generally conceded that outright new construction should be charged to capital and should not therefore be admitted as an annual expense of operation. As Mr. Justice Carter of the Florida court recently put it, in a case where the railroad in complaining of the rates put in force by a commission alleged that its total receipts would not now be sufficient to recoup it for its 'costs of operation' and its 'cost of construction': 'The use of the words "reasonable cost of constructing"

renders the pleading very ambiguous. The reasonable cost of construction is to be considered in determining the fair value of the company's property, which is an element entering into the question of reasonableness of the rate; but the cost of construction is not to be deducted from the earnings under the proposed rates in ascertaining if those rates are reasonable; for under such a rule the public would be compelled to pay for constructing the road without being entitled to its ownership.' So in estimating the net profits of a gas company it was held that operating expenses would not include 'expenditures for new wells, mains, or other permanent improvements or betterments.' "

In the case of *Erie v. Gas Co.*, 78 Kan. 348, referred to in the text just quoted, the Union Pacific cases already referred to are reviewed, and it is held, as quoted in the above text, that "operating expenses will not include expenditures for new wells, mains, or other permanent improvements, nor the cost of supplying gas and making other sales in the profits of which the city does not share."

The supreme court of the United States has also emphatically placed its condemnation upon the proposition of constructing improvements and extensions from service and then proceeding to amortize or charge returns upon such investments. See *Railroad Commission v. Cumberland Telephone & Telegraph Co.*, 212 U. S. 414. The court says, *l. c.* 424:

"It was obligatory upon the complainant to show that no part of the money raised to pay for depreciation was added to capital, upon which a return was to be made to stockholders in the way of dividends for the future. It cannot be left to conjecture, but the burden rests with the complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and so to use it, or any part of it, as to permit the company to add it to its capital account, upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders. That it was right to raise more money to pay for depreciation than was actually



disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might accumulate; but to raise more than money enough for the purpose, and place the balance to the credit of capital upon which to pay dividends, cannot be proper treatment. The court below said it was impossible to find out from the books how much of this had been done, and it treated the fact as one to be explained by the Commission, and not by the complainant. In other words, while this fact was a material one, the onus was placed upon the Commission, and not the complainant, to show it. We think, on the contrary, that the obligation was upon the complainant. Now, although the books, it is said, do not show how much money collected for depreciation has been, in fact, used to increase the capital of the complainant, upon which dividends were paid to stockholders, yet still, even if the books do not show accurately, or even at all, what disposition was made of these moneys, at any rate the officers of the complainant must be able to make up some reasonable approximation of the amount, even if it be impossible to state it with entire accuracy; and this duty rests with the complainant, in order that it may discharge the duty devolving upon it to prove that the rates were not unreasonably high under order No. 488, or, in other words, that they were unreasonably low under order No. 552. It may be that the sum, if any, thus used, was not enough to affect the claim that the rates under discussion were unreasonably low. The evidence is insufficient to show clearly that which complainant is under obligations to show. *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, ante, 371, 29 Sup. Ct. Rep. 148; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, ante, 382, 29 Sup. Ct. Rep. 192. We are not considering a case where there are surplus earnings after providing for a depreciation fund, and the surplus is invested in extensions and additions."

Not very much doubt remains as to the result of the court's opinion when it comes to consider the case mentioned in the last sentence, if it shall be shown distinctly that surplus has been invested in improvements and extensions.

From the foregoing authorities we think the following principles may be assumed as correct:

(a) That the annual depreciation allowed as a maintenance

charge should be fixed and stable, extending over the entire life of the physical property as nearly as is practicable.

(b) That what is added to the permanent value of the property should not be charged as maintenance in a single year, but should be included, in so far as it is a legitimate charge, in the depreciation for the entire useful life of the plant.

(c) That depreciation should be based upon the physical value of the plant and should not attempt to amortize franchise values, good will, or any other intangible value attached to the business.

(d) That in addition to a fair annual return upon the investment, the investor is entitled to receive during the physical life of his plant a return of the value of his investment, and that this return should be made to him as stated in proposition (a), as nearly as possible upon an equable annual allowance.

(e) The depreciation allowed should be the difference between the value of the property put into the business and its value when the business ceases, allowing meantime reasonable amounts for maintenance, this difference, of course, to be apportioned annually as a part of operating expenses.

Applying these principles and comparing them with the principles applied by the trial court in determining the life of the business as distinguished from the life of the physical plant upon a mere arbitrary basis, we come to the final difference between the conclusions reached by the trial court and the Commission. These differences can readily be seen by comparing the Commission's Table 5 with the conclusions of the court as stated in his opinion. The Commission found the reasonable life of the physical plant to be twenty years. It found its salvage value at the end of twenty years. In a desire to be more than fair with the receiver the Commission did not subtract salvage value from the total investment, but did return to the company the full value of the physical plant during the twenty years. The result of this was to allow the company an annual depreciation of \$549,000. If a part of this, as was suggested in the Creditors' Agreement, was to be reinvested by the company in extensions, then a new capital account was created and the usual depreciation would have been applied. The results of that, under Table 5, would have been correct under the assumption that new investments would be made.

If no new investments were made, the five percent depreciation still would have obtained the correct result. Assuming that the gas company would have supplied the same amount of gas that it had in the past, the return would have been 10.46 percent in addition to returning the property to its owners.

We may observe in passing that the junk value of any new improvement or extension built by the receiver would have been far from negligible. The experience of all public utilities in the last two years has been that second-hand material has been worth far more in the market than reasonable estimates made in the past would have placed upon it. It has taken heroic action on the part of courts and commissions all over the country to prevent the tearing up of pipe lines, railroads, and other utility properties—to prevent their being junked—for the mere profit realized in the salvage value of the materials employed.

It will be said that this is the result of war values, but no one can prophesy concerning the period of the duration of the war, nor as to values in the years immediately succeeding the declaration of peace. No one now can have a sound or clear judgment concerning the basis of prices that will prevail in the country in new industrial conditions that will come in the next ten years. The only thing that is certain is that the lower basis of prices which obtained in the last decade will not be met with again during the present generation, and that therefore a value fixed upon a reasonable trend of prices for a period of years in the past will be more than fair to the company when applied to salvage.

Carrying out our comparison, however, let us examine the method adopted by the trial court. Under the term of "requirements of the company for operating expenses" large amounts were allowed for extensions, and it was found as a basis for the order of temporary injunction that more than a million dollars had been paid to the creditors, which, in equity, should have been invested in extensions for the purpose of securing a gas supply. It was ordered, therefore, that one-half million dollars be immediately invested in extensions and charged to operating expenses of the company. Just why the fact that the creditors had received a million dollars to which they were not entitled was a reason that the consumers should be called upon to contribute an extra half million dollars in the next en-

suing year is not perceived. Moreover, in addition to this, the consumer was called upon to contribute \$200,000 annually on the assumption that such extensions might be needed for a period of about five years, or for eternity, for that matter, if the gas could be found, for it was placed and estimated to be as an annual charge upon the property.

Now for the result. The receiver attempted an expenditure of the \$500,000. Before \$250,000 had been invested, or rather used in the purchase of pipe for intended extensions, the receiver's plans, like all "the plans o' mice and men ganged agley." No extensions were made, no more gas was procured, and yet the consumer paid the increased cost based upon a proposed capital investment of the company. There is not the least assurance that the company will ever make an extension or ever secure a better supply of gas than it now has. It would seem, therefor, that the conclusion of the Commission was as nearly correct as could be expected, that instead of being confiscatory and unconstitutional it was the only course that would at all protect the consumer.

As is repeatedly stated in the opinion of the court, the Commission had no power to enforce the building of these extensions, and it follows that if it had allowed for them without compelling the expenditure of the money according to the estimate, that it would have been not only gambling with the consumers' money, but would have placed it where the creditors of the company, under the Creditors' Agreement, could do as they had done in the year next preceding the order—pocketed another million dollars upon which the consumers had the first rightful claim.

#### **The value of gas at the wells.**

The appellants called the attention of the trial court to the fact that there was no evidence in the record that any company was selling gas as high as six cents at the wells, and we respectfully call the attention of this court to the same fact.

The Commission based its findings of four cents as a reasonable amount to pay for this gas, upon the past history of the field. The receiver contends that he will be compelled to pay a much higher price for gas than that, and in his supplemental bill of complaint contends that he will have to pay seven cents.

The Commission's investigation shows that most of the gas purchased by the Kansas Natural cost him three cents. It is true that the receiver is paying six cents for large quantities of gas. This gas he buys from Mr. Braden, who is one of the stockholders of the Kansas Natural Gas Company. (Rec. 1101.) That amount is being paid for no other large quantities of gas by the Kansas Natural, and the testimony here shows that there is any quantity of gas for sale within reach of the Kansas Natural's line at from 2½ to 3 cents a thousand cubic feet at the wells.

It is also to be noticed that this gas that is bought of Mr. Braden is piped from the wells by Mr. Braden's company to the lines of the Kansas Natural. (Rec. 1089-1094.) In its allowance the Commission set aside a fairly good sum to transport this gas from the wells to the Kansas Natural's pipe lines. If the Kansas Natural could receive all the gas it needed for six cents and have it delivered from the wells to its present pipe line the rate fixed by the Commission would still be adequate, because it would have no field expense in gathering this gas and no expense for the extension of its lines. It is not controlling that the Kansas Natural is buying gas from one of its stockholders for six cents when the general price at the wells in the fields is far below that amount.

The undisputed testimony is that for the year ended June 30, 1916, the Wichita Natural Gas Company had paid approximately four cents for its gas. The testimony of Bartlett was that gas was three and one-half to four cents at the wells (rec. 1096-1101), and the specific testimony of York was that even in the vicinity of the Kansas Natural's line the average price of gas at the wells was from three to three and one-half cents. There has been no testimony introduced in this case to show that allowance was not adequate. We call attention of the court, however, to the fact that Mr. Doherty and Mr. York (rec. 1101), as well as all other witnesses who testified in the case at the last hearing, testified that the average price for gas at the well was three cents. The Commission allowed a reasonable sum for the transporting of gas from the wells to its trunk line. Of course, this does not include the gas on Osage leases. The amount delivered, however, to the Kansas Natural from there is small and does not bring up the general average to an important extent. The court should keep in

mind that the question is not, what will the future price of gas be (rec. 1096-1101), but what is the price at the present time, in considering whether the rate prescribed by the Commission is confiscatory.

The supreme court of the United States, in the case of *Newark Natural Gas & Fuel Company v. Newark*, 37 Sup. Ct. Rep. 156, considered a question somewhat analogous to the one presented here. In that case the local distributing company of natural gas was required by an ordinance of the city of Newark to establish a rate for five years, and the city brought an action to compel them to put in the rate. The company answered that they were a distributing company and that the gas was supplied to them by a pipe-line company and that the gas fields were becoming depleted and that the city had not taken into consideration the production property in fixing the rate, and further contending that they had a contract with the pipe line for only two years, whereas the ordinance required them to establish the rate for five years. But the court sustained the city ordinance and required the establishment of the rate. The second paragraph of the syllabus reads as follows:

"The property of a gas-distributing company cannot be said to have been taken without due process of law, contrary to U. S. Const. 14th Amend., by a decree which enforced, without prejudice, to the right to apply thereafter for a modification, a municipal ordinance fixing gas rates for five years, where there was no claim that the company could not operate profitably under such ordinance so long as its contract with a producing gas company, under which the latter was to furnish gas to the former upon the basis of a percentage of meter readings which had two or three years to run when the suit was commenced, remained in force, and no evidence was offered to show the rate paid by the distributing to the producing company after the expiration of such contract."

#### Supply of gas—Administrative, not judicial.

While it appears from the pleadings that whether the 28-cent rate is confiscatory is in the case for the service now being furnished, it is manifest that the relief demanded and expected by the complainant is something that would relieve it from performing the service it was bound to perform under its charter agreements. It is admitted by the gas companies that

they are not performing their franchise duties, and they should not be heard to say that the service which they perform at the rates prescribed by the public administrative body, somewhat higher than those prescribed by said franchises, are noncompensatory.

Failure to perform franchise duties cannot be excused on the ground of poverty. Especially is this true where it appears that were the service performed the rate would undoubtedly prove sufficient. In the case of *People v. McCall* (New York App.), 113 N. E. 795, was one where a gas company had been ordered to build an extension into a certain part of the city covered by its franchise, and it was contended that the building of the extension would result in pecuniary loss to the company in the matter of returns. But the order of the Commission was sustained, the court saying (page 797) :

"In Douglaston and the neighboring territory in the Third ward of the borough of Queens covered by the relator's franchise, there are some 332 houses. The occupants of these houses can get no gas unless they are supplied by the relator. It is the duty of the relator to supply their needs if practicable. *Wisconsin, M. & P. R. R. v. Jacobson*, 179 U. S. 287, 21 Sup. Ct. 115, 45 L. Ed. 194; *People, ex rel. Woodhaven Gas Light Co., v. Deehan*, 153 N. Y. 528, 47 N. E. 787. The cost of the extension is not the only matter for consideration. *Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510, 529, 32 Sup. Ct. 535, 56 L. Ed. 863."

Now, Mr. Doherty said, and in this he was confirmed by every expert who testified, including Mr. Guthrie of the Olathe Gas Company, that the only solution of the problem presented was either that certain territory which was now being served under these franchises be cut off from a supply of gas, or else that such rate be fixed as would result in the use of gas only for cooking and lighting purposes. We fail to see the difference in compelling a gas company to supply certain territory covered by its franchise and permitting it to abandon territory already supplied for the purpose of increasing the net return of the company. In either case the permissive order is administrative and not judicial.

It is admitted that if the supply of gas were adequate the rate would be adequate. It is therefore impossible for this



court to say, from the evidence, that the operation of the 28-cent rate, aside from its voluntary features, would unlawfully take the property of the receiver. This is also an elementary proposition and lies at the very basis of the jurisdiction of this court to grant relief in equity. A very clear defense of this proposition of law is found in a speech delivered by Senator Chester I. Long in the United States senate May 11, 1906, on the Hepburn bill, pointing out the evil effects which would flow from the court entering the realm of administration to review the orders of commissions for any other purpose than that of deciding upon the constitutionality and reasonableness of regulations prescribed. Lack of space prevents a lengthy quotation, but among other things the senator said:

"My amendment did nothing more than to make clear in words the limitation that the supreme court of the United States has prescribed for itself in the consideration and determination of these questions."

Quoting from the *San Diego Land Company Case*, 174 U. S. 754, Senator Long further said:

"The only issue properly to be determined by final decree in this cause is whether the ordinance in question fixing rates for water supplied for use within the city, is to be stricken down as *confiscatory by its necessary operation*, and therefore in violation of the constitution of the United States."

In the case of *Missouri Pacific Ry. Co. v. Kansas*, 216 U. S. 266, the court, speaking by Mr. Justice White, said:

"The difference between the exertion of the legislative power to establish rates in such a manner as to confiscate the property of the corporation by fixing them below a proper remunerative standard and an order compelling the corporation to render a service which it was essentially its duty to perform was pointed out in *Atlantic Coast Line R. Co. v. North Carolina Corp. Com.*, 206 U. S. 1. In that case the order to operate a train for the purpose of making a local connection necessary for the public convenience was upheld despite the fact that it was conceded that the return from the operation of such train would not be remunerative."

Speaking of the distinction between the two, it was said (page 26) :

"This is so (the distinction) because, as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so, as an incident, some pecuniary loss from rendering such service may result. It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not, in and of itself, *necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole system of rates was unreasonable under the doctrine of Smyth v. Ames, 169 U. S. 526, 42 L. Ed. 842, 18 Sup. Ct. Rep. 418.*"

It is admitted that the whole scheme of rates is not confiscatory, for the receiver is charging less than the amount allowed on twenty percent of the product; on another one-fifth to one-fourth the rate is higher than the contract rates.

Again the court said:

"But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, other considerations are, in the nature of things, paramount, since it cannot be said that an order compelling the performance of such a duty at a pecuniary loss is unreasonable."

The necessary conclusion from this law is that a utility should not be heard to plead confiscation where it is admitted that the service being furnished is inadequate. This doctrine has been carried to the extent of taking all, or practically all, of the property of the utility. The corporation can be relieved from its public duty only by legislative authority, or in some cases, by executive consent, such as a suit by the attorney-general to wind up the affairs of the company. In other words, when the corporation has provided the service provided for by its charter it may then plead that the rates prescribed by the legislature are confiscatory, but until that is done there is no equity in its case and there is no way to tell whether, if the duty were performed, the remuneration provided by the legal rates would be compensatory. The order of the Public Utilities Commission is, under the law, presumed to be reasonable

and compensatory. At the risk of repetition we again call attention of the court to the rule announced by the supreme court of the United States in the *Knoxville v. Knoxville Water Co.* case, 212 U. S. 16, 17:

"To this it may be answered, in the first place, that no injunction ought to be granted unless in a case reasonably free from doubt. We think such rule is, and will be, followed by all the judges of the federal courts. The same thought, in effect, was expressed in *San Diego Land & Town Co. v. National City*, 174 U. S. 739, 754, 43 L. Ed. 1154, 1160, 19 Sup. Ct. Rep. 804, 810: 'Judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights of property under the guise of regulations as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.' And in *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 47 L. Ed. 892, 23 Sup. Ct. Rep. 571, after repeating with approval this language, it was said (p. 441): 'In a case like this we do not feel bound to reëxamine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough if we cannot say that it was impossible for a fair-minded board to come to the result which was reached.'

"We cannot know clearly that the revenue would not much exceed that return. We do not feel called upon to determine whether a demonstrated reduction of income to that point would or would not amount to confiscation. Where the case rests, as it does here, not upon observation of the actual operation under the ordinance, but upon speculations as to its effect, based upon the operations of a prior fiscal year, we will not guess whether the substantial return certain to be earned would lack something of the return which would save the effect of the ordinance from confiscation. It is enough that the whole case leaves us in grave doubt."

Again, equity is not bound by the mere form of pleadings or the letter of plaintiff's demand for relief. It should look beyond the mere forms of the pleadings to discern the plaintiff's real intentions in bringing the suit and the ends sought

to be attained by it. If underneath all of this there is an evident intention which is inequitable and which seeks to set aside the plain provisions of the law and accomplish a result legislative in character rather than judicial, and one which the plaintiff is in law and good conscience bound to seek from a legislative tribunal, equity should not give relief, and in reality has no jurisdiction to do so. In *Jencks v. Quibnick Co.*, 105 U. S. 477, the court, speaking by Mr. Justice Brewer, said:

"The court is not bound to shut its eyes to the evident character of the transaction. It will never lend its aid to carry out an unconscionable bargain, but to leave the party to his remedy at law.

"Where a purchase is one simply to speculate upon the chances of successfully attacking transfers of large property made for the benefit of creditors and to deprive them of the benefits of such transfers, equity refuses to be bound by the letter of legal procedure or to lend its aid to such mere speculative purchase which threatens injury and ruin to honest creditors who have trusted for the payment of their debts to the legal validity of proceedings theretofore taken.

"Where there is a scheme for great personal gain at the expense of equally deserving creditors, coupled with long delay, equity will refuse to lend its aid to the accomplishment thereof."

The general equitable doctrine of this case is applicable to the instant cause. The relief sought is not a mere striking down of the 28-cent rate, but a readjustment of the administration of the property which will breathe vitality into stock which was dead timber under the original organization of the corporation and to keep it alive for mere speculative purposes in the interest of a purchaser who acquired that stock during the legal difficulties of the company and now expects to profit by such speculative adventures at the expense of the patrons of the company. These patrons have paid enough for an inefficient service to guarantee every creditor in money and to replace every dollar which has been placed in the property, but still the speculators demand, in angry arrogance, that a rate be fixed by some tribunal which will guarantee them un-

reasonable profits in future speculation. The receiver has come to represent virtually these speculators, no longer the public, and the creditors, being secure, have apparently lost interest. A decree is desired to relieve the company of its corporate duties so that the investing public may be imposed upon by what appear to be high rates, or if such speculative scheme shall fail and the property be wrecked, during the wrecking process, money may be put into the pockets of the pillagers who loot the wreckage.

### CONCLUSION.

It is unnecessary to comment on the results shown by Table 5 of the Commission as compared with the conclusions of the court, if the propositions we have discussed as errors of the court are determined in favor of our contentions. In that event Table 5 shows the correct results of the order made by the Commission and shows that the allowances made to the gas company were liberal indeed.

On the other hand, if the theory of fixing the life of the property according to the probable life of the field be adopted, then, as suggested in the Goldsborough case, the same theory should apply throughout the entire life of the property. If the property, as the trial court finds, has still five years to live, its natural death would occur in 1922, or in sixteen years after its origin in 1906. Then the value of the property should be amortized on the basis of sixteen years, eleven years of which had transpired at the time of the trial of the case. The result would be that nearly three-fourths of the property has, or should have been, taken care of by the annual depreciation, for depreciation which the company fails to provide for cannot be taken account of to its credit. The value of the entire twelve-million-dollar property would now be three million dollars, less than a million and a half of which could be assigned to Kansas as a basis of fair value for rate making. It goes without saying that the figures given in Table 5 for operating expenses and revenues, when applied to this valuation, would show a handsome return.

The questions discussed, therefore, as to the correctness of the court's opinion are essentially questions of law, and these, with the questions of interstate commerce and that of whether there was equity in plaintiff's bill, must settle the controversy.

The question of a supply of gas and the best manner in which the rate at different places should be applied to produce the most revenue for the company are essentially questions of administration, and not legal questions, and certainly this court will not assume to set aside the order of the Commission because of the difference of opinion, if one should exist, as to these matters.

Upon the whole we submit that the complainant has failed to show such a case as warrants the interference of a court of equity in his behalf.      Respectfully submitted.

FRED S. JACKSON.

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Utilities Commission for the State of  
Kansas et al.*

## APPENDIX A.

### PUBLIC UTILITIES COMMISSION LAW.

**Creation and General Powers.** The Board of Railroad Commissioners of the state of Kansas is hereby constituted and created a Public Utilities Commission for the state of Kansas, and such commission is given full power, authority and jurisdiction to supervise and control the public utilities and all common carriers, as hereinafter defined, doing business in the state of Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. (Sec. 8327, G. S. 1915; sec. 1, ch. 238, Laws 1911.)

For laws relating to Board of Railroad Commissioners, see secs. 8389-8452, G. S. 1915.

Power to supervise and control utilities described in section 3. The State, *ex rel.*, v. Gas Co., 88 K. 165; City of Emporia v. Telephone Co., 90 K. 118.

Section 3 contains only exception to unlimited control by commission. The State, *ex rel.*, v. Water Co., 92 K. 227.

Water company held subject to control of Public Utilities Commission. The State, *ex rel.*, v. Water Co., 92 K. 227.

Mere enactment of act did not abrogate telephone agreements, etc. Kaul v. Telephone Co., 95 K. 1.

Power to regulate and control location of telegraph stations. The State, *ex rel.*, v. Postal Telegraph Co., 96 K. 298.

Power necessary to exercise of specific powers is likewise conferred. The State, *ex rel.*, v. Postal Telegraph Co., 96 K. 304.

**Powers of Railroad Board Conferred.** All laws relating to the powers, duties, authority and jurisdiction of the Board of Railroad Commissioners of this state are hereby adopted, and all powers, duties, authority and jurisdiction by said laws imposed and conferred upon the said Board of Railroad Commissioners, relating to common carriers, are hereby imposed and conferred upon the commission created under the provisions of this act. (Sec. 8328, G. S. 1915; sec. 2, ch. 238, Laws 1911.)

For laws relating to Board of Railroad Commissioners, see secs. 8389-8452, G. S. 1915.

Unauthorized corporate acts challenged by attorney for Public Utilities Commission. Telephone Co. v. Telephone Association, 94 K. 163.

Powers, duties, etc., of railroad commissioners conferred upon Utilities Commission. The State, *ex rel.*, v. Postal Telegraph Co., 96 K. 298.

Section virtually extends power over railroads to all public utilities. The State, *ex rel.*, v. Postal Telegraph Co., 96 K. 304.

**Definitions.** The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant, generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipe lines in or through any part of the state, except pipe lines less than fifteen miles in length and not operated in connection with or for general commercial supply of gas or oil, or for the operation of any trolley lines, street, electrical or motor railway doing busi-



ness in any county in the state; also all dining car companies doing business within the state, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power; provided, that this act shall not refer to or include mutual telephone companies. That mutual telephone companies, for the purposes of this act, shall be understood to mean any cooperative telephone company operating only for the mutual benefit of its subscribers without profit other than in the service received. Nothing in this act shall apply to any public utility in this state owned and operated by any municipality. The power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to said Public Utilities Commission as hereinafter provided in section 33 of this act. (Sec. 8329, G. S. 1915; sec. 3, ch. 238, Laws 1911.)

Meaning of term "public utility": physical equipment, etc., not included. *The State, ex rel., v. Gas Co.*, 88 K. 165.

Scope of jurisdiction: utility owning equipment in several cities. *The State, ex rel., v. Gas Co.*, 88 K. 165.

Telephone company held subject to control of Public Utilities Commission. *City of Emporia v. Telephone Co.*, 90 K. 119.

Water company held subject to control of Public Utilities Commission. *The State, ex rel., v. Water Co.*, 92 K. 227.

Exception not restricted to utilities municipally owned when act passed. *Humphrey v. City of Pratt*, 91 K. 413.

Mere enactment of act did not abrogate telephone agreements, etc. *Kaul v. Telephone Co.*, 95 K. 1.

Power to regulate and control location of telegraph stations. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 298.

Businesses operating business of public utility subject to Utilities Commission. *The State, ex rel., v. Flannelly*, 96 K. 372.

**Definition of "Common Carrier."** The term "common carriers," as used in this act, shall include all railroad companies, express companies, street railroads, suburban or interurban railroads, sleeping-car companies, freight-line companies, equipment companies, pipe-line companies and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state. (Sec. 8330, G. S. 1915; sec. 4, ch. 238, Laws 1911.)

Public utility defined. *The State, ex rel., v. Gas Co.*, 88 K. 165; 231 U. S. 622 (1914 L. Ed. 404).

Section legislative construction that railroads, street railroads, etc., distinctive organizations. *O'Malley v. Riley County*, 96 K. 757.

**Jurisdiction.**—The Public Utilities Commission for the State of Kansas has full power, authority and jurisdiction to supervise and control all public utilities described in section 3 of the act, with the exceptions therein specified, and a public utility which owns or operates a separate equipment, plant or machinery for any of the specified purposes in two or more cities is not within such exceptions. *The State, ex rel., v. Gas Co.*, 88 K. 165.

"A telephone company with one-fourth of its phones outside of the city and one-fifth of its value for taxation being outside of the city is within the provisions of this section." *City of Emporia v. Emporia Telephone Co.*, 90 K. 119.

"A waterworks company furnishing four-ninths of the total amount of its water to consumers outside of the city is within the provisions of this section." *State, ex rel., v. Water Co.*, 92 K. 227.

**Appointment and Construction of Board.** The present members of the Board of Railroad Commissioners, which board has been constituted and created by this act as a Public Utilities Commission, shall retain their respective offices for the terms for which they were elected and until their successors are appointed and qualified and shall receive no

additional salary as members of the Public Utilities Commission. Thereafter, the said Public Utilities Commission shall be composed of three commissioners who shall be appointed by the governor, by and with the advice and consent of the senate, one of whom shall be a practical, experienced business man, and one experienced in the management or operation of a common carrier or public utility. Of such three persons, one shall be appointed and designated to serve for a term of one year, one for a term of two years, and one for a term of three years, said term to begin upon the qualifications of the person appointed therefor. Upon the expiration of the terms of the three commissioners first to be appointed as aforesaid, each commissioner shall be appointed and shall hold his office for the term of three years, and until his successor shall have been qualified. In case of a vacancy in the office of the commission, the governor shall appoint his successor to fill the vacancy for the unexpired term. After the expiration of the present term of the present members of said commission, the salary of each commissioner shall be four thousand dollars per year; provided, that not more than two members of said Public Utility Commission shall be of the same political party. (Sec. 8331, G. S. 1915; sec. 5, ch. 238, Laws 1911.)

**The Secretary of the Commission.** The secretary for the Board of Railroad Commissioners shall hereafter be the secretary of the Public Utilities Commission, and his office shall hereafter be known as the office of the secretary of the Public Utilities Commission, and he shall receive the same salary as is now prescribed by law for the secretary of the Board of Railroad Commissioners, and he shall be appointed by the Public Utilities Commission in the manner and for the time as is now prescribed by law for the appointment of a secretary of the Board of Railroad Commissioners; and he shall have the powers and perform the duties now devolving upon the secretary of the Board of Railroad Commissioners. (Sec. 8332, G. S. 1915; sec. 6, ch. 238, Laws 1911.)

**The Attorney for the Commission.** The attorney for the Board of Railroad Commissioners shall hereafter be the attorney of the Public Utilities Commission, and his office shall hereafter be known as the office of the attorney of the Public Utilities Commission, and he shall receive a salary of twenty-five hundred dollars per year, and he shall be appointed by the commission for a term of two years, and he shall have the same powers and perform the duties now devolving upon the attorney for the Board of Railroad Commissioners; and he shall act as counsel for the Public Utilities Commission, and perform such other duties as shall be imposed on him by the Public Utilities Commission. He shall appoint a stenographer, who shall receive a salary of twelve hundred dollars per annum. (Sec. 8333, G. S. 1915; sec. 7, ch. 238, Laws 1911.)

**Qualifications and Powers of Commissioners and Officers.** No person owning any bonds, stocks or property in any railroad company or other common carrier or public utility, or who is in the employment of, or who is in any way or manner pecuniarily interested in, any railroad company or other common carrier or public utility, shall be eligible, except as hereinafter provided, to the office of commissioner, attorney or secretary of said commission, nor shall such commissioner, attorney or

secretary hold any office of profit or any position under any committee or any political party, or hold any other position of honor, profit or trust under or by virtue of any of the laws of the United States or of the state of Kansas. Said commissioners shall be qualified electors of the state, and shall not while such commissioners engage in any occupation or business inconsistent with their duties as such commissioners. And if any member of the commission, at the time of his appointment, shall own any bonds, stock or property in any railroad company or other common carrier or public utility, or is in the employment of, or is in any way or manner pecuniarily interested in any railroad company or any common carrier or public utility, such commissioner or other appointee shall within thirty days divest himself of such interest or employment, and upon his failing to do so he shall forfeit his office, and the governor shall remove such commissioner and shall appoint his successor, who shall hold until a successor is appointed and qualified. Each of said commissioners, attorney and secretary shall be sworn, before entering upon the discharge of the same, to faithfully perform the duties of the respective offices. Each of said commissioners shall enter into a bond, with security to be approved by the governor, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties. Said commissioners shall have the power to appoint one rate clerk, who shall be an expert, and who shall receive a salary of not to exceed five thousand dollars a year; one stenographer who shall receive a salary of one thousand dollars per year; one stenographer who shall receive a salary of nine hundred dollars per year; and two clerks, who shall receive a salary of nine hundred dollars per annum each; and said Public Utilities Commission is also authorized and empowered to employ subject to the approval of the governor, such other extra accountants, engineers, experts and special assistants as in its judgment may be necessary and proper to carry the provisions of this act into effect and fix their compensation; and such rate clerk, stenographers and clerks shall hold their office during the pleasure of said commission; provided, that no person related by blood or marriage to any member of such commission shall be employed or appointed to any place or position under the provisions of this act. (Sec. 8334, G. S. 1915; sec. 8, ch. 238, Laws 1911.)

**Powers of Commission.** The commission shall have power to adopt reasonable and proper rules and regulations to govern its proceedings including the assessment and taxation of costs on any complaint provided for in section 23 hereof, and to regulate the mode and manner of all investigations, tests, audits, inspections and hearings not specifically provided for herein. The commission may confer with officers of other states and officers of the United States on any matter pertaining to their official duties. (Sec. 8336, G. S. 1915; sec. 9, ch. 238, Laws 1911.)

"The Public Utilities Commission, succeeding to all the powers conferred upon the State Board of Railroad Commissioners and by its own enlarged powers conferred by later enactments, has power to supervise the conduct of public service corporations in this commonwealth." *State v. Kansas Postal Telegraph Cable Co.*, 150 Pac. 544; 96 K. 294.

**Rates of Charges, Service, etc.** Every common carrier and public utility governed by the provisions of this act shall be required to furnish reasonably efficient and sufficient service, joint service and facilities for the

use of any and all products or services rendered, furnished, supplied or produced by such public utility or common carrier and to establish just and reasonable rates, joint rates, fares, tolls, charges and exactions and to make just and reasonable rules, classifications and regulations; and every unjust or unreasonable discriminatory or unduly preferential rule or regulation, classification, rate, joint rate, fare, toll or charge demanded, exacted or received is prohibited and hereby declared to be unlawful and void, and the Public Utilities Commission shall have the power, after notice and hearing of the interested parties, to require any common carriers and all public utilities governed by the provisions of this act to establish and maintain just and reasonable joint rates wherever the same are reasonably necessary to be put in, in order to maintain reasonably sufficient and efficient service from such public utilities and common carriers. (Sec. 8337, G. S. 1915; sec. 10, ch. 238, Laws 1911.)

**DISCONTINUANCE OF SERVICE FOR NONPAYMENT.** (Pond on Public Utilities, sec. 220.) "As a necessary consequence of this rule it follows that a customer who is in default for the payment of his service and who fails to pay for the service already rendered cannot complain if the service is discontinued pending his payment for that already received. This is recognized as a convenient means of making collection, for as the court in the case of *State, ex rel. Lathshaw, v. Board of Water & Light Com'rs*, 103 Minn. 472, 117 N. W. 827, 127 Am. 79, 381, decided in 1902, says: 'Both on reason and authority the method of collection here in issue was reasonable and proper. With unusual unanimity, such regulations have been sustained altho where there is statutory authority and where there is not. The imposition of a fifteen percent penalty or discount and of certain costs and expenses of shutting off the gas and turning it on as parts of the arrearage charged relator does not entitle relator to the mandamus he seeks.'"

The weight of authorities seems to be to the effect that where a municipality grants to a public utility the right to adopt such a rule that service may be discontinued for the nonpayment of bills for past service. The case referred to by Pond seems to be controlling, but under the common law such a rule would not obtain. Neither could such a rule apply requiring one to pay arrears of a predecessor.

Vol. I, sec. 436, Wyman on Public Ser. Corp.: "No requirement to pay arrears of predecessors. It is well agreed that this disability is a personal matter. When a householder applies to a gas or water company for a supply of gas or water at his house, and tenders the price, if it is required, or a deposit in advance, he can not be refused because an independent earlier occupant of the premises is in arrears for his gas or water. To so hold would in effect decide that the supply is to the premises, not (as it plainly is) to the occupants. However, it is possible for legislative action to alter this common law and to provide for such a charge upon the premises either by statute or charter provision, or by ordinance or (according to a very few cases) by regulation of which all concerned are apprised."

This subject is well discussed in 49th L. R. N., page 596.

Act requires each utility to establish just and reasonable rates. *City of Emporia v. Telephone Co.*, 96 K. 126.  
 Facts considered in determining whether rate is unprofitable. *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 Rates established by Utilities Commission presumed to be reasonable. *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 Railroad entitled to fair profit on each commodity transported. *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 Voluntary rates established by railroads basis for fixing reasonable rates. *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 "Unreasonable, unjust, oppressive and unlawful" not synonymous with "confiscatory." *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 Power to regulate and control location of telegraph stations. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 298.  
 Commission has power to require reasonably efficient and sufficient service. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 304.  
 Privilege of unloading on route, etc.; contract preferential and discriminatory. *Molohan v. Railway Co.*, 97 K. 51.

**Filing Schedules of Rates.** Every public utility and every common carrier doing business in Kansas, over which the Public Utilities Commission have control, shall publish and file with the Public Utilities Commission copies of all schedules of rates, joint rates, tolls, fares, charges, classifications and divisions of rates affecting Kansas traffic, either state

or interstate, and shall furnish said commission with copies of all rules, regulations and contracts between common carriers or public utilities pertaining to any and all services to be rendered by such public utility or common carrier. The Public Utilities Commission shall have power to prescribe reasonable rules and regulations regarding the printing and filing of all schedules, tariffs, and classifications of all rates, joint rates, tolls, fares, charges and all rules and regulations of such utilities and common carriers. (Sec. 8338, G. S. 1915; sec. 11, ch. 238, Laws 1911.)

Act requires schedules to be filed with Commission. *City of Emporia v. Telephone Co.*, 90 K. 126.

Tariffs filed with Public Utilities Commission control; special contracts void. *Mollohan v. Railway Co.*, 97 K. 51.

**Charging More than Published Rate.** No common carrier or public utility governed by the provisions of this act shall, knowingly or willfully, charge, demand, collect or receive a greater or less compensation for the same class of service performed by it within the state, or for any service in connection therewith, than is specified in the printed schedules or classifications, including schedules of joint rates; or demand, collect or receive any rate, joint rate, toll, fare or charge not specified in such schedule or classification; provided, that rates different from those specified in the printed schedule or classification of rates may be charged by any public utility, street or interurban railway, by agreement with the customer, in cases of charity, emergency, festivity or public entertainment; provided, that any utility governed by the provisions of this act may grant to the officers, employees and agents of such utilities free or reduced rates or service upon like terms and in the same manner as is now provided by law relating to common carriers. (Sec. 8339, G. S. 1915; sec. 12, ch. 238, Laws 1911.)

Act prohibits charging higher rates than those shown by schedules. *City of Emporia v. Telephone Co.*, 90 K. 126.

Tariffs filed with Public Utilities Commission control; special contracts void. *Mollohan v. Railway Co.*, 97 K. 51.

Privilege of unloading en route must be included in schedules. *Mollohan v. Railway Co.*, 97 K. 51.

"Where the tariffs of the carriers filed with the Public Utilities Commission specify the points at which live stock may be stopped in transit to test the market, any special contract enlarging that privilege which is not specified in such tariffs is void." *Mollohan v. Railway Co.*, 97 K. 51.

"As to the right of a public utility or common carrier to give service in payment for franchise rights or for other considerations than money, see *Louisville & N. R. Co. v. Mottley*, 219 U. S. 466, 55 L. Ed. 297, and notes thereunder. Also, *N. Y. C. & H. R. R. Co. v. Gray*, 239 U. S. 583, 60 L. Ed. 451."

**Complaints, Investigations, Orders.** It shall be the duty of the commission, either upon complaint or upon its own initiative, to investigate all rates, joint rates, fares, tolls, charges and exactions, classifications or schedules of rates, or joint rates and rules and regulations, and if after full hearing and investigation the commission shall find that such rates, joint rates, fares, tolls, charges or exactions, classifications or schedules of rates or joint rates, or rules and regulations, are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have power to fix and order substituted therefor such rate or rates, fares, tolls, charges, exactions, classifications or schedules of rates or joint rates and such rules and regulations as shall be just and reasonable. If upon any investigation it shall be found that any regulation, measurement, prac-

tice, act or service complained of is unjust, unreasonable, unreasonably inefficient, insufficient, unduly preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this act or of the order of this commission, or if it be found that any service is inadequate or that any reasonable service can not be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service or acts, and to make such order respecting any such charges in such regulations, measurements, practices, service or acts as shall be just and reasonable. Whenever, in the judgment of the Public Utilities Commission, public necessity and convenience require, the commission shall have power to establish just and reasonable concentration, commodity, transit or other special rates, charges or privileges, but all such rates, charges and privileges shall be open to all users of a like kind of service under similar circumstances and conditions. (Sec. 8340, G. S. 1915; sec. 13, ch. 238, Laws 1911.)

"Unreasonable, unjust, oppressive and unlawful" not synonymous with "confiscatory."  
*Railroad Co. v. Utilities Commission*, 95 K. 604.

**Complaints, Investigations, Orders.** Upon a complaint in writing made against any common carrier or public utility governed by the provisions of this act, by any mercantile, agricultural or manufacturing organization or society, or by any body politic or municipal organization, or by any taxpayer, firm, corporation or association, that any of the rates or joint rates, fares, tolls, charges, rules, regulations, classifications or schedules of such public utility or common carrier are in any respect unreasonable, unfair, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such public utility or common carrier for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient, insufficient, unjustly discriminatory, or unduly preferential, or that any service performed or to be performed by such public utility or common carrier for the public is unreasonably inadequate, inefficient, unduly insufficient or can not be obtained, the commissioners shall proceed, with or without notice, to make such investigation as they may deem necessary. The commissioners may, upon their own motion, and without any complaint being made, proceed to make such investigation, but no order affecting such rates, joint rates, tolls, charges, rules, regulations and classifications, schedules, practices or acts complained of shall be made or entered by the commission without a formal public hearing, of which due notice shall be given by the commission to such public utility or common carrier or to such complainant or complainants, if any. Any public investigation or hearing which such commission shall have power to make or to hold may be made or held before any one or more commissioners, and all investigations, hearings, decisions and orders made by a commissioner shall be deemed and held to be the investigations, hearings, decisions and orders of the Public Utilities Commission, when approved and filed by such commission and filed in their office, and the commission shall have power to require such public utilities and common carrier to make such improvements and do such acts as are or may be

required by law to be done by such public utility or common carrier. (Sec. 8341, G. S. 1915; sec. 14, ch. 238, Laws 1911.)

Power to regulate and control location of telegraph stations. The State, *ex rel.*, v. Postal Telegraph Co., 96 K. 298.  
Acts which are subject to supervision and control by Commission. The State, *ex rel.*, v. Postal Telegraph Co., 96 K. 304.

**Notice, Hearing and Evidence.** Whenever notice shall be required by the provisions of this act to be given any common carrier or public utility governed by the provisions of this act, and the complainant, or either of them, thirty days' written or printed notice of the time and place when and where such investigation or hearing will be had shall be given, such notice to be served by mailing a copy thereof to the public utility or common carrier and complainant. Such notice shall embody in substance the complaint, if any, made against the public utility or common carrier upon which the hearing, investigation and decision of the Public Utilities Commission is requested or on which it will be given. The public utility or common carrier, or the complainants, if any, shall be entitled to be heard, and shall have process to enforce the attendance of witnesses and the production of books, papers, maps, contracts, reports and records of every description affecting the subject matter of the investigation. The Public Utilities Commission may, without præcipe or demand therefor, require the production of any books, papers, contracts, records or other documents in the possession of or under the control of the common carrier, public utility, complainant or complainants, affecting the subject matter of the controversy. (Sec. 8342, G. S. 1915; sec. 15, ch. 238, Laws 1911.)

**Orders of the Commission.** If upon such hearing and investigation the rates, joint rates, fares, tolls, charges, rules, regulations, classifications, or schedules of such common carrier or public utility governed by the provisions of this act, are found to be unjust, unreasonable, unfair, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of this act, or of any of the laws of the state of Kansas, the Public Utilities Commission shall have the power to fix and establish, and to order substituted therefor, such rates, joint rates, fares, tolls, charges, rules, regulations, classifications or schedules as it shall find, determine or decree to be just, reasonable and necessary; and if it shall be found that any regulation, practice or act whatsoever, relating to any service performed or to be performed by such public utility or common carrier for the public in any respect unreasonable, unjust, unfair, unreasonably inefficient, insufficient, unjustly discriminatory or unduly preferential, or otherwise in violation of any of the provisions of this act, or of any of the laws of the state of Kansas, the Public Utilities Commission shall have full power, authority and jurisdiction to substitute therefor such other regulations, practice, service or act as they find and determine to be just, reasonable and necessary. All orders and decisions of the Public Utilities Commission whereby any rates, joint rates, fares, tolls, charges, rules, regulations, classifications, schedules, practice or acts relating to any service performed or to be performed by such public utility or common carrier for the public are altered, changed, modified, fixed or established, shall be reduced to writing, and a copy thereof, duly



certified, shall be served on the public utility or common carrier affected thereby, by registered mail; and such order and decision shall become operative and effective within thirty days after such service, and such public utility or common carrier shall, unless an action is commenced in a court of proper jurisdiction to set aside the findings, orders and decisions of said Public Utilities Commission, or to review and correct the same, carry the provisions of said order into effect. (Sec. 8343, G. S. 1915; sec. 16, ch. 238, Laws 1911.)

Section provides for review and correction of order or decision. *City of Emporia v. Telephone Co.*, 90 K. 126.

Facts considered in determining whether rates are unprofitable. *Railroad Co. v. Utilities Commission*, 95 K. 605.

Rates established by Utilities Commission presumed to be reasonable. *Railroad Co. v. Utilities Commission*, 95 K. 605.

Railroad entitled to fair profit on each commodity transported. *Railroad Co. v. Utilities Commission*, 95 K. 604.

When rate "unreasonable, unjust, oppressive and unlawful" as against carrier. *Railroad Co. v. Utilities Commission*, 95 K. 604.

Voluntary rates established by railroads basis for fixing reasonable rates. *Railroad v. Utilities Commission*, 95 K. 605.

Section provides procedure for changing rules, regulations, etc.; judicial review. *The State, ex rel. v. Postal Telegraph Co.*, 96 K. 305.

Action for review must be brought within thirty days. *Telephone Co. v. Utilities Commission*, 97 K. 139.

**Compelling Witnesses to Testify.** No person shall be excused from testifying or from producing any books, accounts, maps, papers or documents in any action or proceeding, based upon or growing out of any alleged violation of any of the provisions of this act, on the ground or for the reason that the testimony or evidence, documentary or oral, required from him, may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subject to any penalty, punishment or forfeiture on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence, providing that no person so testifying shall be exempted from prosecution or punishment for perjury committed in so testifying. (Sec. 8344, G. S. 1915; sec. 17, ch. 238, Laws 1911.)

**Orders in Effect—Reasonable.** All orders, regulations, practices, services, rates, fares, charges, classifications, tolls, and joint rates fixed by the commission shall be in force and effect on and after thirty days from the making thereof and expiration of thirty days after service aforesaid, shall be *prima facie* reasonable unless, or until, changed or modified by the commission or in pursuance of proceedings instituted in court as provided in this act. (Sec. 8345, G. S. 1915; sec. 18, ch. 238, Laws 1911.)

The burden is upon the carriers to overcome the presumption that the rates ordered established by the Public Utilities Commission are reasonable. *Railroad v. P. U. C.*, 95 K. 604.

Section provides for review and correction of orders and decisions. *City of Emporia v. Telephone Co.*, 90 K. 126.

Rates established by Utilities Commission presumed to be reasonable. *Railroad Co. v. Utilities Commission*, 95 K. 605.

**Orders to Be in Effect.** All findings, rates, joint rates, fares, tolls, charges, rules, regulations, classifications and schedules fixed and established by the Public Utilities Commission shall be in full force and effect, and all regulations, practices, services and acts prescribed or required by the Public Utilities Commission to be done or carried into effect unless otherwise found and determined or stayed by a court of competent juris-

diction as hereinafter provided. (Sec. 8346, G. S. 1915; sec. 19, ch. 238, Laws 1911.)

Enforcement of orders of Utilities Commission; mandamus. *The State, ex rel., v. Flannelly*, 96 K. 372.

**Making Changes in Rates.** Whenever any common carrier or public utility governed by the provisions of this act shall desire to make any change in rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, such public utility or common carrier shall file with the Public Utilities Commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications, or in new issues thereof. No change shall be made in any rate, toll, charge or classification or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any public utility or common carrier, without the consent of the commission, and within thirty days after such changes have been authorized by said Public Utilities Commission, then copies of all tariffs, schedules, and classifications, and all rules and regulations, shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection. (Sec. 8347, G. S. 1915; sec. 20, ch. 238, Laws 1911.)

A public utility or common carrier can not discontinue any established service without first having obtained authority of the Commission. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 298, 150 Pac. 544.

The courts have no rate-making powers. The legislature can not confer such powers upon them. *Railroad Co. v. Utilities Commission*, 95 K. 604.

Special privilege can not be granted unless tariff filed, etc. *Mellohan v. Railway Co.*, 97 K. 51.

Change in rates not made without consent of Utilities Commission. *Telephone Co. v. Utilities Commission*, 97 K. 136.

Gas company can not require meter deposits or additional penalty above established rate. *City of Columbus v. Gas Co.*, 96 K. 367.

A public utility cannot change any rule or regulation or practice pertaining to rates or service without consent of Commission. *City of Scammon v. Gas Co.*, 98 K. 812.

A gas company can not discontinue an established service without consent of Commission. *The State, ex rel., v. Landon*, 100 K. 593.

**Setting Aside Orders.** Any common carrier or public utility governed by the provisions of this act, or other party in interest, being dissatisfied with any order of the commission fixing any valuation, toll, rate, joint rate, fare, charge or findings, rules or regulations, classifications, schedules, or any order or ruling fixing any regulations, practices or service, or order or ruling relating to the issuance of stocks, bonds or other securities hereinafter provided may, within thirty days from the making of such order, commence an action in a court of competent jurisdiction, against the Public Utilities Commission as defendant, to vacate and set aside any such order, finding or decision of the Public Utilities Commission on the ground that the valuation, toll, rate, joint rate, fare, charges, orders, rules, regulations, findings, classifications or schedules in such decisions are unlawful or unreasonable, or that any such regulation, valuation, practice or service fixed in such order or decision is unreasonable. All actions brought under this section shall have precedence in any court, and, on motion, shall be advanced over any civil cause of a different

nature pending in such court, and such action shall be tried and determined as other civil actions. Appeals from any decision of the district court shall be taken from the district court to the supreme court of the state of Kansas, in the same manner as provided by law in other civil actions. During the pendency of any action under the provisions of this act, all orders made by the Public Utilities Commission prescribing rates, joint rates, tolls, fares, charges, rules, regulations, classifications or schedules or findings shall, unless temporarily stayed or enjoined, remain in full force and effect until final judgment is rendered therein. During the pendency of such appeal the judgment of the lower court shall remain in effect, unless stayed by order of the supreme court. Service of summons on any member of the board shall be sufficient service on the board. (Sec. 8348, G. S. 1915; sec. 21, ch. 238, Laws 1911.)

Restraining order and temporary injunction distinguished; appeal. *City of Emporia v. Telephone Co.*, 90 K. 118.  
 Power of courts to enjoin rates allowed by Commission, considered. *City of Emporia v. Telephone Co.*, 90 K. 118.  
 Facts considered in determining whether rates are unprofitable. *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 Railroad entitled to fair profit on each commodity transported. *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 "Unreasonable, unjust, oppressive and unlawful," not synonymous with "confiscatory." *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 When rate "unreasonable, unjust, oppressive and unlawful," as against carrier. *Railroad Co. v. Utilities Commission*, 95 K. 604.  
 Jurisdiction of Commission not obtained by suit in Montgomery county. *The State, ex rel., v. Flannelly*, 96 K. 372.  
 Courts have no power to fix rates. *Telephone Co. v. Utilities Commission*, 97 K. 136.  
 Rates insufficient to pay for service; power of courts; injunction. *Telephone Co. v. Utilities Commission*, 97 K. 137.  
 Rate declared confiscatory; establishment of rate until Utilities Commission acts. *Telephone Co. v. Utilities Commission*, 97 K. 136.

**Units of Measurement.** The commission may ascertain and prescribe for each kind of public utility governed by the provisions of this act, suitable and convenient standard commercial units of products in service. These shall be the lawful units for the purpose of this act. It shall prescribe reasonable regulations for examinations and testing of such products or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. (Sec. 8349, G. S. 1915; sec. 22, ch. 238, Laws 1911.)

**Reports to the Commission.** Each public utility governed by the provisions of this act shall furnish to the commission, in such form and at such time as the commission shall require, such accounts, reports and information as shown in itemized detail: (1) The depreciation per unit; (2) the salaries and wages, separately, per unit; (3) legal expenses per unit; (4) taxes and rentals, separately, per unit; (5) the quantity and value of material used per unit; (6) the receipt from residuals, by-products, services or other sales, separately, per unit; (7) the total and net cost per unit; (8) the gross and net profit per unit; (9) the dividends and interest per unit; (10) surplus or reserve per unit; (11) the price per unit paid by consumers; and, in addition, such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe in order to show completely and in detail

either the operation of the public utility or common carrier in furnishing the unit of its product or service to the public. (Sec. 8350, G. S. 1915; sec. 23, ch. 238, Laws 1911.)

**Annual Reports to Commission.** That section 24 of chapter 238 of the Laws of 1911, being section 8351 of the General Statutes of 1915, is hereby amended so as to read as follows: Sec. 24. Every public utility and common carrier governed by the provisions of this act, when, and as required by the Public Utilities Commission, shall file with the Public Utilities Commission an annual report and such monthly or other regular reports, or special reports, and such other information as the Public Utilities Commission may require. The forms of such reports shall follow as nearly as possible the forms prescribed by the Interstate Commerce Commission. When required by the Public Utilities Commission such reports and information shall be certified under oath by a duly authorized officer having knowledge of the matters therein contained. The Public Utilities Commission may at any time require from any public utility or common carrier specific answers to any questions upon which it may desire information in connection with matters pending before them. The Public Utilities Commission may, in its discretion, grant extensions of the time within which reports and information are required to be filed. Annual reports, however, shall be filed within two months after the close of the fiscal year as fixed by the Public Utilities Commission, and any extensions of such period shall not exceed in the aggregate sixty days. The forms of reports of the common carriers and the public utilities which report to the Interstate Commerce Commission shall, as nearly as possible, follow the form prescribed by the Interstate Commerce Commission. (Sec. 1, ch. 254, L. 1917.)

All acts and parts of acts in conflict herewith are hereby repealed. Sec. 2, ch. 254, L. 1917.)

**Declaration of State Power.** The power to create liens on corporate property situated within the state of Kansas by companies transacting the business of common carriers, as defined in the laws of this state, and public utilities governed by the provisions of this act in this state is a special privilege, the right of supervision, regulation, restriction and control of which shall be vested in the state, and such power shall be exercised according to law, and the provisions of this act shall apply to all companies organized under the laws of other states of the Union and of foreign countries, as well as to domestic corporations, transacting business in this state as a common carrier or as a public utility governed by the provisions of this act. (Sec. 8352, G. S. 1915; sec. 24a, ch. 238, Laws of 1911.)

**Issuing Stocks and Bonds.** A public utility or common carrier may issue stock, certificates, bonds, notes or other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, for the purpose of carrying out its corporate powers, the construction, completion, extension or improvements of its facilities, or for the improvements or maintenance of its service, or for the discharge of lawful refunding of

its obligations, or for such other purposes as may be authorized by law; provided, and not otherwise, that there shall have been secured from the commission a certificate stating the amount, character, purposes and terms on which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate, and that the statements contained in such application have been ascertained to be true, but this provision shall not apply to any lawful issue of stock, the lawful execution and delivery of any mortgage, or to the lawful issue of any bonds thereunder which shall have been duly approved by the Board of Railroad Commissioners prior to the taking effect of this act. The proceedings for obtaining such certificate from the commission and the conditions of its being issued by said board shall be as follows: (a) In case the stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued for money only, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer of the company having knowledge of the facts, showing (1) the amount and character of the proposed stocks, certificates, bonds, notes or other evidences of indebtedness; (2) the general purposes for which they are to be issued; (3) the terms on which they are to be issued; (4) the total assets and liabilities of the public utility or common carrier; and (5) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be issued therefor. (b) In case the stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued partly or wholly for property or services or other consideration than money, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer having knowledge of the facts, showing (1) the amount and character of the stocks, certificates, bonds, notes or other evidences of indebtedness proposed to be issued; (2) the general purposes for which they are to be issued; (3) a general description and an estimated value of the property or services for which they are to be issued; (4) the terms on which they are to be issued or exchanged; (5) the amount of money, if any, to be received for the same in addition to such property, services or other consideration; (6) the total assets and liabilities of the public utility or common carrier; and (7) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor. The commission may also require the public utility or common carrier to furnish such further statements of facts as may be reasonable and pertinent to the inquiry, and shall have full power to ascertain the truth of all statements made by such common carrier or public utility. Upon full compliance by the applicant with the provisions of this section the commission shall forthwith issue a certificate stating the amount, character, purposes and terms upon which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate, and that the statements contained in such application have been ascertained to be

true. Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which shall be issued by such public utility or common carrier contrary to the provisions of this act shall be void. (Sec. 8353, G. S. 1915; sec. 25, ch. 238, Laws 1911.)

The following cases discuss the authority of the state to supervise the issuance of securities: 203 N. Y. 299; 197 N. Y. 1; 203 N. Y. 789; 92 N. E. 1096; 122 N. Y. 641; 1916 C. P. U. R. 42; 60 L. Ed. 334; 1916 C. P. U. R. 705, Annotated; P. U. R. 1916 D, 235, Annotated; 25 L. Ed. 952.

**Penalties for Issuing Stock.** Any common carrier or public utility governed by the provisions of this act, or any agent, director or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stock, certificate of stock, bonds, or other evidences of indebtedness contrary to the provisions of this act, or who shall apply to the proceeds from the sale thereof to any purpose other than that specified in the certificate of the commission, as herein provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred dollars and not more than five thousand dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment. (Sec. 8354, G. S. 1915; sec. 26, ch. 238, Laws 1911.)

**Prohibitions on Carriers and Utilities.** No common carrier or public utility governed by the provisions of this act, domestic or foreign, shall hereafter purchase or acquire, take or hold any part of the capital stock, bonds or other forms of indebtedness of any competing public utility or common carrier, either as owner or pledgee, unless authorized by the commission. Any common carrier engaged in intrastate commerce in this state is prohibited in the transportation of such commerce, articles or commodities under the following circumstances and conditions: (a) when the article or commodity has been manufactured, mined or produced by a carrier or under its authority and at the time of the transportation the carrier has not in good faith, before the act of transportation, disassociated itself from such article or commodity; (b) when the carrier owns the article or commodity to be transported, in whole or part; (c) when the common carrier at the time of transportation has a legal or equitable interest, directly or indirectly, in the article or commodity, except materials and supplies for its own use. Every public utility is prohibited from engaging in any business in this state which is not in conformity with its charter or in which it is not permitted to engage under the laws of the state of Kansas; provided, that this section shall not apply to ownership by railroads of the stock, bonds, or other forms of indebtedness of union depot or terminal railroad properties used in common by two or more such railroads. (Sec. 8355, G. S. 1915; sec. 27, ch. 238, Laws 1911.)

**Valuation of Property.** Said commission shall have the power and it shall be its duty to ascertain the reasonable value of all property of any common carrier or public utility governed by the provisions of this act used or required to be used in its services to the public within the state of Kansas, whenever it deems the ascertainment of such value necessary in order to enable the commission to fix fair and reasonable rates, joint rates, tolls and charges, and in making such valuations they may avail



themselves of any reports, records or other things available to them in the office of any national, state or municipal officer or board. (Sec. 8356, G. S. 1915; sec. 28, ch. 238, Laws 1911.)

**Examination of Accounts.** The commission shall have authority to examine and audit all accounts, and all items shall be allocated to the accounts prescribed by the commission. The agents, accountants or examiners employed by the commission shall have authority under the direction of the commission to inspect and examine any and all books, accounts, papers, records, property and memoranda kept by such public utilities and common carriers. The account shall be closed annually on the 30th day of June, and a balance sheet of that date promptly taken therefrom. (Sec. 8357, G. S. 1915; sec. 29, ch. 238, Laws 1911.)

**Rates of January 1, 1911, to be Rate.** Unless the commission shall otherwise order, it shall be unlawful for any common carrier or public utility governed by the provisions of this act within this state to demand, collect or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same services on the 1st day of January, 1911. (Sec. 8358, G. S. 1915; sec. 30, ch. 238, Laws 1911.)

Telephone rates prescribed in ordinance remain effective until action taken. *City of Emporia v. Telephone Co.*, 88 K. 443.  
Refusal of Commission to grant increase; power of courts; injunction. *Telephone Co. v. Utilities Commission*, 97 K. 136.

**Public Utilities Certificate.** No common carrier or public utility governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the Public Utilities Commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state. This section shall not apply to any common carrier or public utility governed by the provisions of this act now transacting business in this state. (Sec. 8359, G. S. 1915; sec. 31, ch. 238, Laws 1911.)

Provisions of section not applicable to city electric light plant. *Humphrey v. City of Pratt*, 93 K. 413.  
Injunction for want of license not maintainable by rival company. *Telephone Co. v. Telephone Association*, 94 K. 159.

**Report Concerning Accidents.** Every common carrier and every public utility governed by the provisions of this act shall, whenever an accident attended with loss of human life or serious personal injury occurs upon its premises within this state, give immediate notice thereof by telegraph to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith, in connection with the Labor Commission, as now provided by law, which investigation shall be held in the locality of the accident, unless for greater convenience of those concerned it shall order such investigation to be held at some other place. Said investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall seasonably notify an officer or agent of the public utility or common carrier of the time and place of the investigation. (Sec. 8360, G. S. 1915; sec. 32, ch. 238, Laws 1911.)



**Cities' Control of Utilities.** Every municipal council or commission shall have the power and authority, subject to any law in force at the time, to contract with any public utility or common carrier, situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, by ordinance or resolution, duly considered and regularly adopted: (1) As to the quality and character of each kind of product or service to be furnished or rendered by any public utility or common carrier, and the maximum rates and charges to be paid therefor to the public utility or common carrier furnishing such product or service within said municipality, and the terms and conditions, not inconsistent with this act or any law in force at the time under which such public utility or common carrier may be permitted to occupy the streets, highways or other public property within such municipality, (2) To require and permit any public utility or common carrier to make such additions or extensions to its physical plant as may be reasonable and necessary for the benefit of the public, and may designate the location and nature of such additions and extensions at the time within which such shall be completed, and the terms and conditions under which the same shall be constructed. (3) To provide a reasonable and lawful penalty for the noncompliance with the provisions of any ordinance or resolution adopted in pursuance with the provisions hereof; provided, however, that no ordinance or resolution granting or extending any right, privilege or franchise shall be in force or effect until thirty days after the same shall have been duly published; nor if any complaint be made, as hereinafter provided for, shall said ordinance or resolution be in effect while any proceedings to review before said commission or action or appeal in any court in relation thereto shall be pending. Upon any complaint being made, within fifteen days after the publication of any such ordinance or resolution, to the Public Utilities Commission by any such public utility or common carrier, or by ten or more taxpayers of any such municipality a bond to pay the costs of the hearing having first been filed by the complainant with and approved by the said commission, that any right, privilege or franchise granted, or ordinance or resolution or part of any ordinance or resolution adopted, by any municipal council or commission is unreasonable, or against public policy, or detrimental to the best interests of the city, or contrary to any provisions of law, the Public Utility Commission shall set a date for the hearing of such complaint, not less than ten days after date of filing thereof, and shall cite the parties interested to appear on a date named, which date shall be not less than ten days after the fixing of the date of the hearing, and on that date, or a time agreed upon by the interested parties, or a date fixed by the Public Utility Commission, the complainant shall present such evidence as they or it may have in support thereof, and show why such complaint should be sustained, and the Public Utility Commission may inquire into the allegations in such complaint, and may subpoena witnesses, and take testimony to ascertain the truth of the allegations contained therein in contemplation of bringing an action as hereinafter provided; and if said commission shall find that any provision of any such ordinance or resolution is unreasonable, or against the public welfare or public interest,

or has reason to believe that the same may be contrary to law, said Public Utilities Commission shall, within ten days, advise and recommend such changes in the ordinance or resolution as may be necessary to meet the objections set forth in the complaint and protect the public interest, and to remove any unreasonable provision therefrom; and if such municipal council or commission shall not within twenty days thereafter amend such ordinance or resolution to conform to the recommendations of said Public Utilities Commission, the Public Utilities Commission may, in the name of the state of Kansas, within thirty days after such finding, commence proceedings against such municipal council or commission and common carrier or public utility governed by the provisions of this act in any court of competent jurisdiction, to set aside any ordinance or resolution, or part thereof, because of its unreasonableness or illegality, or because the same is not for the promotion of the welfare and best interests of said municipality, which action and proceedings shall be in conformity with the provisions of this act. (Sec. 8361, G. S. 1915; sec. 33, ch. 238, Laws 1911.)

*Power of city to contract with public utility, considered. City of Emporia v. Telephone Co., 90 K. 118.*  
*Referendum of cities of second class not amended or repealed. Humphrey v. City of Pratt, 93 K. 413.*

**Obligations Not be Incurred Without Certificate.** No common carrier or public utility governed by the provisions of this act shall issue any stock, certificates, bonds, notes or other evidences of indebtedness, for money, property or services, either directly or indirectly, nor shall it receive any money, property or services in payment of the same either directly or indirectly until there shall have been recorded upon the books of such corporation the certificate of the commission herein provided for. (Sec. 8362, G. S. 1915; sec. 34, ch. 238, Laws 1911.)

**Stock, Dividends, etc.** No common carrier or public utility governed by the provisions of this act shall declare any stock, bond or scrip dividend or divide the proceeds of the same of any stocks, bond or scrip among its stockholders unless authorized by the commission so to do. (Sec. 8363, G. S. 1915; sec. 35, ch. 238, Laws 1911.)

**Assignment, etc., of Franchise.** No franchise granted to a common carrier or public utility governed by the provisions of this act shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting such franchise or right thereunder be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the commission. (Sec. 8364, G. S. 1915; sec. 36, ch. 238, Laws 1911.)

**Falsifying Books, Records, etc.** Any person who shall willfully make any false entry in the accounts, books of account, records, or memoranda kept by any common carrier or any public utility governed by the provisions of this act, or who shall willfully destroy, mutilate, alter or by any other means or device falsify the record of any such account, book of accounts, record or memorandum, or who shall willfully neglect or fail to make full, true and correct entries of such account, book of accounts, record or memorandum of all facts and transactions apper-

taining to such common carriers or public utilities business, or who shall falsely make any statement required to be made to the Public Utilities Commission, shall be deemed guilty of a felony, and upon conviction shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment of not less than one year nor more than three years, or by both such fine and imprisonment; provided, that the commission may in its discretion issue orders specifying such operating, accounting or financial papers, records, books, blanks tickets, stubs or documents, of carriers which may after a reasonable time be destroyed, and prescribing a length of time such books, papers, or documents shall be preserved; and provided further, that such orders shall be in harmony with those of the Interstate Commerce Commission. (Sec. 8365, G. S. 1915; sec. 37, ch. 238, Laws 1911.)

**Penal Provisions.** If any common carrier or public utility governed by the provisions of this act shall violate any of the provisions of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it in this act, or shall fail, neglect or refuse to obey any lawful requirement or order made by the commissioners, or any final judgment or decree made by any court upon appeal from any order of the commissioners, it shall, for every such violation, failure or refusal, forfeit and pay to the support of the common schools a sum not less than one hundred dollars and not more than one thousand dollars for such offense. Such forfeiture shall be enforced and collected by the attorney-general in any court of competent jurisdiction. In construing and enforcing the provisions of this act, any act, omission or failure of any officer, agent or other person acting for or employed by any such public utility or common carrier while acting within the scope of his employment, shall in every case be deemed to be the act, omission or failure of such public utility or common carrier, and every day during which any such public utility or common carrier or officer, agent or employee thereof, shall fail to comply with any order or direction of the commissioner, or to perform any duty required or enjoined by this act, shall constitute a separate and distinct violation of the provisions of this act. (Sec. 8266, G. S. 1915; sec. 38, ch. 238, Laws 1911.)

**How Commission Shall Enforce Orders.** The commission may compel compliance with the provisions of this act and compel compliance with the orders of the commission by proceeding in mandamus, injunction or other appropriate civil remedies, or by appropriate criminal proceedings in any court of competent jurisdiction. (Sec. 8367, G. S. 1915; sec. 39, ch. 238, Laws 1911.)

Section empowers Commission to compel compliance with its orders. City of Emporia v. Telephone Co., 90 K. 127.  
Enforcement of orders of Utilities Commission; when mandamus will lie. The State, ex rel., v. Flannelly, 96 K. 372.

**Statute Cumulative.** The rights and remedies given by this act shall be construed as cumulative of all other laws in force in this state relating to common carriers and public utilities, and shall not repeal any other remedies or rights now existing in this state for the enforcement of the duties and obligations of public utilities and common carriers or the

rights of the Public Utilities Commission to regulate and control the same except where inconsistent with the provisions of this act. (Sec. 8368, G. S. 1915; sec. 40, ch. 238, Laws 1911.)

Rights and remedies given by act construed as cumulative. *City of Emporia v. Telephone Co.*, 90 K. 127.

**Rule for Construing Statute.** The provisions of this act and all grants of power, authority and jurisdiction herein made to the commissioners, shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon the commissioners. (Sec. 8369, G. S. 1915; sec. 41, ch. 238, Laws 1911.)

Act to be liberally construed; powers granted by act. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 298.

**Pending Actions and Proceedings.** Nothing in this act shall affect pending actions or proceedings brought by or against the Board of Railroad commissioners of this state, but the same may be prosecuted or defended by, and in the name of the commission hereby created. Any investigation, examination, or proceeding undertaken, commenced or instituted by the said Board of Railroad Commissioners prior to the taking effect of this act may be conducted and continued to a final determination by the commission hereby created, under the same terms and conditions and with like effect as though such Board of Railroad Commissioners had not been abolished. (Sec. 8370, G. S. 1915; sec. 42, ch. 238, Laws 1911.)

**Proceedings Before Interstate Commerce Commission.** If any interstate rate, joint rate, fare, toll, charge, rule or regulation, classification or schedule of rates, joint rates, fares or tolls, is found to be unjust, unreasonable, excessive, unjustly discriminatory, or unduly preferential, or in violation of the interstate commerce law, or in conflict with the rules, orders or regulations of the Interstate Commerce Commission, the Public Utilities Commission may apply by petition or other proper method to the Interstate Commerce Commission for relief. (Sec. 8371, G. S. 1915; sec. 43, ch. 238, Laws 1911.)

**Statute Repealed.** That original sections 7063, 7064, 7065 and 7066 of the General Statutes of Kansas of 1909 be and the same are hereby repealed. (Sec. 8372, G. S. 1915; sec. 43a, ch. 238, Laws 1911.)





IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1918.

**No. 277.**

The Public Utilities Commission of the State of Kansas  
et al., *Appellants*,

vs.

John M. Landon, as Receiver of the Kansas Natural Gas  
Company et al.

**No. 329.**

Kansas City, Missouri; The Public Service Commission  
of the State of Missouri et al., *Appellants*,

vs.

John M. Landon, Receiver of the Kansas Natural  
Gas Company et al.

**No. 330.**

Kansas City Gas Company, The Wyandotte County Gas  
Company et al., *Appellants*,

vs.

Kansas Natural Gas Company, John M. Landon and  
George F. Sharitt, Receivers, and Fidelity Title  
and Trust Company.

**No. 353.**

The Public Utilities Commission of the State of Kansas  
et al., *Appellants*,

vs.

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

APPEALS FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF KANSAS.

**REPLY BRIEF OF KANSAS CITY, MISSOURI.**

Many interesting questions are presented in the various briefs in these causes but the underlying elemental

problem upon which all of this litigation rests seems to have passed practically into a total eclipse. That problem is: How shall the people of the various communities get relief from their suffering from an insufficient supply of gas? In a most praiseworthy attempt to render assistance in the solution of that problem we believe that the District Court has either gone too far in its decree or it has not gone far enough. That court, in its anxiety to solve the problem, has either overstepped fixed principles of law by which it was bound in considering rights fixed by contracts, or, if it had the power to brush aside those contracts on some broad equitable principle of public necessity, it has failed to exercise that power comprehensively in the protection and preservation of the equities of all the parties in interest.

### **Did the Court Below Overstep Its Powers?**

In order to present our answer to this question, we want to restate certain general facts in the case.

Prior to September 27, 1906, a private corporation furnished artificial gas to the people of Kansas City, Missouri, by means of a production plant and a distribution system (and the same is true as to most or all of the other cities interested in this controversy). In 1906, after protracted negotiation, an agreement was made between Kansas City, Mo., and McGowan, Small & Morgan for the furnishing of natural gas to Kansas City, Missouri. This agreement was in the form of a franchise ordinance. (The grantees in said franchise were McGowan, Small & Morgan. They have since assigned



their rights and interests to the Kansas City Gas Company, and, in the interest of simplicity of statement, we shall designate the grantees in said franchise as the Kansas City Gas Company). The grantees in said franchise took over the plant of the former company and agreed to furnish natural gas to the people of Kansas City, Missouri, at the rates therein stated, thirty cents per thousand feet being the highest rate fixed. Such a contract is within the powers of Kansas City. (*Detroit, etc., Ry. v. Michigan*, 242 U. S. 238; *Aurora Water Co. v. Aurora*, 129 Mo. 540; *State ex rel. National, etc., Co. v. St. Louis*, 145 Mo. 551; K. C. Charter, 1889, Art. 3, Sec. 1, Clauses 7, 28; Art. 14, Secs. 1, 12.) The Supreme Court of Missouri has held that the rates fixed by such a contract may be modified by the Public Service Commission, under the police powers of the state (*State v. Public Service Commission*, 204 S. W. 497), but it has not held that until so modified the contract is not binding. Kansas City was paying this contract price until it was modified by the court below, July 31, 1917. It was further provided in that franchise agreement that when it should be ascertained, according to the terms of that franchise, that the supply of natural gas was insufficient, the grantees should furnish artificial gas at a price to be fixed in the manner specified in that franchise. To enable said grantees to comply with the obligations of their franchise they made a contract with a natural gas company to furnish gas to them on terms fixed in that contract. (Subsequently other parties became interested in this contract, but for simplicity of statement, we shall

refer to them all as the Kansas Natural Gas Company). There was no contractual relationship between Kansas City, Missouri, and the Kansas Natural Gas Company. In 1912, the State of Kansas sued the Kansas Natural Gas Company in the District Court of Montgomery County, Kansas, charging its violation of the anti-trust laws of Kansas, and on February 15, 1913, that company was adjudged guilty, and the court appointed receivers to take charge of and manage its business. (Eventually, John M. Landon became the sole surviving receiver, and for simplicity we shall state the facts as though he had been the only receiver.) When a receiver is appointed to take over property in litigation there are sometimes executory contracts affecting the business in his hands. In such cases the receiver may continue in the performance of such contracts, temporarily, until he can determine whether it is to the best interests of the estate in his hands to adopt or reject such contracts. The receiver in this case took over and performed the contract between the Kansas Natural Gas Company and McGowan, Small & Morgan, or their successor, the Kansas City Gas Company, as well as all other contracts between the Kansas Natural Gas Company and other distributing companies, until April, 1915, when various proceedings were instituted by him in Kansas tribunals to procure an increase in rates in Kansas. Being unable in those proceedings to procure as large an increase as he desired, the receiver brought this action. One of his claims in this action was that in figuring the rate of return on investment the Kansas Public Utilities Commission did not

make any allowance for going value or any value of the property for the cost of attaching the business. His business had no going value or attached business except that covered by the contracts he now claims are not binding upon him. In such circumstances we are unable to see how there is any room for contending that the receiver was merely temporarily investigating to see whether he would adopt or reject the contract between the Kansas Natural Gas Company and the Kansas City Gas Company. Two years is not a reasonable time for such investigation. And when he has in fact adopted the contract, neither the court appointing him nor any other court can re-cast his contractual obligations by its *ex parte* declaration that he is not to be deemed to have adopted the contract, and thereby nullify its actual adoption.

So far as concerns the contract between the Kansas Natural Gas Company and McGowan, Small & Morgan, no condition arose that would bring its legality into question; and in any event the beneficiary of that contract is in no position to question its legality. (*St. Louis v. St. Louis, etc., Co.*, 248 Mo. 10, 27.)

Much is said in the various briefs on the question of whether or not gas that is being delivered by a distributing company to the gas consumer is an article of interstate commerce because it is flowing from one state to another. In our view of the case we never come to that question. Contracts are binding whether they affect interstate or intrastate commerce. But the contention that the fixing of the price at which gas shall be furnished

by the Kansas City Gas Company, to the gas consumers in Kansas City, by a state public utilities commission, is an interference with interstate commerce, is, in our opinion, based on a misconception of the principles by which interstate commerce questions are governed. In every case it is the nature of the business that determines whether any particular act or transaction is or is not interstate commerce. Counsel for the receiver assumes that the receiver is selling and delivering gas to the consumer in Kansas City, Missouri, and that the Kansas City Gas Company is a mere intervening collection agency. An examination of the contract between Kansas City and McGowan, Small and Morgan, and of the contract between McGowan, Small & Morgan and the Kansas City Pipe Line Company, predecessor of the Kansas Natural Gas Company, will show that Kansas City and its citizens are dealing with McGowan, Small & Morgan, or their successors, the Kansas City Gas Company, and not with the Kansas Natural Gas Company. No one would contend for a moment that if the Kansas City Gas Company should wrongfully cut off the supply of gas to a consumer in Kansas City, Missouri, that consumer would have any action for damages against the receiver or the Kansas Natural Gas Company. Nor could one contend that if a gas consumer should refuse to pay his gas bill the receiver or the Kansas Natural Gas Company could maintain a suit against him to compel its payment.

One of the authorities cited by the receiver (*Southern Pac. etc. Co. v. Interstate Commerce Commission*, 219 U. S. 498), illustrates the true rule applicable here.

A wharf is a local object which cannot move from one state to another. But if it is on the border of a state and is used principally for the moving of traffic across that border, it is on that account essentially a channel of interstate commerce and its use is subject to federal regulation on that account. In another illustrative case (*Western Union Tel. Co. v. Foster*, 38 S. C. R. 438), a telegraph Company and its agents were engaged in interstate commerce when they collected information in one state and conveyed it to their patrons in another state, they knowing at the beginning of the transaction that that very information was going to those very patrons. But the furnishing of gas by a local gas company to the people of a city in which said gas company does its entire business under a franchise contract with such city, is purely a local transaction, and this is equally true whether the local gas company makes or procures its gas at home, or gets it from a producer in another state. The distributing company's business is to furnish gas, regardless of its source, and to furnish a sufficient amount of such gas, and at a sufficient pressure to make it of use. But for an accident of nature, it was entirely within the range of possibility that the Kansas Natural Gas Company might supply the Kansas City Gas Company with gas from wells in Missouri for one day or for one year, and from wells in Kansas for the next day or the next year. In such event, would the right of control of the business of the latter company rest in a State Public Service Commission during such day or such year and pass to a federal commission when the Missouri

well was closed and the Kansas well was opened? A gas franchise between a city and a local company for local service, is, in a sense, an institution of the local government (*Gibbs v. Baltimore Gas Co.*, 130 U. S. 396, 408), and, of necessity, must be subject to local control. The city or some other power capable of exercising such local control must have the right to say when and where new mains must be laid to supply newly settled or settling districts, when and where old mains must be repaired, where street lights must be placed; and to supervise the quality and equality of the service and the price to be paid therefor. A hypothetical case will illustrate the point we are making: The contract in this case runs for a period of thirty years. If the receiver or his successor is still piping natural gas from another state to Kansas City, Missouri, after the franchise and its limitations and burdens have expired, could it be seriously contended that the receiver or his successor would have the right to continue so to do, and that the city and the State then would be powerless to demand a new contract or to impose any limitations or burdens upon the receiver or his successor, or exercise any control or supervision over the service, because such action would constitute an interference with interstate commerce? Or, suppose Kansas City, aggrieved at the failure of the Kansas City Gas Company to furnish proper service, should sue to forfeit its franchise, or should appeal to the Missouri Public Service Commission to order the company to discontinue trying to furnish natural gas, and to begin furnishing artificial gas,

according to the terms of the franchise, would it be held that no order could be made, and that Kansas City must be abandoned to its fate, because to make such an order would be an interference with interstate commerce?

In its decree, the court below ruled that the contract between the Kansas Natural Gas Company and McGowan, Small & Morgan (whose interests have been assigned to the Kansas City Gas Company) was not binding upon the receiver, and that the receiver was entitled to charge the Kansas City Gas Company a price in excess of that fixed by its contract with the Kansas Natural Gas Company. In order to enable the Kansas City Gas Company to pay the new price fixed by the court below, the court in a proceeding in Kansas on process served on Kansas City, Missouri, in Missouri, abrogated the contract between Kansas City and the Kansas City Gas Company to which the receiver was not a party; and the court below in its decree enjoined Kansas City from interfering with the collection of the rate thus fixed in said order. The court in its decree further ruled that the furnishing of gas by the Kansas City Gas Company to the consumers of Kansas City, Missouri, was a transaction involving interstate commerce and therefore beyond the control of the public service commission of Missouri.

On the facts as stated above, we believe the court has overstepped its powers in attempting to assume jurisdiction over Kansas City in a suit instituted in the Federal Court of Kansas, the purpose of which suit, so far as Kansas City is concerned, being to abrogate a con-



tract between Kansas City, Missouri, and the Kansas City Gas Company, to which contract the receiver is not a party. We believe that the court has overstepped its powers in abrogating the contract between the Kansas Natural Gas Company and McGowan, Small & Morgan (and their successors the Kansas City Gas Company) when that contract had been adopted and the business covered by it is still being carried on by the receiver. We believe that the court has overstepped its powers in abrogating the contract between Kansas City, Missouri, and McGowan, Small & Morgan (and their successors the Kansas City Gas Company) against the objections of both of the parties to that contract, at the suit of the receiver and the Kansas Natural Gas Company, neither of whom is now or ever has been a party to such contract.

**Did the court below go far enough in its decree?**

If the court below had the power to abrogate the contract between the Kansas City Gas Company and the Kansas Natural Gas Company and the contract between Kansas City and the Kansas City Gas Company, then it has not gone far enough in disposing of the problems involved.

If the Kansas Natural Gas Company was legally obligated to perform the service now being performed by the receiver, and by its breach of its obligation the Kansas City Gas Company has been compelled to pay a greater amount for the gas which it received and has thereby lost money, the Kansas City Gas Company has a legal claim against the Kansas Natural Gas Company.

And, if the Kansas City Gas Company is saving itself from loss by collecting an increased price from the Kansas City consumers, those consumers have legal claim against the Kansas City Gas Company for the amount which they are losing by reason of the compulsory payment of the excess charge, and they are entitled to reimbursement therefor. The property and moneys in the hands of the receiver should be preserved for the payment of these claims. As a matter of fact, the receiver has been paying off the financial obligations of the Kansas Natural Gas Company; that is, the receiver is performing the contracts of the Kansas Natural Gas Company so far as the bondholders of that company are concerned, but is ignoring the contracts of that company so far as the people are concerned. And the receiver is so conducting the business that the Kansas Natural Gas Company or the purchaser of its capital stock will have preserved for its or his benefit the surplus assets in the hands of the receiver. A speculative estimate has been made by the court that the supply of gas will be exhausted within five or six years from the date of the decree and the rates have been fixed so as to pay out from such rates the total value of the plant within that time. In such circumstances, the plant should become the property of the consumers who have paid for the same out of such excess rates, or be held in trust for their benefit. The decree makes no such provision. If, at the end of the estimated time, there is still a supply of gas, and the plant is still useful, the Kansas Natural Gas Company or its successor in interest will own this plant, paid for

by the gas consumers and the gas consumer will have no interest in it.

Again, if the court below had power to work out the gas problem without regard to contractual obligations, it should have taken over the problem in its entirety and worked it out entirely. The need of the people, and of all of them, is for a sufficient supply of gas at all times. Furnishing an insufficient amount of gas all the time, or a sufficient amount of gas only a part of the time, works a most cruel hardship on the communities supplied. Natural gas, when supplied, is more economical than artificial gas. It has been arranged in at least one city and can undoubtedly be arranged in Kansas City, Missouri, to eke out with artificial gas the supply of natural gas when necessary. All communities must eventually come to artificial gas. But it is extravagance not to use the natural gas so long as it can be used practically. Cities should not be made unnecessarily to give up the natural gas. If the court had authority to make a new contract for the receiver and a new contract for Kansas City, Missouri, and the Kansas City Gas Company, then in the exercise of that power it should compel the Kansas City Gas Company to provide for a sufficient supply of gas at all times and to reform its plant so that when there is not a sufficiency of natural gas, it can supply the people of Kansas City with artificial gas.

**If the receiver is compelled to comply with the contracts of the Kansas Natural Gas Company, can he continue to do business?**

It is claimed that there is not enough gas to enable the receiver to perform the contracts of the Kansas Natural Gas Company unless his mains are extended to new wells and that he cannot make such extensions without money to pay for such extensions, and therefore the contract price will result in no gas at all.

We appreciate the difficulties of the present situation from the receiver's viewpoint. But either the gas-producer and transporter or the gas-distributor, has utterly failed to meet the situation so far as the rights of Kansas City are concerned. The conditions are intolerable. They must be corrected. We doubt whether such correction can be brought about in litigation in a court of law or in a court of equity. We believe that the correction must depend upon some plan wisely made protecting all interests and not unfairly generous to the wrongdoing gas-producer and the indifferent gas-distributor, at the expense of the long-suffering gas-consumer. And if the communities affected are to give away their rights which they possess under former contracts, to procure new agreements, those new agreements must be subscribed by parties who have not sacrificed the confidence of the people, or be put under the supervision of some commission which can supervise the performance of that agreement. In the meantime, because of the overruling necessity that the great numbers of people now dependent on

natural gas must be taken care of in the best manner possible with the limited means available, the receiver must continue temporarily to supply the demand until such a plan can be worked out. (*Seattle etc. Co. v. Snoqualmie etc. Co.*, 40 Wash. 380, 82 Pac. 713.)

Quite aside from the immediate effect of the decision in this case upon its present gas problem, Kansas City is vitally interested in the decision of this case because of the precedent it will establish with reference to its contracts with owners of other public utilities.

It has been held in several cases that where the price of service is fixed by legislative enactment it may be changed by legislative enactment. But it has been held in several cases that where the price is fixed by contract between parties competent to contract, the price cannot be changed otherwise than by mutual consent. (*Quinby v. Public Service Commission* (N. Y.), 119 N. E. 433; *Re Third Ave. R. Co.*, N. Y. Pub. Serv. Com., First Dist., June 6, 1918, P. U. R. 1918 E. 100; *Interurban Ry. & Terminal Co. v. Public Utilities Commission of Ohio*, decided by Ohio Supreme Court, June 21, 1918; *State ex rel. Tacoma etc. Co. v. Public Service Commission* (Wash.), 172 Pac. 890; *Columbus Ry. etc. Co. v. City of Columbus*, decided by Judge Westenhaver, of the Southern District of Ohio, September 20, 1918.) And we do not believe that this court has ever held that a contract between a public utility owner and a city can be changed, against the interest of the public, merely to enable the owner of the utility to comply more easily with its contracts with its bondholders. If franchise

agreements are subject to modification whenever the burden becomes unpleasant for either of the parties to the contract, a franchise amounts to a mere temporary prima facie working agreement and the obligations of the parties to that contract vacillate according to the views of the last tribunal appealed to for its modification. Such a holding would make franchise agreements, reached after long and careful negotiations, valueless scraps of paper. It has always been a part of our national and individual religion, that contracts must be respected. Is it a wholesome thing to break down the traditions of our fathers, to sow broadcast among non-understanding people, the new doctrine that an eight per cent return is paramount to one's word of honor?

We respectfully urge that the judgment in this case be reversed and that the cause be dismissed as to this appellant.

Respectfully submitted,

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The Cities of St. Joseph and Joplin concur in what is here said.

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In the  
**Supreme Court of the United States**  
OCTOBER TERM, 1918.

No. 277.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS ET AL.,  
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*Appeals from the District Court of the United States for the  
District of Kansas.*

**STATEMENT AND BRIEF OF THE CITIES OF  
KANSAS CITY, JOPLIN AND ST. JOSEPH,  
MISSOURI, APPELLANTS IN**  
No. 329.

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*Appeals from the District Court of the United States for the  
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**STATEMENT OF FACTS.**

The facts contained in the following statement of facts will be found in the STATEMENT OF THE EVIDENCE (Record, pp. 777 *et fol.*) except as referred to other portions of the Record.

The Kansas City Gas Company does business in Kansas City, Missouri, and sells natural gas to

the gas consumers of that city under a franchise contract entered into with the City of Kansas City. The Kansas City Gas Company buys all its gas from the Kansas Natural Gas Company (or its receiver John M. Landon), with which company it has a contract for the purchase of gas and said gas is delivered to the Kansas City Gas Company within the State of Missouri. Neither the City of Kansas City, Missouri, nor any gas consumers there have any contract or dealings with the Kansas Natural Gas Company or its receiver. The franchise contract (approved Sept. 27, 1906) provides for a rate of 25 cents for the first five years, 27 cents for the next five years and thirty cents thereafter. In 1916, therefore, the rate was to be raised to 30 cents; the laws of Missouri of 1913 having established a Public Service Commission, the Kansas City Gas Company filed with that Commission the franchise rate of 30 cents before putting it in effect. The consent of the City of Kansas City was entered before the Commission and the Commission made a formal order approving the rate. This rate then went into effect in November, 1916.

John M. Landon, in December, 1915, when this suit was brought, was the receiver appointed by the District Court of Montgomery County, Kansas, for the property of the Kansas Natural Gas Company. The Public Utility Commission of Kansas had established a rate to be paid by consumers in Kansas for natural gas. The receiver brought this suit (No. 136-N) in this court against the Public Utilities Commission of Kansas, the Public Service Commission of Missouri, against

all the distributing companies of Kansas and Missouri who bought natural gas from the Kansas Natural Gas Company and against all the cities of Kansas and Missouri (including Kansas City, Missouri) in which any of said distributing companies were located. Kansas City was not a party to any of the causes herein except No. 136-N. This suit (No. 136-N herein) was for the purpose of restraining all these defendants from in any way interfering with such rates as the receiver might put in effect in Kansas and Missouri.

The suit (No. 136-N herein) was brought in the United States District for the District of Kansas but subpoenas were issued from that court and served upon the city of Kansas City and other Missouri defendants within the State of Missouri. Kansas City has objected to the jurisdiction of the court and excepted to the overruling of its objections.

The final decree of the court below, among other things, holds that the business of transporting natural gas from the time it leaves the wells in Oklahoma till it reaches the burners of the consumers in Kansas and Missouri is interstate commerce. The final decree further restrains all the defendants (including Kansas City, Missouri) from in any way interfering with the rates put in effect by the receiver and restrains Kansas City and the other cities from interfering with the distributing companies in the putting in force of new rates, and thus nullifies the force of the franchise contract between Kansas City, Missouri, and the Kansas City Gas Company and the franchise contracts in the other cities.

Kansas City, Missouri, contends that

1. The United States District Court for the District of Kansas has no jurisdiction over it in this case.

2. The sale ~~of~~ natural gas in Kansas City, Missouri, by the Kansas City Gas Company is not interstate commerce and therefore the district court could not abrogate the order of the Public Service Commission of Missouri approving an increase in rates in Kansas City in accordance with the franchise contract.

3. Regardless of any question of interstate commerce, the district court had no authority to nullify the franchise contract between Kansas City and the Kansas City Gas Company and its action in so doing was the taking of property of Kansas City and its citizens without due process of law.

Joplin and St. Joseph urge the same objections as to themselves.

A more detailed statement of the facts out of which these questions arise is as follows:

1. The Kansas Natural Gas Company is a corporation organized under the laws of the State of Delaware and licensed to do business in Kansas and Missouri. It operates a system of gas pipe lines extending from the counties of Rogers, Wagoner and Tulsa in Oklahoma into Kansas and thence entering Missouri at three main points. It owns some of its lines and operates the lines of the Kansas City Pipe Line Company and the Mar-nett Mining Company under lease or otherwise. Approximately fifty per cent of the main trunk line system, including machinery appurtenant thereto, operated by the Kansas Natural Gas Com-

pany and its receiver is owned by the Kansas City Pipe Line Company and held and operated under a certain lease dated January 1, 1908. (For this lease see Record p. 853, for description of property of Kansas City Pipe Line Co., see intervening petition of that company in suit No. 1351 In Equity Record, p. 936.)

2. Neither the Kansas Natural Gas Company nor its receiver own or hold any interest in any stock or property of any local distributing company in the State of Missouri with the possible exception of Purcell, Alba and Neck City.

3. In 1912 an anti-trust suit was brought in the District Court of Montgomery County, Kansas, against the Kansas Natural Gas Company. Later in the same year a suit to foreclose mortgages was brought in the United States District Court for the District of Kansas (suit No. 1351) and receivers were appointed for the properties of the company in Kansas, Missouri and Oklahoma. In the contest between the various parties as to which court should have the custody of the properties, the United States court gave way and turned over all the property of the company in Kansas, Missouri and Oklahoma to the state receivers appointed by the District Court of Montgomery County, Kansas. The Federal court receivers were not removed but they had no property left in their hands. The receivers of the state court were then appointed by the United States District Courts of Missouri and Oklahoma as ancillary receivers in those courts for the properties in those states respectively. The situation was then as follows; the Kansas properties of the company were in the

hands of the Kansas state court receivers and the Missouri and Oklahoma properties were in the hands of United States court receivers who were the same persons as were acting as the Kansas state court receivers. This was the situation when in December, 1915, John M. Landon, Kansas state court receiver (the other co-receiver having died) filed this suit in equity (No. 136-N) in the United States District Court for the District of Kansas, as an ancillary suit to the pending foreclosure suit (No. 1351) previously brought. The only suit to which Kansas City, Missouri, was made a party was the suit at bar (No. 136-N.)

4. The production, transportation and distribution of natural gas was and is accomplished in the following manner:

The Kansas Natural Gas Company and its receivers acquire the gas by drilling, purchase and otherwise in southern Kansas and in Oklahoma and collect it into pipe lines. The gas is caused to flow from the wells into the gathering lines of the Kansas Natural Gas Company by the force of "rock pressures" which are the pressures at which gas is found in place in the earth, varying from 15 pounds to 500 pounds per square inch. These initial pressures carry the gas along in the pipe lines for some distance and then the pressures become lower and in order to carry the gas further it is necessary to deliver it into compressor stations where, by means of engines, the gas is compressed and raised to a pressure of approximately 300 pounds per square inch. Emerging from the compressors, the gas flows along the pipe lines by reason of the increased pressure, toward the next



compressor station which it reaches at a reduced pressure; it is again compressed and sent forward, which process continues till the gas reaches the distributing system or gas holders of the Kansas City Gas Company, or other distributing company.

5. The trunk lines of the Kansas Natural Gas Company were designed to be not only a transportation system but a storage reservoir. Gas is constantly coming from the wells night and day into the lines and the compressor stations are constantly at work compressing it and packing it into the trunk lines. During the night and certain hours of the day, more gas is thus coming into the trunk lines than is being delivered from the trunk lines into the systems of the distributing companies. Gas is sold at a uniform pressure and the quantity of gas in a container depends upon its pressure as referred to the standard pressure. Gas, unlike liquids or solids, can be compressed to a tremendous extent and MORE GAS CAN BE PUT INTO A PIPE LINE THAN CAN BE SENT THROUGH IT. Thus it results that at the hours when more gas is being put into the lines than is being drawn out, a vast quantity of gas is stored up in the lines. All the witnesses who spoke upon the subject were unanimous as to the fact that the trunk lines of the Kansas Natural Gas Co. form a huge storage reservoir for gas. Mr. Samuel S. Wyer, expert witness of the plaintiff, who made a "Report on the Wholesale Cost and Worth of Natural Gas Service at the Gates of the Various Towns, and Valuation of all the Property of the Kansas Natural Gas Company" says at page 19, Section 27 of said report, that the

storage capacity of the 16 inch line of the Kansas Natural Gas Company from Petrolia, Kansas, to Kansas City, 110 miles in length, is 14,634,620 cubic feet. Mr. Alfred Hurlburt, Gas Engineer and expert, stated that the storage capacity of the Kansas Natural Gas Company's pipe line from Grabham, Kansas, to Kansas City, is approximately 12,000,000 cubic feet. (Record, p. 812.) When it is realized that the distance from Petrolia to Kansas City is less than half the length of the Kansas Natural Gas Company's line from the fields to Kansas City, the total storage capacity of the whole line may be more fully understood.

At certain hours of the day when the demand for gas is greater than the amount being put into the lines this great reservoir is drawn upon.

6. The gas is delivered into the lines of the Kansas City Gas Company at 25th Street in Kansas City, Mo., about 600 feet east of the Missouri-Kansas state line and at 39th Street about 1 foot east of the said state line. After the gas enters the lines of the Kansas City Gas Company, that company has the actual physical possession of it and complete control over it and over its distribution and sale.

7. The Kansas City Pipe Line Company entered into certain supply contracts with Messrs. McGowan, Small and Morgan, dated December 3, 1906 (Record p. 844.) The Kansas Natural Gas Company leased the lines of the Kansas City Pipe Line Company by lease dated January 1, 1908 (Record p. 853) and the Kansas City Gas Co. is the successor of the interest of said McGowan, Small and Morgan under said contract. So that

the parties to the said contract are now the Kansas Natural Gas Company and the Kansas City Gas Company.

The Kansas Natural Gas Co. has been delivering gas to the Kansas City Gas Company under the terms of said supply contract. One of the provisions of said contract is that gas shall be delivered to the local distributing system at a pressure of 20 pounds per square inch. The provision from said contract (Exhibit 1001-C) is as follows:

Exhibit 1001-C. Section 1. "The party of the first part hereby agrees that it will \* \* \* supply and deliver through its said pipe line or lines, to said parties of the second part or any successor in ownership of the property the distribution of gas for Kansas City, Mo., at a pressure of twenty (20) pounds at the point of delivery above mentioned, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in the contract, for the consideration hereinafter mentioned."

This requirement was for the purpose of receiving gas at a pressure sufficient for its distribution and the pressure is as much a part of the commodity contracted for as is the gas.

8. After reaching the lines of the Kansas City Gas Company the gas is passed through reduction stations which reduce its pressure to a uniform pressure of about 8 inches water column, necessary for convenience and safety in distribution and sale. No gas is ever returned from the Kansas

City Gas Company to the Kansas Natural Gas Company.

9. When a surplus of gas is available in the lines of the Kansas Natural Gas Company, the Kansas City Gas Company fills its gas holders, which have a capacity of 7,000,000 cubic feet, and holds this gas in storage until such time as the Kansas Natural Gas Company cannot deliver enough gas to supply the demand, at which time the gas in the holders is pumped through the lines of Kansas City Gas Company for its consumers. The period during which the gas remains in the holders thus stored, varied from 12 hours to several days or weeks, according to the demand and supply. During the present hearing of this case, gas has thus been used from the holders in Kansas City, Mo.

10. In the contract under which Kansas City Gas Company has been receiving gas from the Kansas Natural Gas Company above referred to, there are no provisions which, as between those parties could prevent Kansas City Gas Company from manufacturing gas and mixing the manufactured gas with such natural gas as might be supplied by the Kansas Natural Gas Company. This is the method, in fact, pursued at St. Joseph, Mo. The natural gas delivered to the St. Joseph Gas Company is mixed with artificial gas which that Company produces and the mixture is sold to consumers. When so mixed the commodity is a different thing from that which the Kansas Natural Gas Company delivered to the St. Joseph Gas Company. The fact that this might be done in Kansas City, Mo., as far as any rights of the Kan-

sas Natural Gas Company or Kansas City Gas Company are concerned, shows that the title and possession of the gas passes to the Kansas City Gas Company when it reaches the lines of the Kansas City Gas Company.

11. Consumers of gas in Kansas City obtain gas by appearing at the office of the Kansas City Gas Company, 910 Grand Avenue, Kansas City, Missouri, and signing an application therefor (Record p. 1072).

12. Gas is turned on for the consumer within from thirty minutes to 5 hours after the time of his application. The Kansas Natural Gas Company is not informed of the application of the consumer nor of the fact that gas is being furnished him.

13. The "consumer's meter" belongs to the Kansas City Gas Company and is generally located in the cellar or basement of the consumer's premises. The consumer is charged by the Kansas City Gas Company for all gas that passes through that meter and is required to pay for it except only in the event that he is insolvent and cannot be made to pay. If after gas passes the consumer's meter, any of it escapes through leaks in the consumer's pipes, the consumer must still pay for it.

14. The consumer receives gas for approximately thirty days before his meter is read. Ten days thereafter he is presented with a bill (Record p. 1072) and ten days thereafter he makes payment therefor in cash or by check to the Kansas City Gas Company at 910 Grand Avenue, Kansas City, Missouri.

15. The Kansas City Gas Company exercises its own judgment and discretion as to extending credit to consumers, without consultation with the Kansas Natural Gas Company or its receivers. It requires a cash deposit from some; it accepts guarantees from others and others having credit it supplies without either deposit or guarantee. It discontinues the supply of gas to consumers who default in payment of bills for a certain period of time and for certain other violations of its rules and regulations.

16. There are no relations or dealings between the consumer in Kansas City, Missouri, and the Kansas Natural Gas Company, nor between the City of Kansas City, Mo., and the Kansas Natural Gas Company.

17. The Kansas City Gas Company does not forward to the Kansas Natural Gas Company any list of the names of consumers or the amount of gas required by all or any of them at any particular future time.

18. The contracts above referred to under which the Kansas Natural Gas Company has been delivering gas to the Kansas City Gas Company provide that for the gas delivered to it by the Kansas Natural Gas Company, the Kansas City Gas Company shall pay on a basis of 62½ per cent of the amount collected from consumers. This has been the basis of payment. When bills were not collectible the amount of such bills was not figured in determining the payment due the Kansas Natural Gas Company. It has been the practice to furnish the Kansas Natural Gas Company the names of the delinquent consumers and if later they paid

their bills, the names of such consumers thus paying up were furnished the Kansas Natural Gas Company to enable that company to check up the two lists and thus determine whether or not it was receiving the amount due it.

19. Payments by the Kansas City Gas Company to the Kansas Natural Gas Company have been made on or about the 15th day of each month for the gas delivered by the Kansas Natural Gas Company to the Kansas City Gas Company prior to about the tenth day of the preceding month.

20. The demands of the consumers of the Kansas City Gas Company during the summer months are approximately 10,000,000 cubic feet per day and during the winter months for lighting and cooking approximately 13,000,000 cubic feet per day and for all purposes, if demands were met, approximately 70,000,000 cubic feet per day.

21. The rates charged by the Kansas City Gas Company and paid by its consumers prior to November 19, 1916, and at all times thereafter until the order made in the receivership case (No. 1351) allowing a rate of 60 cents (For order see Record p. 1068) were those named in Ordinance No. 33887 of Kansas City, Mo., the franchise ordinance by authority of which the Kansas City Gas Company is now occupying the streets of Kansas City, Mo. This is the only franchise ordinance to furnish or deliver natural gas in Kansas City, Missouri.

22. The rates charged by the Kansas City Gas Company and paid by its consumers since November 19, 1916, until the above order in No. 1351, are those specified in said Ordinance No. 33887 and



approved by the Public Service Commission of Missouri pursuant to a new schedule of rates and an application filed with said Commission by said Kansas City Gas Company on August 10, 1916, increasing the rates from 27 cents to 30 cents net per thousand cubic feet. (Record pp. 361 to 366 inclusive.)

23. Neither the Kansas Natural Gas Company or its receiver has any franchise or right to occupy or use the streets of Kansas City, Missouri, for the distribution or sale of natural gas.

24. The City of Kansas City, Missouri, is a municipal corporation duly organized and existing under the Constitution and laws of the State of Missouri, by special charter. Section 16 of Article IX of the Constitution of Missouri of 1875 authorized cities having a population of more than 100,000 inhabitants to frame their own charters. Said section is as follows:

"Sec. 16. Large Cities May Frame Their Own Charters, How Adopted and Amended. —Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this state, \* \* \* it shall, at the end of thirty days thereafter, become the charter of such city, and supersede any existing charter and amendments thereof. \* \* \* and all courts shall take judicial notice thereof; \* \* \* but such charter shall always be in harmony with and subject to the Constitution and laws of the State."

25. In order to resolve any doubt as to whether or not this Constitutional provision was self executing, the General Assembly passed what is known as the Enabling Act (Laws of Missouri 1887, p. 42) to definitely authorize such cities to frame their charters in accordance with such Constitutional provision. Section 1 of that Act is as follows:

26. "Section 1. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government consistent with and subject to the constitution and laws of this state, \* \* \* (The section provides the method by which the charter is to be adopted) it shall, at the end of thirty days thereafter, become the charter of such city and supersede any existing charter and amendments thereof. \* \* \* and all courts shall take judicial notice thereof."

27. Sections 50 and 51 of that act are as follows: "Section 50. Such city shall have exclusive control over its public highways, streets, avenues, alleys and public places, and shall have exclusive power, by ordinance, to vacate or abandon any public highway, street, avenue, alley or public place, or part thereof, any law of this state to the contrary notwithstanding."

28. "Sec. 51. It shall be lawful for any city in such charter or by amendment thereof, to provide for regulating and controlling the exercise by any person or corporation of any public franchise or privilege in any streets or public places of such city, whether such fran-

chise or privileges have been granted by said city or by or under the State of Missouri, or any other authority."

(The above set forth sections are incorporated in the Revised Statutes of Missouri of 1889 as Sections 1840, 1889 and 1890, and in the Revised Statutes of Missouri of 1909 as Sections 9703, 9752 and 9753 respectively.)

29. In the twenty-eighth paragraph of Section 1 of Article II of the city charter, adopted May 9, 1889 and in force at the time the gas franchise ordinance was passed, it is provided that the city shall have power by ordinance "\* \* \* to regulate the prices to be charged by telephone, telegraph, gas and electric light companies," etc., the said paragraph of said section is as follows:

"Twenty-eighth. To regulate the prices to be charged by telephone, telegraph, gas and electric light companies, and to compel them and all persons and corporations using, controlling or managing electric wires for any purpose whatever to put and keep their wires under ground, and to regulate the manner of doing the same and the use of all such wires and all connections therewith."

30. Section 1 of Article XIV of said charter granted the city power to construct and operate gas works, electric works and similar works. Said section is as follows:

"Section 1. The city shall have power to construct and operate gas works, or electric light works, or any other kind of works for the purpose of lighting streets and public

buildings and premises and property of private persons, and also to purchase any kind of such works heretofore or hereafter erected, and to operate the same for such purpose."

31. "Section 12 of said article authorized the city to grant a franchise to any person or corporation for the operation of the kind of works specified in said Section 1. Section 12 is as follows:

"Section 12. The city may grant to any person or corporation the right or franchise to conduct the material or means for lighting from any kind of works specified in the first section of this article, under or along or over any of the streets, avenues, alleys or public highways, or public grounds of the city for the purpose of lighting streets, avenues, alleys and public highways of the city and public buildings and private premises; but no franchise or grant for any such purpose shall confer an exclusive right nor be made for a longer period than thirty years, nor be renewed or extended except within the last two years of such term, and then not beyond thirty years: provided, that no such person or corporation shall in any event charge more for light for the city or private parties than the price specified from time to time by ordinance of the city, and that the city shall also have power to regulate and fix from time to time the prices such person or company may charge for the renting of meters or apparatus for ascertaining the quantity of material or means consumed for lighting: and provided further, that the city shall not, in making the original grant, nor in any manner subsequent thereto, ever agree or bind itself to pay any fixed price for lighting streets, avenues, pub-

lic highways, alleys, public grounds or public buildings of the city for a longer period than one year at a time. In case of any such grant to a person or corporation the city shall always have the right to designate the kind of meter or apparatus to be used for the correct measurement of the material or means furnished for lighting under such grant, and to provide for inspecting and regulating same, and to compel an exact compliance with any provisions made by ordinance in that regard; and the city shall also have the right to appoint one or more measurers, whose duty it shall be to inspect all such meters and apparatus and certify to the correctness of all bills made against the consumers of the material or means for lighting, and perform such other duties as may be prescribed by ordinance. Every person or corporation using a grant or franchise under this section shall in using or occupying the streets, avenues, public highways, alleys, public grounds and public buildings of the city, conduct work and operations as may be from time to time prescribed by ordinance, and so as to avoid unnecessary injury or inconvenience to the public and all citizens, and so as to avoid injury and damage to all persons and parties and private property, and shall use at least the same care to avoid such injury and damage that the city would be bound to use if it was conducting such work and business, and shall save the city harmless from all loss, costs and expense on account of any such injury or damage, and on account of anything done in the prosecution of any such work, and the use of any such grant or franchise, and when any street, avenue, public highway or alley, or public ground shall be opened or disturbed in the construction of any such work, shall repair

the same to the satisfaction and approval of the board of public works, and so as to leave the same in as good condition for ordinary public use as it was at the time of opening or disturbing the same, and no such opening or disturbance shall be continued longer than necessary. Whenever the city may grant any right or franchise under this section it shall have the right to purchase the works, and all the appurtenances belonging thereto for furnishing the material and means for lighting, at any time during the term for which such grant may be made, whether such right be reserved expressly in the grant or not. The city may exercise all power conferred by this section by ordinance, and may, by ordinances, from time to time, make provisions for accomplishing the results herein contemplated, and enforce the same."

32. By authority of all of the above authorizations Kansas City entered into a certain franchise contract, being Ordinance No. 33887 of Kansas City, approved September 27, 1906, (Record p. 832) with Messrs. McGowan, Small and Morgan. Said franchise contract was thereafter transferred to and assumed by the Kansas City Gas Company and now constitutes a binding contract between the City of Kansas City, Missouri, and the Kansas City Gas Company. Kansas City has at all times kept and performed all the provisions and conditions of said contract.

No proceedings are shown to have been instituted by Kansas City, Missouri, in any court or tribunal against the Kansas City Gas Company or the Kansas Natural Gas Company or its receivers.

## ASSIGNMENT OF ERRORS

### **By the City of Kansas City, Missouri, Defendant and Appellant in the Above Entitled Cause.**

Comes now the City of Kansas City, Missouri, defendant and appellant in the above entitled cause, and says that in the record and proceedings of said court in the above entitled cause and in the final decree made and entered therein the court erred in the following particulars:

#### I.

The court erred in holding that Section 56 of the Judicial Code authorized the issuing and executing of the process of subpoena against Kansas City, Missouri, in this suit.

#### II.

The court erred in refusing to dismiss the bill of complaint and the supplemental bill for the reason that the court did not have jurisdiction of this cause.

#### III.

The court erred in holding that it had jurisdiction of defendant, Kansas City, Missouri, in said cause and in overruling the motion of said defendant to dismiss the bill of complaint as to it, because:

(a) The writ of subpoena was served upon Kansas City, Missouri, in the State of Missouri, outside of the jurisdiction of the District Court of the United States for the District of Kansas, and without authority of law, and said court did not



have jurisdiction of the defendant, Kansas City, Missouri, in said cause.

(b) The facts stated in said bill of complaint do not constitute a cause of action or ground of relief in equity in favor of the plaintiff and against Kansas City, Missouri.

(c) The bill of complaint is multifarious in that it is exhibited against a multitude of defendants for many distinct matters and causes, in many of which, as appears by said bill, Kansas City, Missouri, is in no way interested.

#### IV.

The court erred in denying and overruling each of the defenses in point of law arising upon the face of the bill of complaint, and on the face of the supplemental bill of complaint, pleaded by Kansas City, Missouri, in its answer to the bill of complaint, and in its answer to the supplemental bill of complaint.

(a) That the subpoena in this suit was served upon Kansas City, Missouri, a municipal corporation of said state, in Jackson county, Missouri, outside of the State and District of Kansas, for which reasons said subpoena and service thereof on this defendant was, and is, without authority of law and void, and this court does not have jurisdiction of this defendant in this suit.

(b) That there is a misjoinder of parties defendant in said suit.

(c) That there is a misjoinder of causes of action in said bill of complaint whereby it is multifarious.

(d) That it appears on the face of the bill of

complaint that the matters and things therein averred do not constitute a cause of action in favor of the plaintiff or against the defendant, Kansas City, Missouri, and do not entitle the plaintiff to the relief prayed for or to any relief against it.

(e) That the plaintiff, for reasons appearing on the face of the bill, is not without adequate remedy in due course of law for redress of any wrongs complained of.

(f) That it appears on the face of the supplemental bill of complaint that the matters and things therein averred do not constitute a cause of action in favor of plaintiff and against the defendant, Kansas City, Missouri, and do not entitle the plaintiff to the relief prayed for or to any relief against it.

#### V.

The court erred in holding that the bill of complaint and supplemental bill of complaint, or either of them, states a cause for relief in a court of equity against Kansas City, Missouri.

#### VI.

The court erred in granting a permanent injunction against Kansas City, Missouri, in said final judgment, after the enlarged court had decided on the application for a temporary injunction that the plaintiff was not entitled to any relief as against Kansas City, Missouri, the evidence at the two said hearings being substantially the same.

#### VII.

The court erred in enjoining Kansas City, Missouri, from enforcing its ordinance contract rates

against the Kansas City Gas Company, because in that respect the decree is broader than the issues made by the pleading in the cause.

### VIII.

The court erred in its final decree in granting a permanent injunction against Kansas City, Missouri, because

(a) The evidence showed that Kansas City, Missouri, had not passed any ordinance or instituted or prosecuted any suit or proceeding against the Kansas Natural Gas Company or its receivers, and had not done or threatened to do any act or thing to impair any right possessed by the Kansas Natural Gas Company and its receivers, or to hinder the exercise of any such right.

(b) The evidence showed that neither the Kansas Natural Gas Company nor its receivers have any right, license or franchise, of any character, to do business within the corporate limits of Kansas City, Missouri, and that neither the Company nor its receivers own any property within the corporate limits of the city.

(c) That the evidence showed that Kansas City Gas Company is an independent dealer in natural gas and is not the agent, for any purpose, of the Kansas Natural Gas Company or of its receivers.

(d) That the supplemental bill of complaint alleges, and the evidence showed, that all natural gas sold by the receivers to the Kansas City Gas Company is delivered at or near the city limits of Kansas City, Missouri, and that thereafter the Kansas City Gas Company has complete and undivided control and direction of the sale, disposition and distribution of said gas.

## IX.

The court erred in its final decree in holding that the Kansas Natural Gas Company and its receivers, or any of them, are engaged in selling or delivering natural gas to consumers in Kansas City, Missouri.

## X.

The court erred in holding that the sale and delivery of gas to consumers in Kansas City, Missouri, is interstate commerce.

## XI.

The court erred in holding that the transportation of gas from Oklahoma to Kansas City, Missouri, is interstate commerce of a national and not of a local character.

## XII.

The court erred in holding that the business of selling and delivering gas carried on by the Kansas City Gas Company in Kansas City, Missouri, is interstate commerce.

## XIII.

The court erred in holding that the order made by the Public Service Commission of the state of Missouri, August 10, 1916, in cause No. 1050, on the petition of the Kansas City Gas Company, authorizing new rates for natural gas in Kansas City, Missouri, was an illegal attempt to burden and regulate interstate commerce, because the rates authorized by said order are the rates fixed in said Ordinance Contract No. 33887.

## XIV.

The court erred in holding that the order of the Public Service Commission of the state of Mis-

souri, August 10, 1916, authorizing new rates for natural gas in Kansas City, Missouri, was the taking of property without due process of law because said rates are the rates fixed by said Ordinance Contract No. 33887, of Kansas City, Missouri.

#### XV.

The court erred in its final decree in granting relief to the complaints against defendant, Kansas City, Missouri, because no ground for relief is stated either in the original bill or in the supplemental bill, and no ground for relief was shown by the evidence against said defendant.

#### XVI.

The court erred in its final decree in enjoining Kansas City, Missouri, from enforcing against the Kansas City Gas Company the Ordinance Contract rates for natural gas, because thereby the city is deprived of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

#### **Assignment of Errors by the City of Joplin, Missouri, Defendant and Appellant in the Above Entitled Cause.**

Comes now the City of Joplin, Missouri, defendant and appellant in the above entitled cause, and says that in the record and proceedings of said court in the above entitled cause and in the final decree made and entered therein the court erred in the following particulars:

## I.

The court erred in holding that Section 56 of the Judicial Code authorized the issuing and executing of the process of subpoena against Joplin, Missouri, in this suit.

## II.

The court erred in refusing to dismiss the bill of complaint and the supplemental bill for the reason that the court did not have jurisdiction of this cause.

## III.

That the court erred in holding that it has jurisdiction of defendant Joplin, Missouri, in said cause, because:

(a) The writ of subpoena was served upon Joplin, Missouri, in the State of Missouri, outside of the jurisdiction of the District Court of the United States for the District of Kansas, and without authority of law, and said court did not have jurisdiction of the defendant Joplin, Missouri, in said cause.

(b) The facts stated in said bill of complaint do not constitute a cause of action or ground of relief in equity in favor of the plaintiff and against Joplin, Missouri.

(c) The bill of complaint is multifarious in that it is exhibited against a multitude of defendants for many distinct matters and causes, in many of which, as appears by the bill, Joplin, Missouri, is in no way interested.

## IV.

The court erred in holding that the bill of complaint and supplemental bill of complaint, or

either of them, states a cause for relief in a court of equity against Joplin, Missouri.

#### V.

The court erred in granting a permanent injunction against Joplin, Missouri, in said final judgment, after the enlarged court had decided on the application for a temporary injunction that the plaintiff was not entitled to any relief as against Joplin, Missouri, the evidence at the two said hearings being substantially the same.

#### VI.

That the court erred in enjoining Joplin, Missouri, from enforcing its ordinance contract rates against the Joplin Gas Company, because in that respect the decree is broader than the issues made by the pleadings in the cause.

#### VII.

The court erred in its final decree in granting a permanent injunction against Joplin, Missouri, because

(a) The evidence showed that Joplin, Missouri, had not passed any ordinance or instituted any suit or proceedings against the Kansas Natural Gas Company or its receivers, and had not done or threatened to do any act or thing to impair any right possessed by the Kansas Natural Gas Company and its receivers, or to hinder the exercise of any such right.

(b) The evidence showed that neither the Kansas Natural Gas Company nor its receivers have any right, license or franchise of any character to do business within the corporate limits of Joplin,



Missouri, and that neither the company nor its receivers own any property within the corporate limits of the city.

(c) The evidence showed that Joplin Gas Company is an independent dealer in natural gas and is not the agent, for any purpose, of the Kansas Natural Gas Company or its receivers.

(d) The evidence shows that all natural gas sold by the receivers to the Joplin Gas Company is delivered at or near the city limits of Joplin, Missouri, and that thereafter the Joplin Gas Company has complete and undivided control and direction of the sale and distribution of said gas.

#### VIII.

The court erred in its final decree in holding that the Kansas Natural Gas Company and its receivers, or any of them, are engaged in selling or delivering natural gas to consumers in Joplin, Missouri.

#### IX.

That the court erred in holding that the sale and delivery of gas to consumers in Joplin, Missouri, is interstate commerce.

#### X.

That the court erred in holding that the transportation of gas from Oklahoma to Joplin, Missouri, is interstate commerce of a national and not of a local character.

#### XI.

That the court erred in holding that the business of selling and delivering gas to consumers in Joplin, Missouri, is interstate commerce.

## XII.

The court erred in its final decree in granting relief to the complainants against defendant Joplin, Missouri, because no ground for relief is stated either in the original bill or in the supplemental bill, and no ground for relief was shown by the evidence against said defendant.

## XIII.

The court erred in its final decree in enjoining Joplin, Missouri, from enforcing against the Joplin Gas Company the Ordinance Contract rates for natural gas, because thereby the City is deprived of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

## XIV.

The court erred in its final decree in holding that the rate of twenty-five cents in effect in the City of Joplin was a rate confiscatory of the property of the Kansas Natural Gas Company or the Joplin Gas Company, for the reason that said rate was the rate provided by the franchise contract existing between the City of Joplin and the Joplin Gas Company.

**Assignment of Errors by the City of St. Joseph,  
Missouri, Defendant and Appellant in the  
Above Entitled Cause.**

Comes now the City of St. Joseph, Missouri, defendant and appellant in the above entitled cause, and says that in the record and proceedings of said court in the above entitled cause and

in the final decree made and entered therein the court erred in the following particulars:

I.

The court erred in holding that Section 56 of the Judicial Code authorized the issuing and executing of the process of subpoena against St. Joseph, Missouri, in this suit.

II.

The court erred in refusing to dismiss the bill of complaint and the supplemental bill for the reason that the court did not have jurisdiction of this cause.

III.

That the court erred in holding that it had jurisdiction of defendant St. Joseph, Missouri, because:

(a) The writ of subpoena was served upon St. Joseph, Missouri, in the State of Missouri, outside of the jurisdiction of the District Court of the United States for the District of Kansas, and without authority of law, and said court did not have jurisdiction of the defendant St. Joseph, Missouri, in said cause.

(b) The facts stated in said bill of complaint do not constitute a cause of action or ground of relief in equity in favor of the plaintiff and against St. Joseph, Missouri.

(c) The bill of complaint is multifarious in that it is exhibited against a multitude of defendants for many distinct matters and causes, in many of which, as appears by said bill, St. Joseph, Missouri, is in no way interested.

## IV.

The court erred in holding that the bill of complaint and supplemental bill of complaint, or either of them, states a cause for relief in a court of equity against St. Joseph, Missouri.

## V.

The court erred in granting a permanent injunction against St. Joseph, Missouri, in said final judgment, after the enlarged court had decided on the application for a temporary injunction that the plaintiff was not entitled to any relief as against St. Joseph, Missouri, the evidence at the two said hearings being substantially the same.

## VI.

The court erred in its final decree in granting a permanent injunction against St. Joseph, Missouri, because

(a) The evidence showed that St. Joseph, Missouri, had not passed any ordinance or instituted any suit or proceeding against the Kansas Natural Gas Company or its receivers, and has not done or threatened to do any act or thing to impair any right possessed by the Kansas Natural Gas Company and its receivers, or to hinder the exercise of any such right.

(b) The evidence showed that neither the Kansas Natural Gas Company nor its receivers have any right, license or franchise of any character to do business within the corporate limits of St. Joseph, Missouri, and that neither the company nor its receivers own any property within the corporate limits of the city.

(c) The evidence showed that St. Joseph Gas Company is an independent dealer in natural gas and is not the agent, for any purpose, of the Kansas Natural Gas Company, or its receivers.

(d) The evidence shows that all natural gas sold by the receivers to the St. Joseph Gas Company is delivered at or near the city limits of St. Joseph, Missouri, and that thereafter the St. Joseph Gas Company has complete and undivided control and direction of the sale and distribution of said gas.

#### VII.

The court erred in its final decree in holding that the Kansas Natural Gas Company and its receivers, or any of them, are engaged in selling or delivering natural gas to consumers in St. Joseph, Missouri.

#### VIII.

That the court erred in holding that the sale and delivery of gas to consumers in St. Joseph, Missouri, is interstate commerce.

#### IX.

The court erred in holding that the transportation of natural gas from Oklahoma to St. Joseph, Missouri, is interstate commerce of a national and not of a local character.

#### X.

The court erred in its final decree in granting relief to complainants against defendant, St. Joseph, Missouri, because no ground for relief is stated either in the original bill or in the supplemental bill, and no ground for relief was shown by the evidence against said defendant.

## **BRIEF AND ARGUMENT.**

### **I. The court had no jurisdiction of the Missouri defendants.**

At the outset it should be noted that the Missouri defendants stand in a different relation to this case than do the Kansas defendants in the matter of jurisdiction. There had been a receivership going on in the United States District Court for the District of Kansas pursuant to the foreclosure of mortgages. Previous to this receivership an action under state anti-trust laws of Kansas had been begun in the Kansas State Court of Montgomery County against the same company (The Kansas Natural Gas Company) (Rec. p. 801). In the contest (Rec. p. 803) between the various parties as to which court should have the custody of the properties, the United States Court gave way and turned over all the property of the Kansas Natural Gas Company in Kansas, Missouri and Oklahoma to the state court of Montgomery County, Kansas (Rec. p. 805, par. 41; pp. 1001, 1005, 1006). The Federal receiver was not removed but he had no property left in his possession. The receivers of the Kansas State Court were then appointed by the United States Courts of Missouri and Oklahoma as ancillary receivers in those courts for the properties in those states. The situation was then this: the Kansas property was in the hands of the Kansas State Court receivers and the Missouri and Oklahoma properties

were in the hands of the United States Court receivers who were the same persons that were acting as the Kansas State Court receivers. This was the situation when in December, 1915, John M. Landon, Kansas State Court receiver (the other state court receiver having died) filed this suit in the United States District Court of Kansas. Subpoenas were issued from that court and served upon the Missouri defendants in the State of Missouri (Rec. pp. 93 to 99 inc.). It is our contention that the court did not obtain jurisdiction over them thereby, for the following reasons:

**1. Process cannot issue out of the United States District Court in one state and be served in another state unless specially authorized by law.**

It is clear that the United States Courts of Kansas and Missouri are entirely separate jurisdictions and that process from one cannot be effective in the other unless there is some very definite authorization to be found for it.

*Jellenik vs. Huron Copper Mining Co.*, 177 U. S. 1 at 10.

*United States vs. American Lumber Co.*, 85 Fed. 827.

*Winter vs. Koon, Schwartz & Co.*, 132 Fed. 273.

**2. District Courts of the United States are courts of limited jurisdiction and their policy is not to stretch their powers for the purpose of acquiring jurisdiction.**

*Kempe's Lessee vs. Kennedy*, 5 Cram. 173 at 185.

*Robertson vs. Cease*, 97 U. S. 646.



*Grover vs. Amer. Central Ins. Co.*, 109 U. S. 278, 283.

*Great Southern Fire Proof Hotel Co., vs. Jones*, 177 U. S. 449 at 453.

**3. Service of process in Missouri was not authorized in this case by Section 57 of the Judicial Code.**

While that section provides for certain cases in which process may be effective outside the district it is limited to cases concerned with the enforcing of liens and removing clouds from title to realty.

*Jellenik vs. Huron Copper Mining Co.*, 177 U. S. 1.

**4. Service of process in Missouri was not authorized in this case by Section 56 of the Judicial Code.**

It seems to us that the section does not apply to our case for the following reasons:

**A. The purpose of Section 56 is to aid in the collection of assets; this suit is not for the purpose of collecting assets.**

Previous to the enactment of this section the collection and control of assets by a receiver in a district court of the United States had been much more cumbersome and difficult for the reason that a receiver appointed by the United States Court of one state could not take possession of the property of the same ownership in an adjoining state. (*Kittel vs. Augusta, Tallahassee & Gulf R. R. Co.*, 78 Fed. 855.) Frequently this resulted in considerable dissipation of the estate and inefficient administration of the property as a whole.

The evident purpose of Sec. 56, then, was to remedy this matter by permitting a receiver to collect and control the assets in neighboring states, thus making administration more easy and efficient for the entire property. The collection and control of the properties is the clear intention of the section. As a means of obtaining control when conflict might arise, the section provides, that "process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within the same district." What property? Evidently the property of the estate that the receiver is charged to collect and preserve. This last quoted phrase again shows most definitely that the purpose of the section was to aid in the collection of the assets. The privilege conferred by this section is thus meant to be employed by a Federal receiver for a special purpose. To permit any other person to employ the privilege of this section to any sort of suit he might choose, is outside the letter and the purpose of the section and might lead, as it has in this very case, to a serious abuse of the court's process.

**B. There was no receiver of the United States District Court of Kansas in charge of the property at the time this suit was commenced, and the fundamental condition of Section 56 is therefore not satisfied.**

At the time process was issued and served, there was no receiver of the United States District Court of Kansas in control of the property and thus the fundamental condition of the section is not satisfied.

It is true there was a nominal receiver under appointment of the United States Court but he had no item of property in his possession; it had all been turned over to the state court of Kansas. He was not a real receiver; he was an empty and naked official with no duties and no responsibilities.

"A receiver is an indifferent person between the parties to a cause appointed by the court to receive and preserve the property or fund in litigation *pendente lite*, when it does not seem reasonable to the court that either party should hold it."

High on Receivers, 4th Ed. Sec. 1.

"A receiver generally speaking is one to whom anything is delivered by another. But the use of the word in reference to the subject of which we are to treat means a ministerial officer of the court of chancery appointed as an impartial and indifferent person between the parties to a suit to take possession of and preserve, *pendente lite*, and for the benefit of the party ultimately entitled to it, the fund or property in litigation when it does not seem equitable to the court that either party should have possession or control of it."

Beach on Receivers, Alderson's Ed., Sec. 2.

To say, then, that the United States receiver then in shadowy existence is such a receiver and his naked receivership is such a receivership as is contemplated by Section 56 for the purpose of en-

larging territorial jurisdiction seems an unwarranted stretch of that section.

**II. The plaintiff is entitled to no relief against the cities because they have committed no act of interference with the natural gas business.**

**1. The only act done by Kansas City was to consent to the new rate put in force August 10, 1916, by the Kansas City Gas Company, which rate was provided for by the franchise ordinance 33887 of said city.**

In the original Bill of Complaint no specific act is charged to have been committed by Kansas City, Missouri, interfering with plaintiff or the natural gas business. In the Supplemental Bill the only act charged against Kansas City, Missouri, and the only act proved was in consenting to the installation of a new rate in that city by the Kansas City Gas Company (Rec. pp. 344, 345.) This came about in the following way:

Kansas City, Missouri, has no contractual relation with the Kansas Natural Gas Company or its receiver (Rec. p. 814, par. 73); its sole contract and relation is with and to the Kansas City Gas Company under ordinance 33887, the franchise ordinance under which the Kansas City Gas Company occupies the streets of Kansas City. By the terms of this franchise (Rec. p. 832) the Kansas City Gas Company was permitted to charge 25 cents per thousand feet for gas during the first five years of the franchise, 27 cents during the next five years and thirty cents thereafter. The franchise having been granted in 1906 it transpired that 1916 was the time to advance the rate

of 30 cents in accordance with such provision. The Kansas City Gas Company went about it by filing a petition with the State Public Service Commission (Rec. pp. 361 to 366 inc.) (which Commission had meanwhile been established in 1913) to which petition Kansas City entered its consent and the rate thereupon went into effect. No threats of any other act by Kansas City are shown to have been made. Surely this act was no interference with the natural gas business or with the plaintiff or any one else since it was strictly in compliance with the contract of the city. The petition should have been dismissed as against Kansas City, therefore, since it stated no ground of action against such city and this defendant ought not to have been kept in the case, and this defendant ought not to have been included in the decree and thus had its hands tied over local matters when no act of interference with the natural gas business or with interstate commerce was proven against it.

**2. The cities of Joplin and St. Joseph, Missouri, also have committed no act of interference with the natural gas business or interstate commerce.**

The only acts alleged to have been committed by Joplin were concerned with enforcing its franchise contract with the Joplin Gas Company. (Rec. p. 347.) The Joplin Gas Company filed a new rate with the Missouri Public Service Commission and the City of Joplin filed a petition with the Commission to prevent the putting in of any rate other than that fixed by the franchise ordinance. The

Supplemental Bill alleged certain threats of the City to arrest Joplin Gas Company's officials if the new rate were put in effect. This was denied in the pleadings and was not proved.

The City of Joplin has no contract or arrangement with the Kansas Natural Gas Company or its receiver but deals exclusively with the Joplin Gas Company. (Rec. p. 664 to 668 incl.) No specific acts are alleged to have been committed by the City of Joplin, Missouri.

The Bill of Complaint makes allegations concerning the non-compensatory character of the rates put in effect in St. Joseph by order of the Public Service Commission of Missouri but does not charge the city of St. Joseph with being responsible therefor.

In the case of Joplin and St. Joseph, therefore, as well as Kansas City, Missouri, no acts of interference with the natural gas business or with interstate commerce are shown and these cities should have been released from the burden of continuing in the suit and of being subjected to the provisions of the decree.

### **III. The sale of natural gas in Kansas City, Joplin and St. Joseph is not interstate commerce.**

There are several features of the natural gas business as it is shown to be conducted which definitely determine that it has an interstate character only until it reaches the local distributing company and its interstate character then ceases.

Any one of these features seems adequate to take away the interstate character of the business

and make it a matter solely of state concern. These features will be first considered in reference to Kansas City, which furnishes a typical example.

**1. The interstate character of the shipment ceases when the gas is delivered to the distributing company.**

One of these items which thus affects the character of the business is the fact that the gas becomes the property of the Kansas City Gas Company as soon as it enters the mains of that company. The gas is sold by the Kansas Natural Gas Company directly to the Kansas City Gas Company. The Kansas Natural has no dealings with the consumer; it delivers the gas to the local company and then its work is done. It cannot have dealings with the consumer because it has no permission to do business in the city. The Kansas City Gas Company is the retailer. When a molecule of gas starts from the well in Oklahoma none knows what consumer in Kansas City will receive it or whether it will not perhaps be used by the Kansas City Gas Company itself and not be resold at all. The consumers are constantly changing, for that matter. No consumer orders any special gas and he may have the gas cut off at any time. The only reasonable intention which can be held as to this gas is that it shall go to the local company and then shall be disposed of as that company shall provide. The gas reaches its interstate destination when it reaches the Kansas City Gas Company. After that the company sends it around where it chooses and in accordance with contracts and arrangements in which the Kansas Natural has and can have no part whatever.



No agency can be built up between the Kansas City Gas Company and the Kansas Natural based on the fact that when the local company comes to pay for the gas the amount of the payment is figured on a percentage basis. Such a question arose in the case of *Banker Bros. Co. vs. Pennsylvania*, 222 U. S. 210. In that case Banker Bros. in Pittsburgh took orders for automobiles and sent the orders with 10 per cent of the price to Pierce in Buffalo. The bill of lading with draft attached was sent to Banker Bros. and he paid it and remitted 80 per cent to Pierce. The court held that this did not establish any agency and that therefore the transaction was not of an interstate character and hence was subject to taxation in Pennsylvania. The court said (l. c. 213):

"The name of the Pierce Company was not mentioned in the order signed by the purchaser. Had there been a breach of its terms he would have had a cause of action against the Banker Company with whom alone he dealt. If he had failed to complete the purchase the Pierce Company would have had no right to sue him on the contract, the fact that he was liable for the freight by virtue of the agreement to 'pay list price f. o. b. factory' did not convert it into a sale by the manufacturer at the factory, neither was that result accomplished because with the machine, Banker Bros. also delivered to the buyer in Pittsburgh a warranty from the manufacturer direct."

In subdivision 17 of the Supplemental Bill of Complaint herein, the plaintiff charges that when

he was notified by the Kansas City Gas Company of

"its refusal to put into force and effect the scale of prices fixed by this plaintiff, plaintiff notified said Kansas City Gas Company that from and after September 1, 1916, he would charge said Kansas City Gas Company for gas delivered to it by him at a price of 18 cents per thousand cubic feet at the gates of the plant of the Kansas City Gas Company, being points where the gas is transferred from the pipe lines of this plaintiff to the distributing plant of the Kansas City Gas Company. \* \* \*

"That since the giving of said notice, this plaintiff has at all times insisted, and now insists, upon payment from the Kansas City Gas Company for natural gas so delivered to it from and after September 1, 1916, at the rate of 18 cents per thousand cubic feet as measured by meter at the gate of said distributing plant."

It is shown by the evidence in the case at this hearing that since September 1, 1916, the receiver has charged the Kansas City Gas Company with gas as delivered by the receiver at the point of connection between the pipes of the Kansas City Gas Company and pipes operated by the receiver, as shown by meters set at or near those points.

Kansas City, Missouri, contends (so also does the Kansas City Gas Company) that no relation of agency ever at any time existed between the Kansas City Gas Company and the Kansas Natural Gas Company or its receivers. If the receiver ever at any time believed an agency existed

between the Kansas Natural Gas Company or its receivers and the Kansas City Gas Company, he abandoned all faith in that proposition at the time he served notice of his intention to charge 18 cents at the point of delivery, as defined in said 17th subdivision of the Supplemental Bill, wherein it clearly appears that from that time on it was his purpose to regard, and he did regard, the Kansas City Gas Company as an independent purchaser of gas so delivered, whether the Kansas City Gas Company resold the gas or permitted it to escape and go to waste, and without regard to the price received for any such gas by the Kansas City Gas Company.

**2. The interstate movement ceases when the gas is stored in the reservoirs.**

As pointed out in the statement of facts, the main trunk lines of the Kansas Natural became a huge storage reservoir for natural gas. The storage capacity of a section leading to Kansas City was placed by experts at from 12,000,000 to 14,000,000. The fact that this reservoir happens to be long and slim does not make it any the less a great storage reservoir. When the Kansas City Gas Company wants gas it draws on this reservoir and takes out some just as it might go to a tank and draw off a gallon of molasses.

Another storage reservoir is the big gas tank maintained by the local company in Kansas City. Here the company stores up a supply of gas during times of small consumption and thus has it ready for times of peak-load demand.

And why should not this item of storage follow the same rule which this Court has laid down elsewhere when an interstate shipment goes into storage? This matter was considered in the case of *American Steel & Wire Co. v. Speed*, 192 U. S. 500. In that case the company manufactured goods at various plants in Ohio and shipped them to Memphis, where its agents stored them in warehouses, pending further shipment to purchasers. When orders came to the main office in Chicago that office sent directions to Memphis to forward such and such supplies to such and such points. It was plainly stated in the case that the goods so held at Memphis were sent and held there only temporarily till the identity of the ultimate consumer was determined. The Court, the Chief Justice speaking, said (l. c. 518):

"With these facts in mind we are of opinion that the court below was right in deciding that the goods were not in transit, but on the contrary had reached their destination at Memphis and were there held in store at the risk of the steel company to be sold and delivered as contracts for that purpose were completely consummated."

And the Court held that the goods were therefore subject to the taxing power of the State of Tennessee.

*General Oil Company v. Crain*, 209 U. S. 211, is another storage case where it was held that the fact that the oil was put in storage determined that its interstate movement had ceased. In that case the company shipped oil in tank cars

to Memphis for the purpose of there putting it up in barrels and sending it on to the ultimate consumers in Tennessee and other states. Here again the court decided that "it had reached the destination of its first shipment," was therefore not interstate commerce and hence was subject to the taxing power of the State of Tennessee.

**3. The interstate movement ceases when the gas is mixed with the mass of property of the state.**

In *Brown v. Houston*, 114 U. S. 622, the property in question was coal shipped from Pennsylvania to Mississippi for the purpose of being transhipped to foreign destinations. It was still lying on the barge in the river and yet the court held it to have become mixed with the property of the state so as to be taxable, and said of the situation (l. c. 632):

"It (the tax) was imposed after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans."

And so, *a fortiori*, we must say upon such authority, that when the natural gas gets into the mains of the local company it has reached its destination. It ceases to be interstate commerce.

Upon the question of the termination of the interstate shipment the case of *Atchison, Topeka & Santa Fe R. R. Co. v. Harold*, 241 U. S. 371, has been suggested as an authority for holding

that a temporary stop does not terminate the interstate character of the shipment. That the case does not stand for this principle but that the court very clearly had another point in mind as the determining consideration in the case is shown by the court's language (l. c. 375):

"The motion to dismiss referred to at the outset is based on the ground that the action of the court involved no question of interstate commerce but purely one of intrastate commerce. But this disregards the fact THAT THE BILL OF LADING WHICH WAS SUED UPON WAS AN INTER-STATE COMMERCE BILL COVERING A SHIPMENT FROM KANSAS CITY, MISSOURI, TO ELK FALLS, KANSAS."

And it was therefore held that the shipment was an interstate one.

The situation and methods of doing business in Joplin and St. Joseph are similar to those in Kansas City and the local distributing gas business in those places is equally intrastate. The St. Joseph situation is interesting in that it shows an additional argument for the fact that the gas becomes mixed with the mass of property of the state before it is delivered to the consumer. In that city the local company manufactures some gas and mixes it with the natural gas purchased from the Kansas Natural. The resulting gas is certainly something different from the gas that comes over the state line; it has clearly, and in a physical sense, been mixed with the property of the state and its interstate character lost. The same pro-

cedure might, as far as the rights of Kansas Natural are concerned, be carried out in Joplin and Kansas City.

**IV. The business of the Kansas Natural Gas Company and of its receivers is in its nature local, neither requiring nor being capable of uniform treatment. Congress not having regulated it, the States may regulate it in a reasonable way to protect the health and convenience of their citizens.**

The exclusive right of Congress to regulate commerce with foreign nations, among the several states, and the Indian tribes, exists where the subject involved is national in its character and permits of only one uniform method of regulation.

In *Cooley v. The Board of Wardens of the Port of Philadelphia*, 12 How. 299, the foregoing doctrine was announced by the Supreme Court, wherein the court said (l. c. 319):

"Now, the power to regulate commerce embraces a vast field, containing not only many, but exceedingly vast subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating clearly on the commerce of the United States in every port; and some like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation."

Willoughby on the Constitution, Sec. 308, says:

"The doctrine of *Cooley v. Board of Wardens* is, at the present time, the accepted doctrine of the Supreme Court."



In *Munn v. Illinois*, 94 U. S. 113, the question arose as to the power of the state to license grain elevators used in connection with interstate carriers, and such regulation was held not to be an interference with interstate commerce in the absence of national legislation on the subject.

(l. c. 135:)

"Their regulation is a thing of domestic concern, and certainly until Congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction."

In *Escanaba Company v. Chicago*, 107 U. S. 678, the power of the city to regulate the use of drawbridges over a navigable river came into question, and the decision held that although the river was under national authority, yet until Congress should act the state might control, since it was a matter local in its nature. The court there says (l. c. 683):

"But the states have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience and prosperity of their people."

(l. c. 687:)

"On the other hand, when the subjects on which the power may be exercised are local in their nature or operation or constitute mere aids to commerce, the authority of the state may be exerted for their regulation and

management until Congress interferes and supersedes it."

(l. c. 687:)

"Inaction of Congress upon these subjects of a local nature or operation, unlike its inaction upon matters affecting all the states and requiring uniformity of regulation, is not to be taken as a declaration that nothing shall be done in respect to them, but is rather to be deemed a declaration that for the time being and until it sees fit to act they may be regulated by state authority."

In *Davis v. Pennsylvania Gas Company* (Public Utility Reports, 1917 F) before the New York Public Service Commission, a proceeding had been brought to compel a reduction in the price of natural gas in New York brought into the state from Pennsylvania. The sole question was whether or not the business was interstate commerce of such a nature that the state of New York could not control the price in New York. The commission says of this business (l. c. 614):

"Has Congress intended to leave to the states affected the regulations necessary to control the trade in gas? The control of this product is not one which is of interest to the whole country. The area which produces it is comparatively small. In the same sense the distance it may be conveyed with profit is short. For commercial purposes but one method of transportation is possible—by pipe lines. The course of supply is continually changing, and varies in amount. It is used for light, heat and power under different conditions and for different purposes."

The Commission considered the decision of the case at bar in the court below at the preliminary hearing of this case and concluded that the natural gas business is local in character, and that the state should therefore have power to control the rate.

*Jamieson v. Indiana Natural Gas & Oil Co.*, 128 Ind. 555, involved the transportation of natural gas from Indiana to Illinois and regulations in Indiana respecting it. On the point of the local character of the natural gas business the court said (l. c. 571):

"The local character of such a substance as natural gas is, we repeat, marked and peculiar \* \* \*. It is so essentially local that only local regulation can be effective or appropriate. \* \* \*"

(l. c. 572:)

"The local and peculiar character of natural gas makes it almost impossible that it should be the subject of a general national regulation. \* \* \* (l. c. 573.) Upon this point we affirm that natural gas is characteristically and peculiarly a local product; that its production is confined to a limited territory; that because of its local characteristics and peculiarities it is a proper subject for state legislation and cannot, so far as regards local protection, be made the subject of general legislation by Congress; or, at all events, that it does not require a uniform system as between the states' for its regulation."

In *Manufacturers Light & Heat Co. v. Ott*, 215 Fed. 940, the company was operating its lines in

Ohio, Pennsylvania and West Virginia, and it was held that the West Virginia Public Service Commission had authority to regulate rates to be charged in that state and such regulation was not an interference with interstate commerce which could be objected to, since Congress had expressly declined to regulate interstate gas companies.

To the same effect are

*Railroad Commission Cases*, 116 U. S. 307.  
*N. Y. N. H. & H. R. R. v. New York*, 165  
 U. S. 628.

*Minnesota Rate Cases*, 230 U. S. 352.  
*Western Union Tel. Co. v. James*, 162 U.  
 S. 650.

The natural gas business is not such as to require national legislation. Congress has expressly refused to regulate it. (U. S. Compiled Statutes 1916, Sec. 8563; 36 Statutes at Large, Chap. 309, p. 544, Sec. 7.) The express language excluding the natural gas business from the terms of the Interstate Commerce Act is conclusive of the intention of the Federal Government to leave that business open to local regulation. The business is not great in extent, considered from a national standpoint. It is carried on in Oklahoma, in Kansas and comes just across the state line into Missouri. The maximum number of meters on the entire system is 150,000. There are few other gas fields in the United States, and each field can serve only its limited local territory and has its special local problems. The business affects the use of city streets over which the cities of the state must have complete control and over which

the state of Missouri has given its cities complete control. The business touches the safety and convenience of the citizens of the state so closely that the state should have the right to protect those citizens.

**V. The decree of the court below amounts to a taking of the property of Kansas City, Missouri, without due process of law in violation of the Fifth Amendment to the Constitution of the United States.**

1. The Franchise Ordinance No. 33887 between Kansas City, Missouri, and The Kansas City Gas Company is a valid contract.

A. At the time the franchise ordinance was adopted, Kansas City had adopted a charter under the provisions of Section 16 of Article IX of the Constitution of Missouri of 1875 (for text of this section see paragraph 24 of Statement of Facts, ante) which ordains:

"Any city having a population of more than 100,000 inhabitants may frame a charter for its own government consistent with and subject to the Constitution and laws of this state," etc.

In 1887 the General Assembly passed an Act (Laws of Missouri 1887, page 42, for text of section see paragraph 26 of Statement of Facts, ante) known as the "Enabling Act," the object of which was to resolve any doubt as to whether or not the constitutional provision was self executing, and to thus allow the cities to freely avail themselves of the power granted. Under this authority Kansas City adopted a charter on May

9, 1889, which was in force at the time Franchise Ordinance No. 33887 was enacted (see paragraphs 27, 28, 29, 30 and 31 of Statement of Facts, *ante*).

**B. The power of the city to provide, by special charter, a complete system of municipal government for the regulation of its own local affairs, including use of streets by public utilities, has been many times affirmed by the Supreme Court of Missouri.**

*Sluder v. Transit Co.*, 189 Mo. 107, 1. c. 130.

*Kansas City v. Railroad*, 187 Mo. 146.

*City of California v. Telephone Co.*, 112 Mo. App. 722.

*State ex rel. v. Railway Co.*, 140 Mo. 539.

**2. The validity and binding force of this contract upon the Kansas City Gas Company was not an issue raised by the pleadings in this cause and the court had no authority to release the Kansas City Gas Company from its obligations to Kansas City thereunder.**

At no time did the plaintiff suggest by pleadings or at the trial that any attack was to be made upon the binding force of the Franchise Ordinance 33887 by which Kansas City permitted the use of its streets and the Kansas City Gas Company was bound to furnish natural gas at a certain rate. Neither did the Kansas City Gas Company raise any such issue and no issue or question was given a hearing or even raised at the trial.

The court below did in its final decree effectually nullify the rights of Kansas City under said franchise contract. The United States District

Court for the District of Kansas, having again taken control of the receivership of the Kansas Natural Gas Company in Case No. 1351 (a case in which none of the Missouri cities were parties), made a rate order raising the price of natural gas to be charged the consumers in Kansas City, Missouri (and the other cities, Joplin and St. Joseph), from 30 cents to 60 cents. Then in the final decree of the case at bar (No. 136-N) the court enjoined Kansas City and the other cities "from interfering with the plaintiff or any of said defendant distributing companies in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri." This, of course, has completely tied the hands of Kansas City and has made its franchise contract worthless to the city.

The court below, therefore, went too far in nullifying this franchise ordinance by its final decree, and thus relieving the Kansas City Gas Company of its contract obligations to the city.

**3. The decision of a court upon an issue not raised by the pleadings does not afford a hearing and is not due process of law.**

In *Reynolds v. Stockton*, 140 U. S. 254, the question was whether or not a certain judgment rendered in New York against an ancillary receiver there was valid so as to bind the principal receiver in New Jersey, and it was held that the judgment rendered in New York went beyond the pleadings in the case and hence was void. This Court said (l. c. 265):



"The invalidity of the judgment depends upon the fact that it is in no manner responsive to the issues tendered by the pleadings. This idea underlies all litigation. Its emphatic language is that a judgment to be conclusive upon the parties to the litigation must be responsive to the matters controverted."

In *Coe v. Armour Fertilizer Co.*, 237 U. S. 413, the question of due process arose upon the failure of the Florida statute to require specific notice to stockholders before execution could be levied against them personally upon an unsatisfied judgment against the corporation. The court discussed the question as follows (l. c. 426):

"For in this case there was no pending action or issue; plaintiff in error came into court to object, on jurisdictional ground, to the execution of final process upon his property. And the effect of the decision under review was to convert his petition, which simply raised an issue of law under the State Constitution and the Fourteenth Amendment, into a tender of an issue of fact respecting his unpaid subscription, if any, and then to hold him concluded upon the latter issue for failure to introduce evidence bearing upon it. In doing this the court in effect rendered judgment against him upon a matter that was not within the pleadings and was not in fact litigated. TO DO THIS WITHOUT HIS CONSENT—AND THE RECORD SHOWS NO CONSENT—IS CONTRARY TO FUNDAMENTAL PRINCIPLES OF JUSTICE." (Capitals are ours.)

In *Windsor v. McVeigh*, 93 U. S. 274, the facts were as follows: The United States had instituted condemnation proceedings against Windsor as a rebel during the Civil War and his land was sought to be taken. He entered an appearance in the suit, but his plea was stricken out on the ground that he was a rebel, and the proceedings went through and the land was sold by the United States marshal. Plaintiff now brings suit in ejectment and defendant sets up title from the United States marshal under this sale. This Court held that defendant acquired no title because the condemnation was void as not affording the owner due process of law in that case. The language of the court in the case is very significant for our case at bar (l. c. 282):

"The doctrine invoked by counsel that, where a court had once acquired jurisdiction, it has the right to decide every question that arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is undoubtedly correct as a general proposition, but, like all general propositions, is subject to many qualifications in its application."

And at l. c. 283:

"The decree of a court of equity upon oral allegations, without written pleadings, would be an idle act, of no force beyond that of an advisory proceeding of the chancellor."

In *Standard Oil Co. v. Missouri*, 224 U. S. 270, the court said (l. c. 281):

"For even if a court has original jurisdiction, criminal and civil, at law and in equity, it cannot enter a judgment which is beyond the claim asserted, or which, in its essential character, is not responsive to the cause of action on which the proceeding was based."

And to the same effect are the following:

Cooley on Constitutional Limitations, 7th Ed., p. 506.

Watson on the Constitution, p. 1449.

*Scott v. McNeal*, 154 U. S. 34.

*Hovey v. Elliott*, 167 U. S. 409.

*Ex parte Indiana Transportation Co., Petitioner*, 244 U. S. 456.

We respectfully urge that the judgment in this case should be reversed, and the cause dismissed as to these appellants.

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APR 15 1918

JAMES D. MAHER,  
CLERK.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1917.

No.  277

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural  
Gas Company et al., Appellees.

No.  329

KANSAS CITY, MISSOURI, et al., Appellants,

vs.


JOHN M. LANDON, as Receiver of the Kansas Natural  
Gas Company et al., Appellees.

No.  330

KANSAS CITY GAS COMPANY et al., Appellants,

vs.

KANSAS NATURAL GAS COMPANY et al., Appellees.

No.  353

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural  
Gas Company et al., Appellees.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS.

MOTION BY APPELLANTS TO CONSOLIDATE CAUSES  
AND ADVANCE.

IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1917.

---

No. 693

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural  
Gas Company et al., Appellees.

---

No. 816

KANSAS CITY, MISSOURI, et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural  
Gas Company et al., Appellees.

---

No. 817

KANSAS CITY GAS COMPANY et al., Appellants,

vs.

KANSAS NATURAL GAS COMPANY et al., Appellees.

---

No. 856

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS et al., Appellants,

vs.

JOHN M. LANDON, as Receiver of the Kansas Natural  
Gas Company et al., Appellees.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS.

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**MOTION BY APPELLANTS TO CONSOLIDATE CAUSES  
AND ADVANCE.**

Comes now the Public Utilities Commission of the State  
of Kansas, Joseph L. Bristow, John M. Kinkel and D. F.

Foley, Commissioners, and H. O. Caster, as Attorney for the Public Utilities Commission of the State of Kansas, and S. M. Brewster, as Attorney General of the State of Kansas, being the appellants in the above entitled causes No. 693 and No. 856, and come also The City of Kansas City, Missouri, The Public Service Commission of the State of Missouri, William G. Busby, Edwin J. Bean, David E. Blair, Noah W. Simpson and Edward Flad, as the Public Service Commission of the State of Missouri, and Alex Z. Patterson, as Attorney for the Public Service Commission of the State of Missouri, and Frank W. McAllister, as Attorney General of the State of Missouri, and the Cities of Joplin and St. Joseph, Missouri, being the appellants in the above entitled cause No. 816, and respectfully show to the Court:

1. That said cause No. 693 is an appeal from the judgment of the District Court of the United States for the District Court of Kansas, First Division, dated July 5, 1917, in the case of John M. Landon, Receiver of the Kansas Natural Gas Company v. The Public Utilities Commission of the State of Kansas *et al.*, No. 136-N In Equity, in said court; that said causes No. 816, No. 817 and No. 856 are separate appeals from the final judgment of said court in the same cause No. 136-N; that each of said groups of appellants from said cause No. 136-N has taken an appeal for certain errors pertaining particularly to that group, and also for certain other errors which pertain to all of said appellants in all of said groups:

2. That in said decrees the District Court has enjoined the public officers of the States of Missouri and Kansas, and the officers and agents of more than forty cities and towns in Missouri and Kansas from in any way interfering with the rates for natural gas fixed by said court for said cities and towns, and from bringing any other suits to determine any of the matters determined in this cause and has thus made it impossible for said cities to enforce their franchise contracts with local natural gas distributing companies and has seriously embarrassed the officials of Missouri and Kansas in the performance of their public duties.

3. That the Public Service Commission of the State of Missouri has refused to exercise jurisdiction over other

matters incidental to the service of natural gas because it cannot determine until this case is decided whether or not it has jurisdiction over the matters growing out of the service.

4. That the price fixed by the United States District Court is greatly in excess of the price authorized by the public authorities of Missouri and Kansas, and upon the ultimate decision in these four appeals depends the price which 1,500,000 inhabitants of more than forty cities and towns of Kansas and Missouri will pay for natural gas.

Wherefore, these appellants respectfully pray that said above entitled causes Numbers 693, 816, 817 and 856 be consolidated and said causes be heard and considered at one and the same time, and that the said causes so consolidated be advanced for hearing on the docket of this court.

F. S. JACKSON,

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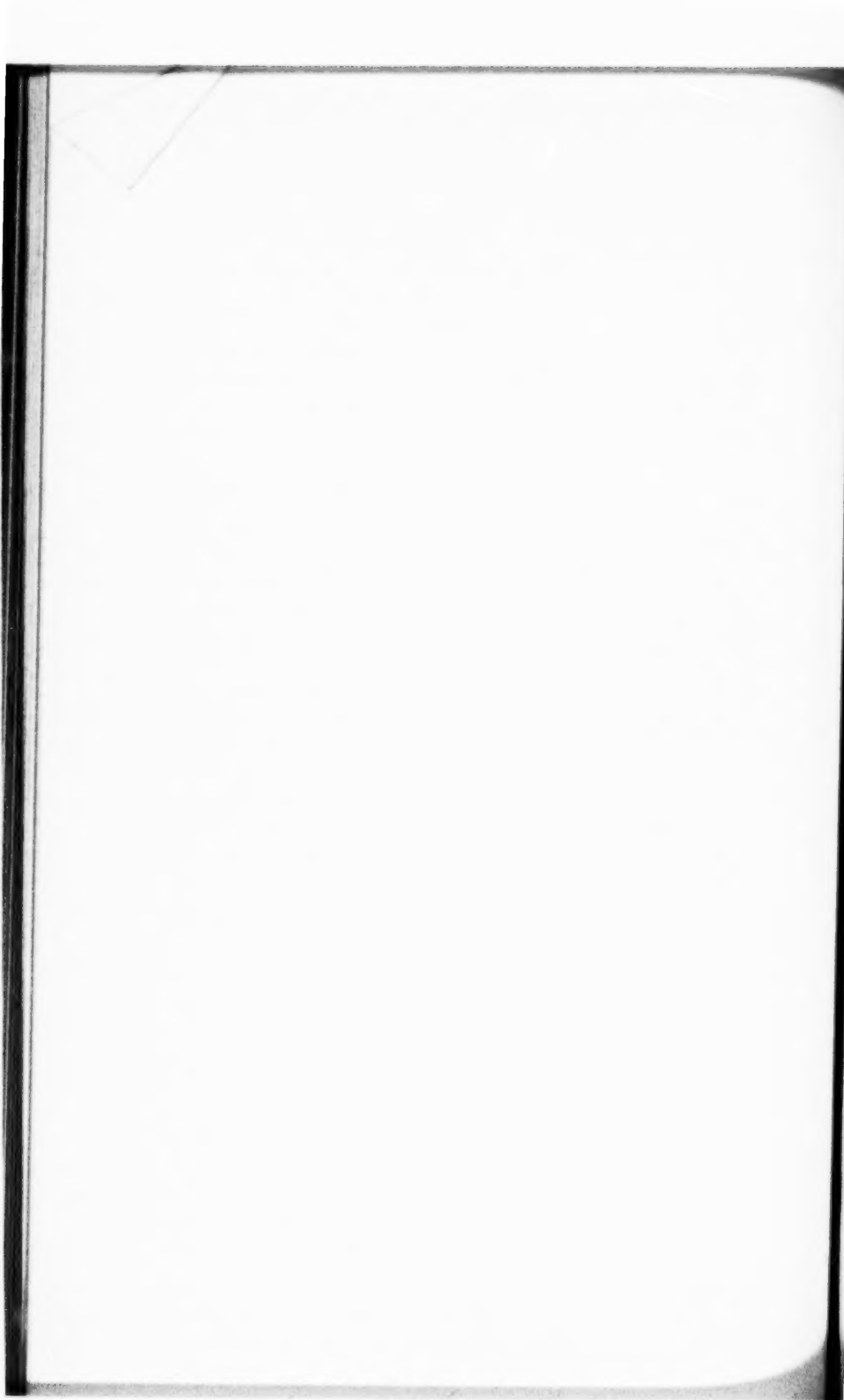
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*Counsel for Kansas City, Missouri, et al., appellants in No. 816.*





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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1918.

KANSAS CITY, MISSOURI, the Public  
Service Commission of the State of Mis-  
souri et al., *Appellants*,  
vs.  
JOHN M. LANDON, Receiver of the  
Kansas Natural Gas Company, et al.,  
*Respondents*.

No. 329.

APPEAL FROM THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DIS-  
TRICT OF KANSAS.

Statement, Brief and Argument for Appellants, Public  
Service Commission of the State of Missouri,  
the Attorney-General of the State  
of Missouri et al.

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FRANK W. McALLISTER,  
Attorney-General of the  
State of Missouri.  
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IN THE  
**Supreme Court of the United States**

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OCTOBER TERM, 1918.

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KANSAS CITY, MISSOURI, the Public Service Commission of the State of Mis- souri et al., <i>Appellants</i> ,	}	No. 329.
vs.		
JOHN M. LANDON, Receiver of the Kansas Natural Gas Company, et al., <i>Respondents</i> .		

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APPEAL FROM THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DIS-  
TRICT OF KANSAS.

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Statement, Brief and Argument for Appellants, Public  
Service Commission of the State of Missouri,  
the Attorney-General of the State  
of Missouri et al.

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**STATEMENT.**

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The Kansas Natural Gas Company, a corporation organized under the laws of Delaware, is the owner of a system of pipe lines and properties employed in the production, purchase, transportation, distribution

and sale of natural gas. The lines extend from various points in Oklahoma northerly into and through Kansas, with terminals at the cities and towns of Joplin, Oronogo, Neck City, Nevada, Kansas City and St. Joseph in Missouri, and numerous cities in Kansas as well. At the points or terminals on or near the western line of Missouri, gas is delivered into the pipes of local companies operating in their respective cities and towns above named. These local companies operate under franchises granted by the cities. The local companies, or their predecessors, had written contracts with the Kansas Natural Gas Company, or its predecessors, entered into in the period of the years 1904-1906, fixing the rates and prescribing the terms under which natural gas should be supplied by the Kansas Natural Gas Company to the respective local companies. The local companies in the various cities are Missouri corporations. Receivers were appointed for the Kansas Natural Gas Company on October 9, 1912, and since that time its property and business have been in charge of Receivers.

This suit was brought on the 29th day of December, 1915, by respondents, Receivers of the Kansas Natural Gas Company, against the Public Service Commission of Missouri, the Public Utilities Commission of Kansas, the various cities in the two States wherein natural gas furnished by the Kansas Natural Gas Company was sold, and also against the local companies in the respective cities in both States selling the gas to consumers.

It was brought by respondents as the Receivers actually in charge of the property and business of the Kansas Natural Gas Company, both under appointment of the District Court for Montgomery County, Kansas, and also as potential and ancillary Receivers,



under the appointment of the United States District Court for the District of Kansas, in two suits in the latter court; one by John L. McKinney and others as plaintiffs, and another by Fidelity Title and Trust Company as plaintiff, against the Kansas Natural Gas Company.

The suit was alleged to be dependent upon and ancillary to said two last mentioned suits in the District Court of the United States.

#### THE PURPOSES OF THE SUIT.

Its purpose, so far as the Missouri defendants were concerned, was to enjoin the Public Service Commission of Missouri from interfering with rates, and the division of rates between the Kansas Natural Gas Company and the local companies, desired to be put into effect by the Receivers; and to enjoin the Commission from exercising regulatory power in respect of natural gas over the local companies in Missouri, upon the ground that the sale of natural gas by the local companies to consumers in said cities was interstate commerce.

Its purpose also was to enjoin said cities of Missouri and the local companies in them from interference with the rates desired by the Receivers, either through the enforcement of provisions of franchises held by the local companies from the cities, or by the enforcement of the provisions of contracts, between said local companies, and the Kansas Natural Gas Company, specifying rates and conditions for the furnishing of natural gas to said local companies by the Kansas Natural Gas Company. Like relief was asked against the Public Utilities Commission of Kansas, and the cities and local companies in that State.

## THE ISSUES.

All of the substantial averments constituting the underlying basis or major premise of the claim of right to relief against the Public Service Commission of Missouri, are stated by the Receivers in paragraphs 21, 22 and 23 of their bill of complaint (pages 18 and 19 of Transcript of Record), as follows:

"That in carrying on said business as aforesaid, these plaintiff receivers carry on and conduct the same by the use of instrumentalities consisting of pipelines, gas wells, compressor stations, gathering lines, feed lines, measuring stations, regulating stations, and other devices commonly used in the gas business, and that said pipelines extend from the counties of Roger, Wagoner and Tulsa in the State of Oklahoma, northerly through the counties of Washington and Nowata, in the State of Oklahoma, through the State of Kansas, and into the State of Missouri, reaching terminals at Joplin, Oronogo, Neck City, Nevada, Kansas City and St. Joseph, in the State of Missouri; that the said pipelines extending through Kansas reach the cities of Atchison, Leavenworth, Topeka, Galena, Pittsburg and Kansas City, and points intermediate between the said last named points in the State of Kansas and the Kansas-Oklahoma state line. That the gas is taken from the wells where it is produced in the states of Oklahoma and Kansas, and piped at its own natural pressure into pipelines which transport it to the main pipelines or

trunk lines extending from Oklahoma through Kansas, into Missouri. It is transported through said pipelines to the compressor stations, where it is compressed to a high pressure and made to flow freely through said pipelines by means of said compression to the next compressor station, where it is again compressed and made to flow through said pipeline to the next compressor station, where it is again compressed, and by this process of compression and recompression, it is transported through said pipelines to the consumers in the states of Kansas and Missouri. That each of said compressor stations is part of the unit system of transportation owned and operated by these plaintiffs, and are essential and necessary parts of said transportation system.

"That said pipelines constitute one complete system, which cannot be operated separately or otherwise than as one unit. That said natural gas from the time it leaves the gas wells in Oklahoma until it is delivered to the consumers in the States of Kansas and Missouri and by them consumes, is in continuous course of transportation and at no time is it stored or is its transportation suspended. That plaintiffs begin in Oklahoma such transportation of natural gas with the intent and purpose that said natural gas shall be continuously moved and transported without interruption until it is delivered to consumers in Kansas and Missouri, and the same is true of the natural gas transported from Kansas to consumers in Missouri. That

none of the natural gas transported by plaintiffs is produced in Missouri, and only 6% is both produced and delivered to consumers in Kansas.

"That the natural gas is delivered to the consumers in the several cities by plaintiffs through distributing companies under written contracts of which those set out in the files and records in cases No. 1351 Equity, and No. 1-N, Equity, of this Court are typical. That the amount paid by the consumer for natural gas purchased, as measured by his meter, is divided between plaintiffs and the distributing company in payment of the services rendered by each according to the percentages set out in the contracts above referred to, and such amount includes the original cost of the product to plaintiffs plus the cost of transportation and profits, if any.

"That of the total volume of natural gas obtained and transmitted by plaintiffs in carrying on said business, approximately 85% is obtained in Oklahoma and 15% in Kansas, and that the portion obtained from Kansas wells is piped and transmitted from said wells direct to the transporting pipelines employed by plaintiffs, and is there, and immediately upon entering the same, inextricably commingled with the gas from Oklahoma wells, and cannot be thereafter separated or distinguished from the same; nor can such Kansas gas be controlled without interfering with the control and management of said Oklahoma gas, which is transmitted through and by means of said pipelines

from the wells in Oklahoma in one continuous and uninterrupted journey to the consumers in Kansas and Missouri.

"These plaintiffs further say that the business carried on and conducted by them as and in the manner aforesaid, is the carrying on of the business and commerce among different states of the Union, to-wit, Oklahoma, Kansas and Missouri, and is exclusively under the control of the Congress of the United States, as confided to it by Section 8 of Article I of the Constitution of the United States, and is not subject to control, regulation or interference by the states of Kansas, or Missouri, or their officers."

This sets forth the essential claim of the Receivers in the case; that the passage and consumption of natural gas, through and at the tips of the burners of the individual consumers in said Missouri cities, is interstate commerce, over which the Public Service Commission of Missouri has no control.

Upon the foregoing basis, the Receivers set the farther allegation or minor premise in pleading and evidence offered, that the Public Service Commission of Missouri had suspended or undertaken to suspend, by orders made or threatened to be made by it, schedules of increased rates for natural gas, filed with the Commission by the local companies operating in the various Missouri cities above named, and was by said orders undertaken to interfere with interstate commerce, and with the establishment and collection of reasonable rates, or proportions of the same, demanded by the Receivers in said cities.

It was alleged that the Public Service Commission of Missouri, upon a hearing, had made an order canceling a schedule of increased rates for natural gas filed by the St. Joseph Gas Company, and that the Commission had suspended, under the provisions of Section 70, of the Public Service Commission Law of Missouri, before a hearing and pending an injury as to their reasonableness, schedules of increased rates filed by the local companies at Oronogo and Carl Junction, Missouri.

Section 70, of the Public Service Commission law of Missouri, provides that when a schedule of increased rates for gas is filed with the Commission, it may, upon protest filed, or of its own motion, suspend for a period of one hundred and twenty days, the putting into effect of the new rates, and enter upon a hearing as to their reasonableness, and may also, pending said hearing, and for the purpose of completing the same, suspend such rates for a further period not exceeding six months.

Said Section 70 is set out in full in the appendix hereto at page 60.

The answer of the Missouri Commission alleged that the schedules of the Oronogo and Carl Junction Gas Companies, had been voluntarily withdrawn by said companies. It alleged that the action of the Commission as to the schedule of the St. Joseph Gas Company, was based upon substantial evidence produced upon a full hearing. It set up the provisions of Sections 111, 112, 113 and 114, of the Missouri Public Service Commission Act, which provide proceedings for review in the courts of the orders of the Commission.

These sections are set out in full in the appendix, pages 61-67.

The answer of the Missouri Commission also pleaded that the defendant's local distributing companies, for themselves, and not as the agents of the Receivers, or the Kansas Natural Gas Company, were furnishing gas to Missouri consumers under contract originally made with the Kansas Natural Gas Company or its predecessors, and that since their appointment, the Receivers, the plaintiffs, had been furnishing gas to said local companies under the terms of said supply contracts.

A hearing of the case upon plaintiffs' application for a preliminary injunction, was had before the enlarged court of three judges. Their decision appears in 234 Federal, 152. In that proceeding, on June 3, 1916, a preliminary injunction was granted against the Public Utilities Commission of Kansas, as having established a rate for natural gas spoken of as the "twenty-eight cent rate," which the court found to be confiscatory. It was also there found that no sufficient grounds existed at that time for the issuance of an injunction against the Public Service Commission of Missouri. It was said that the schedules of the Oronogo and Carl Junction companies had been voluntarily withdrawn; that the Receivers were not parties to the proceedings before the Commission against the St. Joseph Gas Company; and that there was nothing to prevent the Receivers from collecting as before, from the local company, their proportion of the rate provided for by the contract between the Kansas Natural Gas Company and the said St. Joseph Gas Company.

Afterward, at various dates in August and September, 1916, certain of the local companies filed with the Missouri Commission, schedules or notices of increased rates for natural gas, above those mentioned



in their supply contracts, and the Missouri Commission made orders of suspension of said schedules, in accordance with the provisions of said Section 70 of the Public Service Commission Act of Missouri, as pending an inquiry into the reasonableness of the proposed new rates.

The Kansas City Gas Company also made application to the Commission to file a schedule of rates to an amount and to take effect at a time as provided by the franchise ordinance of Kansas City, Missouri, granted to the said Kansas City Gas Company, and in accord also with the supply contract between the Natural Gas Company and the local company.

Afterward, and before the final hearing in the cause, plaintiffs filed their supplemental bill, which appears at page 343 of the printed transcript. In this supplemental bill, among other things, it was alleged that the Kansas City Gas Company had filed with the Public Service Commission of Missouri a new schedule of rates for natural gas in Kansas City, Missouri. Under this proposed schedule, the rates were to be those, and they were to take effect at the time specified in the franchise ordinance. It was alleged that Kansas City, Missouri, through its City Counselor, had consented to the filing of said application and schedule, and that the Public Service Commission of Missouri, by its order, had permitted the same to be filed.

The rate—30 cents per thousand cubic feet mentioned in said schedule—while in accordance with the rate fixed by the franchise ordinance, was different from that promulgated by the Receiver to be effective in Kansas City, Missouri. The supplemental bill also alleged the filing with the Missouri Commission, by certain local companies, of new schedules of rates

for natural gas purchased from the plaintiff, and intended to be put into effect by the local companies in response to and in accordance with new charges for natural gas promulgated by the Receiver to the local companies.

These new schedules were alleged to have been filed, and were filed by companies operating in the towns and cities of Joplin, Oronogo, Carl Junction and Nevada, Weston and St. Joseph, Missouri. It was alleged, and it appeared, that in each instance, upon the filing of a new schedule, the Public Service Commission of Missouri made an order in accordance with the provisions of section 70 aforesaid of the Public Service Commission Law of Missouri, whereby it declared said new schedules suspended pending and for the purpose of an inquiry to be made into the reasonableness of said new rates. The period of suspension in each case was for one hundred and twenty days.

In each case, the rate thus proposed for consumers was in excess of the rates fixed by the respective supply contracts or franchise ordinances held by the local companies, and was a rate designated in response to the demands of the Receivers for an increase.

It was alleged that these orders of the Public Service Commission of Missouri were an interference with interstate commerce, and an undue burden upon the same.

Defendants, appellants here, the Public Service Commission of Missouri, and the Attorney-General of Missouri, filed answer to the supplemental bill of the Receivers. The answer is shown at page 424, printed Transcript.

In this answer to the supplemental bill, the appellants (page 427, printed Transcript), alleged

that the enlarged court had expressly withheld the expression of any opinion as to the validity of the various city ordinances, contracts between the cities and distributing companies, and contracts between the distributing companies and the Natural Gas Company, or as to the obligations of the Receiver under them.

The answer denied that any of the local companies in Missouri were the agents of the Receiver or of the Kansas Natural Gas Company, or that any of said local companies, in the sale of natural gas to consumers, were engaged in interstate commerce. The answer alleged in respect of each of said local companies in Missouri, filing a new schedule, respectively, that the local company was an independent domestic corporation organized under the laws of Missouri, which purchased from the Receiver, or, from the Kansas Natural Gas Company, the natural gas distributed by it to its consumers.

The Public Service Commission of Missouri permitted these orders of temporary suspension to expire without proceeding to a hearing or attempting to enforce them, because, while no writ of injunction had actually issued against the Commission at that time, it was withheld by the statement from the bench of the judge sitting in the case that the court, pending trial and final decision, would deal with any attempt at interference with the collection of rates for natural gas which the court's Receiver, under instruction from the court, had promulgated. The hearing of the evidence consumed much time, and it is readily conceivable that it was not the desire of the Public Service Commission of Missouri to enter into an unseemly controversy with the court in collateral actions, but that its purpose was to await a decision

on the essential questions involved, in due course, in the main case.

The case as to the Kansas defendants was decided first. The decision was handed down April 21, 1917, and is reported in 242 Fed. at page 658. The opinion of the court is also found at page 563 et seq. of printed Transcript herein.

The case against the Missouri defendants was decided August 13, 1917. The court in the memorandum opinion handed down at that time, stating its final conclusions, and, particularly disposing of the case of the Missouri defendants, set forth in a concise way the court's view of the material issues concerning the Missouri defendants, and the nature of the relief sought and to be adjudged against them, as follows (Pages 616-617, printed Transcript):

"The principal issues in which the Missouri defendants are interested involve two main questions. First, whether the acts of the Missouri Commission and of the Missouri defendants or of certain of them have been of such a character as to call for an injunction against them on behalf of the Receiver. That question resolves itself into two subordinate questions: (a) Whether the business which is being carried on by the Receiver, viz.: The transportation of natural gas from Oklahoma and sale thereof in Missouri constitutes interstate commerce; (b) whether the acts of the Missouri Commission or any of them can be held to be acts which in effect deprive the Receiver of the property of the company without due process of law. The second main question and one in which not only the Missouri defendants but also the

Kansas defendants are interested, is the question as to the status of the supply contracts originally made by the Kansas Natural Gas Company or its predecessor with various distributing companies or their predecessors. This question again is divisible into two subordinate questions: (a) As to the status of the supply contracts as between the original parties or their assignees, and (b) the status of the supply contracts as to the receiver. The relief sought by the Receiver is:

"First, by way of injunction against the defendants, and especially against the Missouri Commission, restraining them from interfering with the carrying on of the business of transportation and selling of natural gas from Oklahoma into Missouri. The claim of the plaintiff is that the business thus carried on is interstate commerce, and that the Missouri Commission and some of the other defendants have attempted to unduly and directly burden this interstate commerce and to place restrictions upon it; and further it is claimed that the acts of the Missouri Commission in effect take away the property of the Receiver without due process of law. Secondly, by way of injunction as against all of the defendants to prevent them or any of them from instituting any suits or proceedings or taking any steps without the consent of this court to enforce the provisions of the so-called supply contracts, which they claim, or which some of them claim, are still in force as against the Receiver; the Receiver claiming: (1) that these supply contracts

were invalid in their inception; (2) that even if they were valid yet, nevertheless, by reason of the changed circumstances, and by reason of the provisions in the contracts themselves looking towards a change of circumstances, they are no longer binding upon the original parties to these contracts; (3) that even if the contracts were valid in their inception and still are existing valid contracts between the original parties, yet they are not at this time binding upon the receiver."

#### THE PUBLIC SERVICE COMMISSION OF MISSOURI.

The Public Service Commission of Missouri was created by an act known as the Public Service Commission Law, approved March 17, 1913, Laws of Missouri, 1913, pages 556-651, and amendments, Laws of Missouri, 1917, pages 432, 441.

The sections of the law prescribing the powers and duties of the Commission, and especially those having to do with the subject of control and regulation of gas companies, the sale and distribution of gas, natural and artificial, and the rates therefor, are printed in the appendix hereto, and particular reference will be made to them as occasion requires.

#### GAS COMPANIES IN MISSOURI.

Companies formed in Missouri for the purpose of supplying gas, electricity or water to cities and their inhabitants, are organized under general corporation laws, and particularly the provisions found in article VII, of chapter 33, Revised Statutes of Missouri, 1909, among which is section 3367, as follows:

*"Gas, electricity and water companies, powers of.*—Any corporation formed under the provisions of this article, for the purpose of supplying any town, city or village with gas, electricity or water, shall have full power to manufacture and sell, and to furnish such quantities of gas, electricity or water as may be required in the city, town or village, district or neighborhood where located, for public or private buildings or for other purposes; and such corporations shall have the power to lay conductors for conveying gas, electricity or water through the streets, lanes, alleys and squares of any city, town or village, with the consent of the municipal authorities thereof, and under such reasonable regulations as said authorities may prescribe."

The Kansas Natural Gas Company never had any franchise, right or license to use or occupy the streets of any of the Missouri cities above mentioned, nor did it have any interest in any of the local companies operating in said Missouri cities. (Page 806, printed Transcript.)

Authority for the sale in Missouri cities of natural gas furnished by the Kansas Natural Gas Company came from the cities by way of franchise ordinances or licenses granted to the local companies owning plants in said cities. The rates to be charged were fixed for definite periods by ordinance or contract with the local companies in their respective cities. These franchises or licenses grew out of the existence of contracts spoken of as "supply contracts" between the local companies and the Kansas Natural Gas Company or its predecessors, whereby the Kansas Natural



Gas Company agreed to sell and the local companies agreed to buy from it, upon certain specified terms, natural gas for the use of the consumers of the local companies.

Natural gas is sold in Kansas City, Missouri, under an ordinance of that city passed September 27, 1906, granting that right to Hugh J. McGowan and others, predecessors of the Kansas City Gas Company (page 382, Transcript), and under a supply contract between the Kansas City Pipe Line Company, predecessor of the Kansas Natural Gas Company and said Hugh J. McGowan and others. (Page 844, Transcript.)

Under section 13 of said ordinance, the price at which natural gas should be sold to consumers in Kansas City was fixed at twenty-five cents per thousand cubic feet during the first five years of its sale; at twenty-seven cents per thousand cubic feet during the second period of five years; and at thirty cents per thousand cubic feet thereafter during the remainder of the thirty year term of the ordinance.

Under the terms of said supply contract, it was provided among other things (page 846, Transcript) that:

"So long as the party of the first part is able to supply the same, the parties of the second part agree to *buy* from the party of the first part all the gas they may need to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and

thereafter a sum equal to sixty-two and one-half per cent of such gross receipts."

Supply contracts of a similar nature were made by the predecessors of the Kansas Natural Gas Company with the local companies operating respectively in the cities and towns of Joplin, St. Joseph, Nevada, Oronogo and Carl Junction, Missouri (page 787, Transcript), and in all of said cities progressive rates were prescribed by franchise or contract for certain periods, substantially as in Kansas City.

It was and is the contention of the Public Service Commission of Missouri that all of said supply contracts were contracts of purchase and sale, and that under the terms of said contracts, and under the methods employed both by the Kansas Natural Gas Company and the Receivers, there was and is an absolute sale and delivery of natural gas by the Kansas Natural Gas Company or its Receivers to the local companies. On the other hand, the theory of the Kansas defendants, based upon the statute of that State, was that the local companies there were agents of the Kansas Natural Gas Company.

#### NO NATURAL GAS PRODUCED IN MISSOURI.

"None of the natural gas furnished by the Receiver is produced in Missouri; a small percentage, not exceeding 6% thereof is produced in Kansas, and the greater portion thereof is produced in Oklahoma. Approximately 44% of the gas furnished by the Receiver is sold in Kansas, and 56 per cent is sold in Missouri "

(Paragraph 54 statement of the evidence, page 807, printed Transcript.)

*The nature, manner of transportation and of sale of natural gas.*

These matters, essential in the consideration of the case, can best be shown here as they are given in that part of the statement of the evidence approved by the Court, appearing at pages 808 to 816 printed Transcript, including all, or parts, of paragraphs 61 to 83 of said statement:

"61. The production, transportation, distribution and sale of natural gas was and is accomplished in the following manner:

"The Kansas Natural Gas Company and its receivers acquire the gas by drilling, purchase and otherwise in southern Kansas and in Oklahoma and collect it into pipe lines. The gas is caused to flow from the wells into the gathering lines of the Kansas Natural Gas Company by the force of "rock pressures" which are the pressures at which gas is found in place in the earth, varying from 15 pounds to 500 pounds per square inch. These initial pressures carry the gas along in the pipe lines for some distance and then the pressures become lower and in order to carry the gas farther it is necessary to pass it into compressor stations where, by means of engines, the gas is compressed and raised to a pressure of approximately 300 pounds per square inch. Emerging from the compressors, the gas flows along the pipe lines by reason of the increased pressure, toward the next compressor station which it reaches at a reduced pressure; it is again compressed and sent forward, which process continues till the gas reaches the distributing system or gas holders of the Kansas City Gas Company, or other local gas company. The

whole process is merely the application of the law of flowing gases from a given pressure or density to a lower pressure or density.

"62. There is a permanent physical connection between the pipe-lines operated by the Kansas Natural Gas Company and its Receivers and the distribution mains of the local companies at or near the corporate limits of the various cities in which said companies are doing business, through which natural gas passes from said pipe-line system into said distributing systems.

"63. Gas is constantly moving from the wells into the gathering mains and along the pipe-line system night and day; and the compressors are constantly at work night and day compressing gas into the trunk main system; during the night and certain hours of the day during certain warm days more gas passes into and is compressed into trunk main system than is being taken out for use. The amount of gas in the pipe-line system at any particular time depends upon pressure and is apportioned to absolute pressure, which absolute pressure is atmospheric pressure, 14.4 plus pressure produced by mechanical processes. The process of filling the lines in excess of demand during the night time and warm days and certain hours of the day is called 'packing the lines.'

"64. Mr. Alfred Hurlburt, Engineer for the Kansas City Gas Company testified that that the pipe-line system of the Kansas Natural Gas Company constitutes not only a transportation system but a great storage

reservior by means of this packing of the lines; that the storage capacity of the lines of the Kansas Natural Gas Company from Grabham, Kansas, to Kansas City, Missouri, amounts to 12 million cubic feet in addition to the carrying capacity of the lines; that both the carrying capacity and the storage capacity of this system are requisite and necessary for the proper supply of gas by the Kansas Natural Gas Company and its Receivers to the Kansas City Gas Company; that if it were not for the storage capacity of the Kansas Natural Gas Company's lines, the Kansas Natural Gas Company and its Receivers would not be able to supply the instantaneous demands of the consumers upon the Kansas City Gas Company at times when the demands are greatest for the reason that such instantaneous demands at maximum-demand-hours of the day always exceed the carrying capacity of the lines and the storage capacity must be drawn upon; that all gas is in constant motion and even if enclosed in a holder it cannot be held still, that is, the nature of gas is constant molecular motion; that there is a constant movement of gas in the pipelines, the general direction of which is from the gas sands of the wells toward the consumers' appliances; and that gas, unlike solids, oils and other liquids, can be greatly compressed.

"65. S. S. Wyer, Consulting Engineer, who made an affidavit in the preliminary hearing known as plaintiff's Exhibit No. 2, and made a report to the Federal Receivers

in suit No. 1351, equity, and several other affidavits that were used both in the preliminary and final hearings, testified for the plaintiff in substance, as follows:

"Gas passes from the well tubing, where found, out to the conveying lines, then to the measuring stations and to the various compressing stations, through the main line measuring stations at the gates of the town and then through the medium of the pressure lines of the town; then through the low pressure line of the town to the gas service cocks and the gas service lines to the consumers' pipe and ultimately fixing its final destination at the burner of the consumers' fixtures. It requires all of these pipe lines, those of the Kansas Natural, the distributing company and the consumer to complete the system. All of them are essential to the transmission of gas from Kansas or Oklahoma to the consumers in Missouri. Gas is a fluid composed of a large number of molecules which are vehicles of energy continually in motion, and having an inherent tendency to get farther and farther apart. The range of motion of the molecules is limited only by the volume of the closed containing vessel in which they constantly move to and fro. The most distinguishing characteristic of gas is its universal property of completely filling an enclosed space.

"Natural gas is a highly combustible gas made by a secret process of nature. It is not a chemical compound but is a mechanical mixture of several gases, the number

and proportion of the various constituents varying somewhat with different localities and at individuals wells. Gas pressure is the result of the combined efforts of all of the moving molecules in the mass trying to get farther and farther apart. Being restrained in the container it exercises a pressure against the walls of the vessel. The pressure is the same in all directions on equal areas of surface. With a given mass of gas any increase in the volume of the containing vessel will give the molecules more range of motion and thereby lower the pressure. So if part of a given mass of gas is removed from a reservoir the remaining mass of gas will expand instantly and keep the reservoir filled, but at a lower pressure.

"In the transportation of natural gas from the gas stand to the ultimate consumer the gas is never at rest but is a constantly seething, moving mass between the gas stands in the fields and the consumers' fixtures in the various cities

"When the line is operated at its fullest capacity the gas will move at a greater velocity than the fastest express train. The gas can only go in one direction at the same time when flowing through a given pipe. The gas is compressed at compressor stations and is thus forced from the field to the point of consumption. At the intake of the line the pressure must be large and at the discharging end of the line the pressure should be relatively low. There is no delivery until the gas has not only passed through the con-



sumer's meter but is burned at the consumer's fixtures. Each distributing plant is simply one of the integral transportation system as a whole. There is no delivery beginning at the consumer's pipe line to the service pipe

"In making a comparison between the transportation of railroad and the transportation of natural gas by pipe lines, the receiver of the goods in the railroad shipment corresponds to the ultimate consumer of the natural gas. There is no other feasible way of transporting natural gas except by this system or method of pipelines. The continuous movement of gas in the pipes is caused by the expansion power of the gas produced originally by natural rock pressure and as that pressure declines, it is supplemented by gas compressors along the main transportation line. In the system of the Kansas Natural Gas Company, the movement is always from Oklahoma north through Kansas into Missouri.

"The demands on the pipe line vary very largely with the hours of the day. Gas being compressible, if the compressor stations are operated practically uniformly, that is, with a practical uniform rate, then during certain periods of the day when the consumption is less than the output at the compressing station may be made to do what in the natural gas man's parlance is known as "packing the lines," which will result in a limited storage capacity in the line. This is inevitably connected with the transportation of gas and if it were not present transportation of gas could not be made with the

present size of the Kansas Natural pipe line system.

"During such periods of the day as the natural gas flow is below the normal, service gas may be by-passed into a storage holder, and then it may be removed from the holder during the peak-load-demand in order to take care of the peak-load-demand at the distributing plant. This is not necessary so far as the transportation of gas is concerned, but is useful to improve the service rendered by the distributing company. Ordinarily the percentage of gas thus flowing through a holder is relatively small. Such holders are not generally used in the transportation and delivery of natural gas. Such holder is not a part of the transportation of gas but is a mere incident and is merely a part of the distribution. Storage might be compared to the milling of grain in transit, or the feeding of cattle in transit, or the compressing of cotton in transit. It might also be compared to water standing in an irrigation ditch.

"The Kansas Natural has a 16 inch main running from Petrolia to Kansas City, 110 miles long. The mean pressure is 250 pounds. The storage capacity of that would be 14,634,620 cubic feet. If there is a delivery of 70 million cubic feet a day from this pipe line it would have to be filled and emptied five times during the day.

"On cross examination by Mr. Dana, Mr. Wyer was asked and made answer as follows:

"(Mr. Dana:)

" 'Q. Mr. Wyer, assuming that the natural gas lines are full of gas and that the lines of the distributing system are full of gas and the consumer's house pipings are connected, how long after the consumer decides to buy a thousand feet of gas does he get it?

"(Mr. Wyer:)

" 'A. He gets it instanter, that is, if the service is operating and the gas is going. He gets it by simply turing a cock.

"(Mr. Dana:)

" 'Q. He gets it instanter?

"(Mr. Wyer:)

" 'A. Yes, sir.

On redirect examination by Mr. Long, Mr. Wyer was asked and made answer as follows:

"(Mr. Long:)

" 'Q. That is incidental to the transportation of natural gas?

"(Mr. Wyer:)

" 'A. Yes, sir!"

"66. The gas passes into the mains of the distributing plant of the Kansas City Gas Company at 25th Street in Kansas City, Missouri, about 600 feet east of the Missouri-Kansas state line and at 39th Street in Kansas City, Missouri, about one foot east of the said state line. After the gas enters the mains of the Kansas City Gas Company, that company has the actual physical possession and complete control over it and over its distribution and sale. After reach-

ing the main system of the Kansas City Gas Company, the gas is passed through governor stations which reduce its pressure to a uniform pressure of about 8 inches water column necessary for convenience and safety in distribution and sale. No gas is ever returned from the Kansas City Gas Company to the Kansas Natural Gas Company.

"67. When a surplus of gas is available in the lines of the Kansas Natural Gas Company, the Kansas City Gas Company fill its own gas holders, having a capacity of 7,000,000 cubic feet, from the mains, and holds this gas in storage until such time as the Kansas Natural Gas Company cannot deliver enough gas to supply the demand, at which time the gas in the holders is pumped by the Kansas City Gas Company through its mains into its governor stations, and thence into and through its low pressure distributing system to its consumers. The period during which the gas remains in the holders thus stored, varies from a few hours to several days or weeks, according to the demand and supply. During the present hearing of this case, gas has thus been used from the holders in Kansas City, Mo. (Transcript, p. 75, 76.)

"6810 Nearly half the gas distributed by Kansas City Gas Company in June, 1917, went into the holders and was pumped out again by the Kansas City Gas Company. The holders were used during every month of the year 1917 up to the time of the hearing of this case (July). The storage holders are not a necessary part of the pipe-line system

for the transportation of gas from the Kansas Natural wells to the consumers (Transcript, 137, 138). When the gas comes from the holders of the Kansas City Gas Company it has to be compressed by that company in order to put it through the mains (Transcript, 115.)

"69. A consumer in Kansas City, Mo., who wishes to procure natural gas makes written application therefor to the Kansas City Gas Company and complies with certain reasonable rules prescribed by that company. If accepted within a few hours or within a day or two, according to circumstances, the gas is turned on for the consumer by the Kansas City Gas Company. The consumer's meters are read, bills made and presented to them, and if not paid, gas is turned off, all by the Kansas City Gas Company without consultation with the Kansas Natural Gas Company or with its Receivers. The form of such application is incorporated herein, par. 85.

"70. The 'consumer's meter' belongs to the Kansas City Gas Company and is generally located in the cellar or basement of the consumer's premises. The consumer is charged by the Kansas City Gas Company for all gas that passes through that meter whether it reaches the burner tip or not, and the consumer is required to pay for it except only in the event that he is insolvent and cannot be made to pay. If, after gas passes the consumer's meter, any of it escapes through leaks in the consumer's pipes, the consumer must pay for it.

"71. The consumer receives gas for approximately thirty days before his meter is read. Ten days thereafter he is presented with bill (Exhibit 1015) and ten days thereafter he makes payment therefor in cash or by check, to the Kansas City Gas Company at 910 Grand Avenue, Kansas City, Missouri. The form of bill is incorporated herein, par. 85.

"72. The Kansas City Gas Company exercises its own judgment and discretion as to extending credit to consumers, without consultation with the Kansas Natural Gas Company or its Receivers (Transcript, p. 81). It requires a cash deposit from some; it accepts guarantees from others and those having credit it supplies without either deposit or guarantee. It discontinues the supply of gas to consumers who default in payment of bills for a certain period of time and for certain other violations of its rules and regulations according to its own discretion.

"73. There are no relations or dealings between the consumer in Kansas City, Missouri, and the Kansas Natural Gas Company or its Recievers; or between the City of Kansas City, Mo., and the Kansas Natural Gas Company or its Receivers, except such, if any, as might be construed to arise or to be created by operation of law from the terms of said supply-contracts and franchise-ordinances and the course of dealing herein stated or any or all of the same.

"74. The Kansas City Gas Company does not forward to the Kansas Natural Gas Company any list of the names of consumers

or the amount of gas required by all or any of them at any future time. The Kansas City Gas Company has paid to the Kansas Natural Gas Company, or its Receivers 61- $\frac{1}{2}$  per cent of its gross receipts from the sale of gas. When bills were not collectible the amount of such bills were not figured in determining the payment due the Kansas Natural Gas Company or Receivers. It has been the practice for the Kansas City Gas Company to furnish the Kansas Natural Gas Company or Receivers annually a list of the names and amount due from delinquent consumers; and if later they paid their bills, the names of such consumers thus paying, were furnished to the Kansas Natural Gas Company, to enable that company to check up the two lists and thus determine whether or not it was receiving the amount due it.

"75. Payments by the Kansas City Gas Company and the Wyandotte County Gas Company to the Kansas Natural Gas Company and Receivers have been made on the 15th day of each month for the gas sold to consumers and collected for prior to about the tenth day of the preceeding month. Since September 1, 1916, the Receiver has rendered bills to The Wyandotte County Gas Company and the Kansas City Gas Company for gas claimed to have been delivered by the Receiver at the points of connection at or near the city limits, between the mains of the Wyandotte County Gas Company and the Kansas City Gas Company and pipe-line system operated by the Re-



ceiver, and the Kansas City Gas Company, and The Wyandotte County Gas Company have not paid said bills, but has paid on the basis of the supply-contracts and the Receiver is now prosecuting claims against said companies for gas on the basis of measurements and deliveries at the city limits, as shown by the allegations and exhibits to plaintiff's supplemental bill and the Kansas City Gas Company's and the Wyandotte County Company's answers and amended and supplemental answers on file.

"76. The Kansas City Gas Company and the Wyandotte County Gas Company have carried on their business in substantially the same manner in all material respects and have pursued the same course in their dealings, transactions and communications to and with the Kansas Natural Gas Company, the Receivers and their respective consumers.

"77. The demands of the consumers of the Kansas City Gas Company during the summer months are approximately 10,000,000 cubic feet per day and during the winter months for lighting and cooking approximately 13,000,000 cubic feet per day and for all purposes, if demands were met approximately 70000,000 cubic feet per day. During the winter of 1916-17 the greatest available supply on maximum-demand-days for Kansas City, Missouri, was 12,000,000 cubic feet for all purposes.

"78. The rates charged by the Kansas City Gas Company and paid by its consumers prior to November 19, 1916, and at all times

thereafter up to the time of the fixing of a rate by Judge Booth were those named in Ordinance No. 33887 of Kansas City, Missouri (Exhibit 1009).

"81. The St. Joseph Gas Company maintains a manufacturing plant for the manufacture of artificial gas for the purpose of supplying any deficiency in the supply of natural gas. The natural gas delivered by the Kansas Natural Gas Company to the St. Joseph Gas Company is mixed with the artificial gas which that company produces and the mixture is sold at a higher rate than that charged for natural gas alone, the rate depending upon the percentage of artificial gas which is, in any given month, put into the mains with the natural gas. That settlements by said St. Joseph Gas Company with the Kansas Natural Gas Company or the Receiver are based on the readings of the consumers' meters. That said city of St. Joseph passed no ordinance governing the sale of natural gas and is not a party to the contract between the St. Joseph Gas Company and the Kansas Natural Gas Company.

"82. The Kansas City Gas Company has filed with the Public Service Commission of the State of Missouri a petition for authority to supplement natural gas with manufactured gas and fix the price thereof. Said petition is incorporated herein, par. 85.

"83. The foregoing statement as to the manner of the transportation, distribution, delivery and sale of natural gas applies in all

substantial respects to the defendant Cities  
of Missouri.”

### THE FINDINGS AND CONCLUSIONS OF THE COURT.

Upon the foregoing the court found and decreed;  
First; That the sale to consumers in Missouri cities  
of natural gas furnished by the Receiver was inter-state  
commerce. Second: That the Public Service Commis-  
sion of Missouri had made no orders fixing general rates  
for the sale of natural gas by the Receiver, as had been  
done by the Kansas Commission, but that the acts  
of the Missouri Commission in making orders sus-  
pending new schedules of rates filed by the local com-  
panies, and its threats to enforce said suspending  
orders and to defer the establishment of said schedules  
for a period of one hundred and twenty days or longer,  
constituted attempts to directly interfere with and  
directly burden interstate commerce. Third: That  
the provisions of Section 69, Subdivision 12, and  
Section 70 of the Public Service Commission Act of  
Missouri, providing for the suspension by the Commis-  
sion of the enforcement of natural gas schedules, and  
the construction placed upon said sections by said  
Missouri Commission, and the acts of the Commission  
thereunder, constituted the taking of the property of  
the Receiver and of the local companies without due  
process of law, and without just compensation, and were  
a denial of the equal protection of the laws. Fourth:  
That the so-called “supply contracts” were not binding  
upon the Receiver; but expression of opinion was with-  
held as to whether said contracts were originally valid  
or invalid. (Page 615-Page 621, Vol. II, Record).

Thereupon, the court granted its permanent injunction against these appellants, enjoining and restraining them from making or attempting to make, or attempting to enforce in any manner any orders affecting or interfering in any way with rates for natural gas established by the Receivers and said local companies.

And from the aforesaid decree of the court, the defendants, Public Service Commission of Missouri, and Frank W. McAllister, Attorney-General of Missouri, together with the defendant cities, Kansas City, St. Joseph and Joplin, Missouri, obtaining jointly an order of severance from their co-defendants, were allowed an appeal in this cause.

With their appeal, the appellants, Public Service Commission of Missouri, and the Attorney-General of Missouri, filed their assignment and also their amended assignment of errors.

The final assignments of errors so filed, are as follows: (Page 757 Record.)

# I

"The said District Court for the District of Kansas erred in said cause in holding upon the final hearing thereof, that the business transacted by the plaintiff, that is to say, the transportation of natural gas from Kansas and Oklahoma to Missouri and the distribution and sale of said gas in the State of Missouri by plaintiff and the distributing companies selling natural gas in the defendant cities of Missouri above mentioned, is interstate commerce of a national character and not of a local nature, for the reason that

the sale of natural gas in Missouri is a business of a local nature and not of a national character, and is not interstate commerce.

## II

"The said District Court for the District of Kansas erred in the trial of said cause below upon the final hearing thereof, in holding that the orders of the Public Service Commission of Missouri suspending rates and schedules for natural gas filed by local distributing companies, and the order approving and establishing a new rate for natural gas in Kansas City, and the threats of said Public Service Commission and of its Counsel to make other and similar orders, are attempts directly and unduly to burden and regulate interstate commerce, and therefore unauthorized and void; for the reason that said orders are a regulation of and effect intrastate commerce within the State of Missouri only, and are within the powers of the Public Service Commission of Missouri to make.

## III

"The said District Court for the District of Kansas erred in the trial of said cause below upon the final hearing thereof in holding that the Public Service Commission Act of the State of Missouri and particularly Section 69, subdivision 12, and Section 70 thereof authorizing said Commission to suspend the enforcement of natural gas rate

schedules filed with said Commission, and defer the use of rates, charges, forms of contract and agreements for a period of 120 days beyond the time when such rates, charges, forms of contract and agreements would otherwise go into effect; and further authorizing said Commission to extend the time of suspension for a further period of six months, and further providing that no change shall be made in rates, charges, forms of contract or agreements established after thirty days' notice to the Commission and publication thereof for 30 days by order of the Commission, together with the construction placed upon said Public Service Commission Act by said Commission, and the acts and proceedings of said Commission thereunder, in suspending schedules filed by local distributing companies in the defendant Missouri cities fixing the price of natural gas to consumers, constitute the taking of the property of the plaintiff and said distributing companies above named without due process of law, and without just compensation, and deny to the plaintiff and said distributing companies the equal protection of the laws, all in contravention of the Constitution of the United States, for the reason that the provision of said Public Service Commission Act allow to plaintiff and the distributing companies an opportunity to be heard in due course of law, and said business is intrastate and within the jurisdiction of said Commission.

## IV

"The said District Court for the District of Kansas in the trial below, upon the final hearing thereof, erred in enjoining these appellants from interfering with the plaintiff, or any of the said defendant distributing companies in the State of Missouri, in establishing and maintaining such rates as the said District Court has approved or may hereafter approve for consumers of natural gas in the State of Missouri, for the reason that natural gas is sold to consumers in Missouri only by local companies incorporated under the laws of the State of Missouri, operating under franchises granted by the cities under ordinances and permits of the municipal authorities, and conducting, in the sale of natural gas to the consumers, a business of a local character, over which the Public Service Commission of the State of Missouri has exclusive jurisdiction and power of regulation.

## V

"The said District Court for the District of Kansas erred in the trial of the case below upon the final hearing of the case thereof in granting the prayer of the Kansas Natural Gas Company, defendant herein, for a permanent injunction against the Public Service Commission of Missouri upon the ground of interference by said Public Service Commission of Missouri with interstate commerce



in the sale of natural gas in Missouri, for the reason that the sale of natural gas in the State of Missouri is intrastate commerce and within the exclusive jurisdiction of appellants' Public Service Commission of Missouri.

## VI

"The said District Court for the District of Kansas erred in the trial of the case below upon a final hearing thereof in granting to the defendant, Geo. F. Sharitt, the Receiver of the Kansas Natural Gas Company, a permanent injunction against the defendants, appellants herein, to the same extent an effect as the injunction granted to plaintiff against these defendants, appellants herein, for the reason that said Receiver is not engaged in the business of interstate commerce, nor in the sale of natural gas in the State of Missouri."

### SPECIFICATION OF ERRORS.

1.—The court erred in holding that the sale in the Missouri cities of natural gas furnished by the Receiver is interstate commerce.

2.—The court erred in holding that the Public Service Commission of Missouri was without jurisdiction over the sale of natural gas by the local companies in Missouri cities.

3.—The court erred in holding that the suspension by the Public Service Commission of Missouri of schedules of rates for natural gas filed by the local companies in Missouri cities deprived the Receiver or

the local companies of their property without due process of law or denied them the equal protection of the laws.

4.—The court erred in holding that the suspension by the Public Service Commission of Missouri of schedules of rates, filed in Missouri cities by local companies, for natural gas furnished in Missouri cities by the Receiver, was an interference with or a direct burden upon interstate commerce.

**BRIEF.****I.**

**The sale and delivery of natural gas to consumers in the Missouri cities is not an interstate business, but local or domestic in its nature.**

The Kansas Natural Gas Company or its Receiver transports its own gas through its own system of pipes to the points near the Missouri cities, where it delivers the gas into the pipes of the respective local companies.

There is no legal relation between the Kansas Natural Gas Company or its Receiver and the consumers.

Under the terms of the supply contracts and under the course of dealing pursued by the Receiver, there is a point of space and of time when the gas leaves forever the possession and the ownership of the Natural Gas Company and comes into the ownership and possession of the local company. This is not affected by the fact that there is a continuous forward movement of the gas, nor does it on the other hand depend upon the fact that the local company may have holders in which gas is stored to meet unusual demands; nor, upon the fact that the pipes of the Natural Gas Company through compression of the gas in them, at certain times, constitute in some degree a storage system. It rests upon the fundamental relation that exists between seller and purchaser, after the seller has delivered the article to the purchaser.

"After the gas enters the mains of the Kansas City Gas Company, that Company has the actual physical

possession and complete control over it and over its distribution and sale. No gas is ever returned from the Kansas City Gas Company to the Kansas Natural Gas Company." (Page 813 of Record, par. 66.)

On one side of the line the molecule of gas is in process of interstate transportation. On the other it is localized by purchase, and by delivery, and by a possession which, under the dealings of the parties, is never to be reversed. It is inconceivable that gas which the Kansas Natural Gas Company, or the Receivers, have sold and delivered to the local company can maintain its interstate character in the possession of the local company when, by the terms of the transaction, the course of dealing of the parties, and the nature of the article dealt in, the Receivers have no lien upon it, no control over its disposition, no power to reclaim it, nor any right whatsoever, which inheres in the article itself. The right of the Receivers is the single right to have payment for gas delivered to the local company, according to a measure agreed upon between the Natural Gas Company and the local company.

This measure of the payment to be made, a percentage of the aggregate sum accruing from sales to consumers, at certain rates fixed by franchise ordinance, does not make the relation between the Receiver and the local Company that of principal and agent, nor cause the gas delivered into the possession of the local company to carry with it the characteristics of interstate commerce.

Upon this phase the decision in *Banker Brothers vs. Pennsylvania*, 222 U. S. 210, is applicable and authoritative.

The Banker Brothers Company was a corporation and engaged at Pittsburgh, Pennsylvania, in the sale of

automobiles. It obtained the automobiles from the Pierce Company, manufacturer, of Buffalo, New York. The Pierce Company agreed to make and sell to Banker Brothers Company automobiles at twenty per cent less than list price. Deliveries were to be made C. O. D., Buffalo, and payments were to be cash. The Banker Brothers Company could sell only within a restricted territory and upon terms stipulated by the manufacturer. The Banker Brothers Company took the order of a customer who paid a percentage of the list price. The order given by the purchaser was not addressed to the manufacturer, nor did the name of the Pierce Company appear in the order. The manufacturer, the Pierce Company, shipped the automobile to the Banker Brothers Company with draft for the remainder of the list price, less twenty per cent.

Continuing the subject, the language of the court, in its decision, 222 U. S. at page 213, is used, where it is said:

"The Banker Brothers Company, on paying the draft, took up the bill of lading, received from the carrier an automobile which though shipped in interstate commerce had become at rest in the State of Pennsylvania. Banker Brothers Company had the title and delivered it to the buyer on his paying the balance of the purchase money. Compare *Dozier v. Alabama*, 218 U. S., 124. The written contract was silent on the subject, but it was stipulated that the Pierce Company warranted the machine direct to the purchaser.

"It is contended that Banker Brothers Company were agents and the Pierce Company an undisclosed principal. It is urged that the sale was an interstate transaction

between the manufacturer and the purchaser, with Banker Brothers Company merely acting as an agent which looked after the delivery of the machine and collected the purchase price.

"This is one of the common cases in which parties find it to their interest to occupy the position of vendor and vendee for some purposes under a contract containing terms which, for the purpose of restricting sales and securing payment, come near to creating the relation of principal and agent. But as between Banker Brothers Company and the Pittsburg purchaser, there can be no doubt that it occupied the position of vendor. As such it was bound by its contract to him and under the duty of paying to the State a tax on the sale.

"The name of the Pierce Company was not mentioned in the order signed by the purchaser. Had there been a breach of its terms he would have had a cause of action against the Banker Brothers Company, with whom alone he dealt. If he had failed to complete the purchase the Pierce Company would have no right to sue him on the contract. The fact that he was liable for the freight by virtue of the agreement to 'pay the list price f. o. b. factory' did not convert it into a sale by the manufacturer at the factory; neither was that result accomplished because, with the machine, Banker Brothers Company also delivered to the buyer in Pittsburg a warranty from the manufacturer direct.

"These were mere incidents of the intra-state contract of sale between Banker Brothers Company and the purchaser in Pittsburgh, who was not concerned with the question as to how the machine was acquired by his vendor, or whether that company bought it from another dealer in the same city or from the manufacturer in New York. The contract was made in Pennsylvania, and was there to be performed by the delivery of the automobile and the payment of the balance of the purchase price. *See American Steel & Wire Co. v. Speed*, 192 U. S. 500; *American Express v. Iowa*, 196 U. S. 133, 146. The court properly held it was not an interstate transaction, but taxable under the laws of Pennsylvania."

In the case at bar, the gas is not paid for and by its nature cannot be paid for by the local company upon delivery. It is delivered pursuant to a contract or course of dealing whereby it is to be paid for later by the local company. But, the actual delivery is made, and when made is unconditional, absolute and beyond recall. This difference in method and physical fact and movement does not distinguish the case at bar from the case cited.

The actual physical delivery of the article with no right of recall but free to be redelivered in turn to the ultimate consumer, in either case, is the test whereby it is determined that the intermediate company, the local distributing company here, is a principal, and a vendor to the purchasing consumer. The natural gas involved, while by the nature of its molecules it may be in a material sense perpetually in



motion, yet in a legal sense, upon being delivered into the pipes of the local company, it "has become at rest in the State of Missouri."

The questions propounded by this court but not answered, because unnecessary to a decision of the case, in *Hall vs. Geiger-Jones Company*, 242 U. S. at page 558, concerning the securities affected by the "Blue-Sky" Law of Ohio, seem pertinent here, in view of plaintiff's contention that natural gas is moving in interstate commerce when it bursts into flame at the tip of the burner of the individual consumer.

This court, as above, propounded the queries: (Italics ours):

"We might, indeed, ask, When do the designated securities cease migration in interstate commerce and settle to the jurisdiction of the State? Material things, choses in possession, pass out of interstate commerce when they emerge from the original package. Do choses in action have a longer immunity? It is to be remembered that though they may differ in manner of transfer, they are in the same form in the hands of the purchaser as they are in the hands of the seller, and in the hands of both as they are brought into the State. *We ask again, Do they never pass out of interstate commerce? Have they always the freedom of the State?* Is there no point of time at which the State can expose the evil that they may mask? *Is anything more necessary for the supremacy of the national power than that they be kept free when in actual transportation, subjected to the jurisdiction of the state only when they are attempted to be sold to the individual purchaser?*"

The evidence (Vol. II, page 813 et seq.) shows that the consumer in Kansas City, Missouri, who wants natural gas, applies to the local company, the Kansas City Gas Company. He has no dealings with the Receiver. His meter is furnished by and belongs to the local company. He begins to receive service within a few hours after his application is made. He is governed in all things by the rules of the local company. Like conditions prevail in the other Missouri cities.

Gas from the Kansas City Gas Company is separated and segregated by the Receiver from the whole volume of gas in the main pipe and turned into and delivered to the Kansas City Gas Company through its mains at 25th street and 39th street in Kansas City, Missouri. Thence separation and segregation of the volume in and entering the pipes of the local company is made to the individual consumer. For each consumer there is a point at which gas for his use is separated from the volume in the pipes.

Does the molecule of gas maintain one and only one unchanged and unchangeable legal relation to the Receiver from the time it enters the pipes in Oklahoma until it passes in flame through the burner of the consumer in Kansas City or Joplin?

## II.

**The characteristics and uses of natural gas, and the limitations surrounding its production, transportation and sale, make the business one incapable of uniform or natural regulation, but adapted to State supervision and regulation.**

The conclusions of the Supreme Court of Indiana upon this phase of the subject in *Jamieson vs. Indiana*

Natural Gas & Oil Co., 128 Ind. 555, rest upon a solid basis of fact and of reason. That court said:

"We affirm that natural gas is characteristically and peculiarly a local product; that its production is confined to a limited territory; that because of its local characteristics and peculiarities, it is a proper subject for state regulation, and cannot, so far as regards local production, be made the subject of general legislation by Congress, or, at all events, that it does not require a uniform system as between the states for its regulation."

The Supreme Court of Kansas, speaking of the same business as that now done by the Receiver, in *State ex rel. Caster vs. Flannelly*, 96 Kan. 372, said:

"Assuming that the sale of natural gas produced in Oklahoma, from there transported into this State through pipe lines and here sold to consumers throughout the State, is interstate commerce; it is not national in its nature; it does not admit of one uniform system of regulation; it is not that kind of interstate commerce which requires exclusive legislation by Congress, and until Congress acts it is under the control of this State."

The Supreme Court reaffirmed its adherence to this view in the more recent case of *State ex rel. Bristow vs. Landon*, 165 Pac. 1111.

Like views were held by the United States District Court for the Northern District of West Virginia in *Manufacturers' Light & Heat Company vs. Ott*, 215 Federal 940.

## III.

The peculiar qualities of natural gas and the marked and distinctive conditions under which it must be sold render governmental regulation thereof necessary; and the failure of Congress to undertake regulation compels the conclusion that meanwhile the subject is left to the respective states in which the business exists.

Failure of Congress to act upon the subject in hand means either that it is to remain free from all positive regulation, or that until Congress takes positive action, commerce in natural gas may be dealt with by the states respectively concerned.

By the provisions of the Interstate Commerce Act (U. S. Compiled Statutes, 1916, sec. 8563, 36 Statutes at Large, chap. 309, p. 544, sec. 7), Congress expressly excepted from the provisions of the Act the corporations or persons "engaged in the transportation \* \* \* of natural or artificial gas by means of pipe lines."

Natural gas occurs in only a small number of states, and in limited areas. The supply in a given territory is usually exhausted in a comparatively short time. It is a product of nature which is not reproduced. It can not be transported with profit for great distances. It can be transported only by means of pipe lines. It can not be sold to advantage except in large towns or cities. It can therefore only be sold profitably through or by companies holding franchises or permits to occupy and use the streets of cities for the purpose, and owning a plant of mains and distribution pipes located by consent of the city, and suitable for the sale and distribution of both natural and artificial gas. It comes into competition with domestic artificial

gas, or is sold in conjunction with it, as in the city of appellant, city of St. Joseph, Missouri. (Vol. II, page 816, par. 81, Record). It comes into competition for light, etc., with locally produced electric current in cities.

It is sold and, as a matter of practical business and concrete fact, can only be sold by a domestic a public service company, owing its existence to the state, and receiving its right to do business from the state through the state's agency, the municipal corporation, upon terms prescribed by the State, either directly or through its municipal agency by franchise or otherwise.

The rate at which it is sold to the consumer involves consideration not only of the value, or cost of production, at the wells, and of transportation from the wells, but of the cost of distribution at the place of consumption, and a proper return upon the investment of the local company.

The position here taken is, that upon the subject of commerce between the states not every failure of Congress to act is to be construed as leaving the particular subject free from state regulation, and as being an inhibition against state regulation, but, that each such subject, when occasion arises, is to be considered in accordance with its nature, and its relation to state, and interstate or Federal rights.

The contention of appellants is that the nature of the commodity, and of the circumstances under which the business in it is carried on leave it, in the absence of positive Federal regulation, among those subjects mitted to be dealt with by the States.

This court has frequently had occasion to consider closely the location in given instances of the line between the exclusive right of Federal regulation, and permitted State regulation. It is one not always easily discernible.

The question presented in this case is one with which this court has not heretofore been called to deal. The distinction must be drawn in accordance with the nature of the subject.

In the concurring opinion of Mr. Justice Field in *Bowman vs. Chicago etc. Ry. Co.*, 125 U. S. 465, l. c. 506, it is said:

"There is great difficulty in drawing the line precisely where the commercial power of Congress ends and the power of the State begins. The same difficulty was experienced in *Brown v. Maryland*, in drawing a line between the restriction on the States to lay a duty on imports and their acknowledged power to tax persons and property. In that case the court said that the two, the power and the restriction, though distinguishable when they did not approach each other, might, like the intervening colors between white and black, approach so nearly as to perplex the understanding as colors perplex the vision, in marking the distinction between them; but as the distinction existed, it must be marked as the cases arise."

It needs neither argument nor citation of authority to support the statement that the furnishing of light and heat for the use of a city and of its inhabitants for public and domestic purposes is peculiarly a municipal problem. The solution is always founded upon the granting of a privilege monopolistic in character. The existence of municipal or State regulation, recognizing local needs and protecting local interests, is essential.

National, general or uniform regulation is impossible.

The discussion, in part, in the opinion of the court in *Wilmington Transp. Co. vs. California R. R. Commission*, 236 U. S. 151, sets forth the views attempted to be here expressed.

The California Railroad Commission had prescribed rates of transportation to be charged by the Transportation Company for a voyage from one port in California to another port in California, but which carried the vessel for a part of the voyage over the high seas, although without any landing being made between the point of starting and the destination.

The Transportation Company challenged the power of the State Railroad Commission. The court, 153, said:

"It is urged that the fixing of rates is a regulation of the commerce involved, and hence of necessity is repugnant to the Federal authority, although the latter be unexercised. This proposition, however, as has frequently been pointed out, is too broadly asserted if no regard be had to the differences in the subjects which, by virtue of the Commerce Clause, are within the control of Congress. Thus, vessels engaged in foreign commerce have been compelled to submit to state requirements as to pilotage and quarantine since the foundation of the government, although it could not be denied that these requirements were regulations which Congress could at any time displace. *Cooley v. Board of Wardens*, 12 How. 299, 317, 319; *Ex parte McNeil*, 13 Wall. 236, 240; *Wilson v. McNamee*, 102 U. S. 572; *Anderson v. Pacific Coast S. S. Co.*, 225 U. S. 187, 195; *Morgan S. S. Co. v. Louisiana*, 118 U. S. 455, 465; *Compagnie Francaise v. Board of Health*,



186 U. S. 380, 387. In these cases it was apparent that the subject was of a local nature admitting of diversity of treatment according to local necessities, and it could not be supposed that it was the intention to deny to the States the exercise of their protective power, in the absence of Federal action. It is not necessarily determinative that the vessels in the course of the transportation in question pass beyond the boundary of the State. See *The Hamilton*, 207 U. S. 398, 405. In the case of ferries over boundary waters, it has always been recognized that ferriage from the shore of a State is peculiarly a matter of local concern and, while undoubtedly Congress may regulate interstate transportation by ferry as well as other interstate commercial intercourse, still, because of the nature of the transportation and the local exigency, a State in the absence of Federal regulation may prevent unreasonable charges for carriage by ferry from a point of departure within its borders. *Port Richmond Ferry v. Hudson County*, 234 U. S. 317, 332; *Sault Ste. Marie v. International Transit Co.*, 234 U. S. 333, 342. The rule which the plaintiff in error invokes is not an arbitrary rule, with arbitrary exceptions, but is one that has its basis in a rational construction of the Commerce Clause. As repeatedly stated, it denies authority to the States in all cases where the subject is of such a nature as to demand that, if regulated at all, its regulation should be through a general or national system, and that it should be free from restraint or direct burdens save as it is consti-

tutionally governed by Congress; and on the other hand, as to those matters which are distinctively local in character although embraced within the Federal authority, the rule recognizes the propriety of the reasonable exercise of the power of the States, in order to meet the needs of suitable local protection, until Congress intervenes. *Cooley v. Board of Wardens, supra*; *Ex parte McNeil supra*; *Welton v. Missouri*, 91 U. S. 275, 280; *County of Mobile v. Kimball*, 102 U. S. 691, 697; *Gloucester Ferry v. Pennsylvania*, 114 U. S. 196, 204; *Bowman v. Chicago & C. Ry.* 125 U. S. 465, 481; *Minnesota Rate Cases*, 230 U. S. 352, 399-403; *Port Richmond Ferry v. Hudson County, supra*."

#### IV.

The orders of the Public Service Commission of Missouri for the suspension, pending investigation, of new schedules of rates above those fixed by contract by the companies concerned, was not an attempt at the taking of property without compensation, or without due process of law, nor a denial of the equal protection of the laws.

The presumption is that rates, fixed by competent legislative authority by direct enactment, or by delegated power upon a fair hearing, or fixed voluntarily by the Company or companies concerned by their agreement or otherwise and filed as such and permitted to stand by the rate-making body, as reasonable. Fuller Interstate Commerce, page 148, *Chicago, Milwaukee & St. Paul Ry. Co. vs. Tompkins*, 176 U. S. 167, and do not infringe the constitutional guarantees of protection of property.

Upon the filing of a proposed increase of such rates the burden of proof to show the reasonableness of the increase is upon the company proposing the increase, where the reasonableness of the increase is challenged by a competent body or interested party.

Minneapolis & St. Louis R. R. Co. vs. Minnesota, 186 U. S. 257.

Interstate Commerce Commission vs. Union Pacific Railroad Co. 222 U. S. 541.

The rate schedules filed by the local companies of Missouri cities other than Kansas City whose temporary suspension by the Missouri Commission under the provisions of Sections 69 and 70 (pages 59-60 appendix), of the Missouri Public Service Commission Law were complained of, were increases over rates fixed by contract between the cities, the local companies and the Kansas Natural Gas Company, which had been in force and were on file with the Commission.

The orders of suspension for 120 days, pending and for the purpose of an inquiry into the reasonableness of the proposed new rates, were not intended to be final, could have no other effect than to maintain temporarily the existing status while requiring the companies by evidence upon a full hearing to prove that the increase asked for was necessary and reasonable.

The court found (page 618 Vol. II Record) that the "Missouri Commission had made no orders fixing general rates for the sale of gas by the Receiver within the State of Missouri, as was the case in regard to the Kansas defendants." If therefore, the sale of gas to consumers by the local companies was not interstate commerce, or, if in the absence of action by Congress the power of regulation of the local companies in respect of natural gas remained with the State, the orders of

suspension did not invade any constitutional right or guarantee of protection of property of either the local companies or the Receiver.

The Missouri Commission could cancel the proposed new rate only upon a full hearing and upon competent evidence, whereby, and by review proceedings in court provided by the Missouri Public Service Commission law, all constitutional rights were preserved.

The fact that the Commission permitted the suspension orders to expire without proceeding to a hearing is not important, since the Commission while then and now asserting its right so to proceed, chose to let the issue be determined in this proceeding rather than, pending determination of the issue here, to deliberately invoke intermediate collateral action by the trial court.

### CONCLUSION.

The position of the Missouri Public Service Commission is, that the sale of natural gas to consumers is not interstate commerce. The gas enters the mains of the local companies in its original form, and composition, but, when it is passed through the governing or equalizing compressing stations of the local company and brought to the proper and uniform density and pressure for its safe passage through the intermediate pipes to the consumer, it has become a domestic article in every sense. Although it may, from its nature be continually in motion, it has been in a legal sense transformed. It lies on the counter of the local merchant, ready for sale, to the local customer, or consumer, having had done for it all that the retail merchant can do for the articles received for his store from a foreign state.

The rates and regulations apply to it after and only after it has thus been prepared by the local vendor for sale and actual consumption. The reduction of the original pressure, necessary for transportation, to the pressure necessary for consumption, is the breaking of the "original package."

In any event, the conditions of its sale imperatively demand governmental regulation.

And no other regulation is applicable or practical except that touching at the place of its ultimate use and consumption.

The court is respectfully asked to reverse the findings and orders of the District Court made and entered against the Missouri defendants.

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## APPENDIX.

Sections and parts of the Public Service Commission Law of the State of Missouri.

"Sec. 1. **Short Title.**—This act shall be known as the 'public service commission act,' and shall apply to the public service herein described and the commission herein created, and to the public service corporations, persons and public utilities mentioned and referred to in this act." (Laws 1913, p. 557.)

"Sec. 2, Sub-div. 10.—The term 'gas plant,' when used in the act, includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas (natural or manufactured) for light, heat or power." (Laws 1913, p. 558.)

"Sec. 2, Sub-div. 11.—The term 'gas corporation,' when used in this act, includes every corporation, company, association, joint stock company or association, partnership and person, there lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any gas plant operated for public use under privilege, license or franchise now or hereafter granted by the state or any political sub-division, county, or municipality thereof." (Laws 1913, p. 558.)

"Sec. 2, Sub-div. 25.—The term 'public utility,' when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation and heat or refrigerating corporation,

as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act." (Laws 1913, p. 560.)

"Sec. 2, Sub-div. 26.—The term 'service,' when used in this act, is used in its broadest and most inclusive sense and includes not only the use and accommodation afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility, and to the use and accommodation of consumers or patrons." (Laws 1913, p. 560.)

"Sec. 2, Sub-div. 27.—The term 'rate,' when used in this act, shall mean and include every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof." (Laws 1913, p. 560.)

"Sec. 67. **Application of Article.**—This article shall apply to the manufacturing and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power and the generation, furnishing and transmission of electricity for light, heat or power, and the supplying and distribution of water for any purpose whatsoever." (Laws 1913, p. 602.)



**"Sec. 69. General Powers of Commission in Respect to Gas, Water and Electricity.—**The commission shall:

\* \* \* 12.—Have power to require every gas corporation, electrical corporation, water corporation and municipality to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established and enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation, water corporation or municipality; but this subdivision shall not apply to state, municipal or federal contracts. Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule of regulation relating to any rate, charge of service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation or municipality in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe. No corporation or municipality shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation or municipality refund or remit in any

manner or by any device any portion of the rates or charges so specified, not to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time." (Laws 1913, p. 607.)

**"Sec. 70. Power of Commission to Stay Increased Rate.**—Whenever there shall be filed with the commission by any gas corporation, electrical corporation, water corporation or municipality any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested gas corporation, electrical corporation, water corporation or municipality, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation, or practice, and pending such hearing and the decision thereon, the commission upon filing such schedule, and delivering to the gas corporation, electrical corporation, water corporation or municipality affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such

schedule and defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, form of contract or agreement, rule, regulation or practice, would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, form of contract or agreement, rule, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, form of contract or agreement, rule, regulation or practice as would be proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule, regulation or practice had become effective: Provided, that if any such hearing cannot be concluded with the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rates is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation, or municipality, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible." (Laws 1913, p. 608.)

**Sec. 111. Court proceeding for review.**—Within thirtydays after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the circuit court of the county where the hearing was held or in which the commission has its principal office for a writ of *certiorari* or review (hereinafter referred to as a writ of review) for the purpose of having the reasonableness or lawfulness of

the original order or decision or the order or decision in rehearing inquired into or determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard by the circuit court, unless for a good cause shown the same be continued. No new or additional evidence may be introduced upon the hearing in the circuit court but the cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceedings. Upon such hearing the circuit court shall enter judgment either affirming or setting aside the order of the commission under review. In case said order is reversed by reason of the commission failing to receive testimony properly offered, the court shall remand the cause to the commission, with instructions to receive the testimony so proffered and rejected, and enter a new order based upon the evidence theretofore taken, and such as it is directed to receive. The court may, in its discretion, remand any cause which is reversed by it to the commission for further action. No court of this state, except the circuit court to the extent herein specified and the supreme court on appeal, shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the executing or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties. The circuit courts of the state shall always be deemed open for the trial of suits brought to review the orders and decisions

of the commission, as provided in this act, and the same shall be tried and determined as suits in equity.

**Sec. 112. Writ of review; bond to be given; excess charges of rates to be paid into court; additional bond may be required.**—The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the commission, but during the pendency of such writ, the circuit court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order or decision. No order so staying or suspending an order or decision of the commission shall be made by any circuit court otherwise than on three days' notice and after hearing, and if the order or decision of the commission is suspended the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that the great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. In case the order or decision of the commission is stayed or suspended, the order or judgment of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the circuit court, payable to the state of Missouri, and sufficient in amount and security to secure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the commission, in the case such order or decision is sustained. The circuit court, in case it stays or suspends the order or decision of the commission in any manner affecting rates, fares, tolls, rentals, charges or classifications, shall

also by order direct the corporation, person or public utility affected to pay into the court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended. In case any circuit court stays or suspends any order or decision of the commission lowering any rate, fare, toll, rental, charge or classification, upon the execution and approval of said suspending bond, shall forthwith require the corporation, person or public utility affected, under the penalty of immediate enforcement of the order or decision of the commission (pending the review and notwithstanding the suspending order), to keep such accounts, verified by oath, as may, in the judgment of the court, suffice to show the amount being charged or received by such corporation, person or public utility, pending the review, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations and persons to whom overcharges will be refundable in case the charges made by the corporation, person or public utility, pending the review, be not sustained by the circuit court: *Provided*, that the street railroad corporations shall not be required to keep a record of the names and addresses of such persons paying such overcharge of fares, but such street railroad corporations shall give to such persons printed receipts showing such overcharges of fares, the form of such printed receipts to be approved by the commission. The court may, from time to time, require said party petitioning for a review to give additional security on,

or to increase, the said suspending bond, whenever in the opinion of the court the same may be necessary to secure the prompt payment of said damages or said overcharges. Upon the decision of the circuit court, all moneys which the corporation, person, or public utility may have collected pending the appeal, in excess of those authorized by such decision, together with interest, in case the court ordered the deposit of such moneys in a bank or trust company, shall be promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the court, unless an appeal be granted such corporation, person or public utility, as hereinafter provided. If any such moneys shall not have been claimed by the corporations or persons entitled thereto within one year from the decision of the circuit court, or the supreme court, upon appeal, the circuit court shall cause notice to such corporations or persons to be given by publication, once a week for two successive weeks, in a newspaper of general circulation, printed and published in the city or county where the circuit court tried the cause, said notice to state the names of the corporations or persons entitled to such moneys and the amount due each corporation or person. All moneys not claimed within three months after the publication of said notices shall be paid by the corporation, person or public utility, under the direction of the circuit court, into the state treasury for the benefit of the general revenue fund.

**Sec. 113. Preferences in all court proceedings.—**

All actions or proceedings under this or any other act and all actions and proceedings commenced or prosecuted by order of the commission, and all actions and proceedings to which the commission or the state may be parties, and in which any question arises under this or any other act, or under or concerning any order or deci-



sion or action of the commission, shall be preferred over all other civil causes except election contests in all the circuit courts of the state of Missouri, and shall be heard and determined in preference to all other civil business pending therein except election contests, irrespective of position on the calendar. The same preference shall be granted upon application of the general counsel for the commission in any action or proceeding in which he may be allowed to intervene.

**Sec. 111. Appeals to supreme court; transcript and exhibits; clerk to docket appeal at first term.—**

The commission, any corporation, public utility or person or any complainant may after the entry of judgment of the circuit court in any action in review, prosecute an appeal to the supreme court of this state. Such appeal shall be prosecuted as appeals from judgment of the circuit court in civil cases except as otherwise provided in this act. The original transcript of the record and testimony and exhibits, certified to by the commission and filed in the circuit court in any action to review an order or decision of the commission, together with a transcript of the proceedings in the circuit court, shall constitute the record on appeal to the supreme court. Where an appeal is taken to the supreme court the cause shall, on return of the papers to the supreme court, be immediately placed on the docket of the then pending term by the clerk of said court and shall be assigned and brought to a hearing in the same manner as other causes on the then pending term docket, but shall have precedence over all civil causes of a different nature pending in said court. No appeal shall be effective when taken by a corporation, person or public utility unless a cost bond of appeal in the sum of five hundred dollars shall be filed within ten days after the entry of judgment in the circuit court appealed from. The

circuit court may in its discretion suspend its judgment pending the hearing in the supreme court on appeal, upon the filing of a bond by such corporation, person or public utility with good and sufficient security conditioned as provided for bonds upon actions for review and by further complying with all terms and conditions of this act for the suspension of any order or decision of the commission pending the hearing of review in the circuit court. This bond shall be in addition to the cost bond heretofore provided in this section. The general laws relating to appeals to the supreme court shall, so far as applicable and not in conflict with the provisions of this act, apply to appeals taken under the provisions of this act.

OCT 26 1918

JAMES D. MAHER,  
CLERK.

Nos. 277, 329, 330, 353.

# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF  
KANSAS *et al.*, Appellants,

*vs.*

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Com-  
pany, *et al.*

No. 277. Filed September 20, 1917.

KANSAS CITY, MISSOURI, THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI *et al.*, Appellants,

*vs.*

JOHN M. LANDON, Receiver of The Kansas Natural Gas Company  
*et al.*

No. 329. Filed January 10, 1918.

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY *et al.*, Appellants,

*vs.*

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON and  
GEORGE F. SHARITT, Receivers, and FIDELITY TITLE AND  
TRUST COMPANY.

No. 330. Filed January 14, 1918.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KAN-  
SAS *et al.*, Appellants,

*vs.*

JOHN M. LANDON, as Receiver of the Kansas Natural Gas Com-  
pany, *et al.*

No. 353. Filed February 6, 1918.

*Appeals from the District Court of the United States for the  
District of Kansas.*

## REPLY BRIEF OF APPELLANTS THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS.

FRED S. JACKSON,

*Attorney for the Appellants, The Public  
Utilities Commission for the State of  
Kansas, and the appellant cities of  
the State of Kansas.*

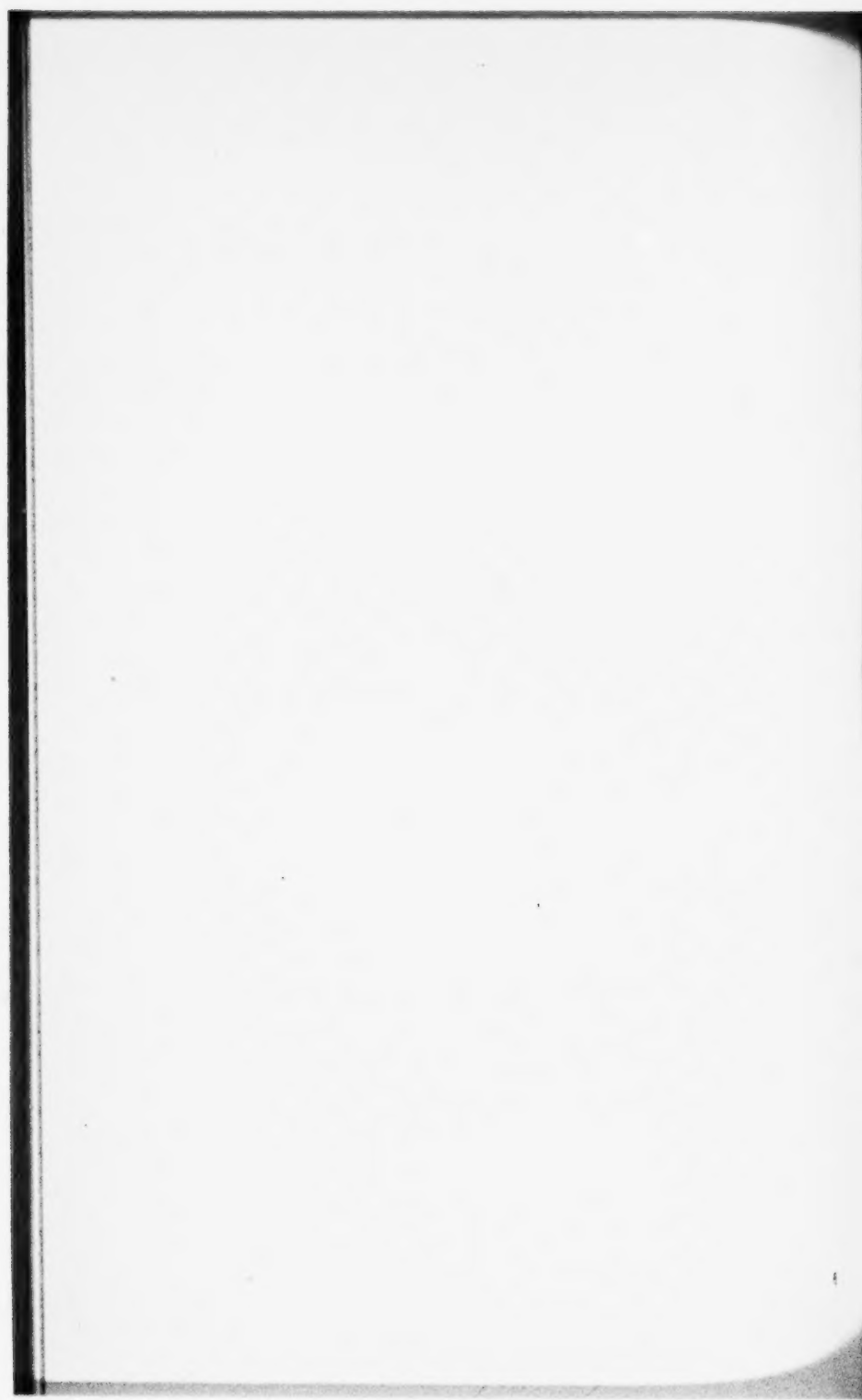


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No. 353.      *Filed February 6, 1918.*

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## REPLY BRIEF OF APPELLANTS

THE PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS.



## STATEMENT.

The appellant, for the convenience of the court and to prevent the possibility of mistake in examining the record, desires to call attention to several errors in statements of fact and decisions occurring in the brief of the appellees, John M. Landon, Receiver, Fidelity Title and Trust Company, Kansas Natural Gas Company, and George F. Sharitt, Receiver of the Kansas Natural Gas Company, hereinafter referred to as appellees.

### I.

On page 5 of said brief, relative to the opinion of Judge Marshall in *Fidelity Title and Trust Company v. Kansas Natural Gas Company*, 219 Fed. 614, the following statement is made:

"Judge Marshall held that the extensions were to be made in Oklahoma, *that the business of the receiver was interstate commerce*, and therefore the whole subject was beyond the jurisdiction of the Public Utilities Commission of Kansas, and directed the receiver not to make the extensions."

Judge Marshall did not make such holding or statement. He did hold that the transportation of gas from Oklahoma into Kansas was interstate commerce, but did not hold that the whole subject was beyond the jurisdiction of the Public Utilities Commission. On the contrary, Judge Marshall found specifically as follows:

Syllabus 2. "Where a foreign corporation admitted to do business in a state and engaged in the business of obtaining supplies of natural gas, transporting it by pipe lines to various cities in such state and other states and selling it to local public service corporations or manufacturing plants, though granted the right of eminent domain, was not by any specific contract or charter provision granted an exclusive right so as to imply a contract to supply the full needs of those depending on it, *while, so far as it availed itself of the permission granted it by the state, its property was affected by a public interest, its use*

*of the property was subject to valid state regulation, and it could not, with respect to property devoted to this quasi-public service, abandon that service, it could not be compelled by the state Public Utilities Commission to extend its lines to new gas fields so as to constantly furnish an adequate supply of gas."*

In the opinion, p. 617, Judge Marshall stated :

"The state, because of the public interest, has the power to prescribe reasonable rates for gas sold and to secure the efficiency of the service by reasonable regulations, and it is not to be doubted that a receiver of the property of the corporation must operate it in accordance with valid state laws in respect thereto.

*"The action of the state was only permissive. The company was not obligated to build any pipe line or furnish any gas. So far as it availed itself of this permission, its property used for the quasi-public service was affected by the public interest, and its use of the property in this business was subject to valid state regulation, but it did not become a mere agency of the state, and was under no obligation, contractual or other, to increase its investment or build new lines."*

It is apparent, therefore, that instead of Judge Marshall holding that the whole subject of the receiver's business was beyond the jurisdiction of the Commission, he sustained fully the contentions of the appellant in this case; that is, he held that the sale and distribution of gas within Kansas by the appellees was a local business of public interest, transacted by virtue of the state's police regulations and authority, subject to state control. He refused to enforce the order of the Commission solely because the extensions ordered were located outside of Kansas, beyond the authority of state laws, and the order concerned that part of the transaction, the conveyance of gas from one state to another, which every one admits is interstate commerce.

## II.

Concerning the decision of the supreme court of Kansas, *In re Flannelly*, 96 Kan. 372, on page 6 of appellees' brief the statement is made:

"The supreme court also held there was no order of the Public Utilities Commission outstanding which should be enforced, and denied the writ of mandamus."

The writ was not denied in that decision, except as to Judge Flannelly. As to the receivers of the Kansas Natural Gas Company, jurisdiction was retained "for such orders and judgment as may be hereafter made."

## III.

In appellees' brief, p. 10, the statement is there made that the supreme court of Kansas in the case of *In re Flannelly*, 96 Kan. 837, held that:

"The United States district court of Kansas was a court of competent jurisdiction to determine the reasonableness of the rate established by the Commission and had jurisdiction of this suit."

The court did not so hold. The only reference made to the case then pending in the United States district court in the opinion in the Flannelly case was as follows:

"At the hearing of the application for removal it was conceded that the receivers had complied with the order of the Commission and had put into effect the rate fixed by the order of December 10, 1915. The fact that they are seeking by the suit in the federal court to enjoin the rate as confiscatory and unreasonable makes no difference. They have the right to question the reasonableness of the rate established by the Commission and to choose the forum where that question shall be adjudicated."

The Kansas court did not decide that the receivers had chosen the proper forum, and did not attempt to decide for the federal court that there was equity in the receivers' bill of complaint or in his cause.

## IV.

In appellees' brief, p. 16, the following statement is made there:

"The Kansas Natural Gas Company and its receivers have never been parties to any of the franchises granted to local distributing companies, nor have its receivers ever adopted the terms, if any, of the franchises."

The bill of the appellees (rec. 43-44) alleges that the franchises were made with the distributing companies by the cities with the view that the distributing companies should be supplied with gas by a transportation company, and "that by reason thereof one of said franchises under which a large percentage of the total supply and distribution of natural gas was undertaken by the Kansas Natural Gas Company and *these complainants*, expressly provides as follows."

And again, in said bill on said page, the following allegation is made:

"That all of said ordinances are passed by said cities and accepted by said distributing companies with full knowledge of the foregoing facts and the conditions and provisions of said supply contracts."

Exhibit B, attached to the bill of complaint of the appellees, is entitled, "Rates provided by franchises in principal cities supplied by Kansas Natural Gas Company and rates in effect prior to December 10, 1915." It is also averred in the bill of complaint of the appellees (rec. 14):

"That the receivers after their appointment immediately qualified and took possession of all the properties of the Kansas Natural Gas Company in the states of Oklahoma, Kansas and Missouri, and thereafter carried on the business theretofore conducted by the Kansas Natural Gas Company of producing, purchasing, distributing and selling natural gas to the people of Kansas and Missouri."

Of course it must be conceded that both the supreme court of Kansas and the United States district court, in the opinion from

which this appeal is taken, specifically found that the receiver was operating, at the time the order of the Commission was made and at the time this suit was begun, under the local franchises. If this were not true (rec. 1113) there would be no basis at all for the claim made by the receiver that the fixing of rates at the meters' tips was a part of interstate commerce. The question of whether the court has since set aside these contracts as inoperative or inequitable as to rates is another proposition.

#### V.

Appellees' brief 18-19. The statement is here made that the supreme court of Kansas, in *State, ex rel., v. Flannelly*, 96 Kan. 372, held the 28-cent rate void, that it was admittedly too low, and would not be enforced by the court. At the time the opinion in that case was rendered the 28-cent rate had not been made by the Commission, and was therefore not in existence. On pages 18 and 19 occurs the same misstatement as to the opinion of Judge Marshall in *Fidelity Title and Trust Company v. Kansas Natural Gas Company*, 219 Fed. 614, referred to in this brief in paragraph I, and *State v. Flannelly*, 96 Kan. 833, referred to in this brief in paragraph III.

## ARGUMENT.

### INTERSTATE COMMERCE.

A chain is no stronger than its weakest links. There are several links in the theory of the appellees on the question of interstate commerce that are manifestly so weak that the entire argument falls. Without attempting to reargue the propositions contained in our first brief, we call attention to some of these points as expressed in the brief of the appellees.

#### FIRST.

*As to the attempt of the appellees to show that the use of franchise rights (brief, p. 56) does not change the claimed interstate character of appellees' business.*

A good part of this section of appellees' brief is taken up by a discussion of the proposition that local agencies do not change the character of an interstate business. This is equivalent to arguing that the employment of an agent by the importer to transact his business does not change the character of his business, and one which will readily be acceded to by every one. But the question of the importer obtaining the right to transact a business local in its nature by the authority of and under the benefits of the local law is not touched upon by the appellees except to argue that the question was settled in *West v. Natural Gas Co.*, 221 U. S. 229, and in *Western Union Telegraph Co. v. Foster*, 38 Sup. Ct. 438, denominated the Ticker Cases. The question of the use of local franchises to transact a local business was not involved in either case. In the *West* case the question was one of the right of the exporter to purchase and transport to another state natural gas produced in one of the states of the Union. The use of the highways or of other means of transportation was no more than that used by any railroad company which is engaged in an interstate business. The argument of the appellees in this case, as in several others, is based upon the wrong end of the trip or export jour-

ney. We think it well settled that the exporter has a right within the state to use any means legally at hand for the purpose of gathering, collecting or fitting for export the commodities sought to be transported to another state, and that the entire transaction is a part of interstate commerce. But this does not mean that the transaction may not become intrastate commerce after the importation has reached its destination, or even before then, if the exporter wills to and does commingle his property with the general mass of property in the state into which the importation is made. He may accomplish this by employing local franchises for that purpose. As was said by Judge Marshall, in *Fidelity Title and Trust Co. v. Kansas Natural Gas Co.*, *supra*: "It is not to be doubted that a receiver who is operating a property devoted to a quasi-public service and affected by public interest is subject to valid state regulation." (*l. c.* 617.) In announcing this doctrine Judge Marshall was merely adopting the law as announced by his illustrious namesake, Chief Justice John Marshall, in *Brown v. Maryland*, which is discussed in our brief at page 75, and relates to the duties and obligations of the importer who avails himself of privileges granted by local authorities. We have there cited the authorities which sustain this view.

#### THE TICKER CASES.

Local franchise rights were not involved in this case, although this seems to be asserted in numerous places in the brief of the appellees. While some of the telegraph companies involved in that litigation did cross the public highways with their lines, it is specifically found by the court that the telephone companies were not engaged in a public business in the transactions involved in transporting the messages of the stock exchange to the ticker customers in Massachusetts. While this case seems to be the star case of the appellees, they completely overlook the main proposition of the case, which is stated in the foregoing sentences. To restate it, the entire case turned



upon the proposition that the information collected from the quotations made up from the transactions of the New York Stock Exchange constituted the exchange's private property. This was the doctrine of the *Christie Grain Case*, 198 U. S. 236. Therefore, the stock exchange could sell this information or keep it, as it desired. The contracts made in the case under consideration specifically provide that this information should not be transported to any one without the consent of the New York Stock Exchange. Every contract made by the local agency was to be approved by the exchange, and all persons prohibited from receiving the information unless the consent of the exchange was first received. This provision of the contracts nullified the idea of a general retail business or a general distribution of the information to the inhabitants of the state of Massachusetts, and negated, as well, any possibility of a plea of the business being one clothed with a public interest. The service of the Western Union Telegraph Company and the Postal Company and their subsidiaries and local agents thus became the mere private acts of the exporter, the New York Stock Exchange, in protecting its property. The lines of these companies were employed merely for such private purpose. These points being established, all other points in the case became subsidiary, and, as the court said, "of no importance." On the other hand, if the brokers or the telegraph companies had possessed the right, under the contracts made with the New York Exchange, to sell the information indiscriminately under the local laws and under local franchises and regulations obtained under the authority of the state of Massachusetts, an entirely different rule would have obtained, and the transaction would have been more nearly in line with the instant case. The court says:

"Unlike the case of breaking bulk for subsequently determined retail sales, in these the ultimate recipients are determined before the message starts and have been accepted as the contemplated recipients by the exchange."

We think this is all that needs to be said about this case under the consideration of this proposition or any other involved herein.

## SECOND.

*The Mixing of Intrastate and Interstate Natural Gas in the Pipe Line within the State of Kansas.* Appellees' Brief, 120.

This part of appellees' brief also fails to furnish any answer to the self-evident proposition that the willful commingling of the property of the importer with the local property of the state changes the interstate character of the shipment, if one existed, to that of a local character and constituted the entire mass of property of the importer "property within the state subject to state control." The authorities cited by the appellees, as well as those cited by the trial court, to sustain the contrary proposition are all either railroad cases, express or telegraph cases. In each of these cases the question involved was whether the use of the instrumentality used for transportation at one time for intrastate business destroyed its interstate character when used at another time for interstate business. There was no commingling of the property involved in any of these cases. They are enumerated on page 121 of appellees' brief. The same proposition was discussed ably and fully by this court in the *Minnesota Rate Case*, and of course there is no room for difference of opinion upon that point.

## THE IMPORTER'S RIGHT OF SALE.

As the appellees are in error in the foregoing propositions, so they are equally in error in their attempted announcement of the doctrine of the right of the importer to sell. Speaking of our position on this subject (appellees' brief, p. 54) they say:

"Their misconceptions are premised on their failure to recognize the fact that the interstate commerce clause of the federal constitution protects not only the transportation of the articles in interstate commerce, but its sale *after the completion of its journey.*"

How long *after* the completion of the journey does this right to sell abide with the importer? How long is he exempt from the operation of the local laws which apply to other people—one day, two months, five years? Is there one rule which applies to property which had its origin outside of the state, and another which applies to property produced in the state, when all are commingled together with the general mass of property in the state?

There is absolutely no authority for the position of the appellees. The right to sell free from state control is bound up with the purposes of the importation and ends with the importation, and must always fall short of any act of the importer which would commingle his imported property with the general mass of property in the state. Nor does the use of the term by the courts that when the property is "at rest" at its destination necessarily mean that the property must have reached actual physical rest. The appellees attempt to make much of the alleged fact that the gas is moved as rapidly on its journey as science can accomplish its transportation. They seem to think that if the importation is still in motion that it cannot be said to be legally at rest for the purpose of general distribution in the state. This is also error. The importer may have chosen a method of moving his importation for the very purpose of commingling it with the general property of the state. The words of Chief Justice Marshall in *Brown v. Maryland* guaranteed the importer exclusive control of his importation and the right to sell up to the point of commingling his property, but not afterward.

To illustrate: If in the Rhoads case, 188 U. S. 1, relied upon by the appellees (brief, p. 65), the owner of the sheep driving them from Utah through Wyoming to Nebraska had begun selling sheep at retail to any person who sought to buy, or, as the courts express it, by a subsequently made contract, an entirely different rule would have been applied by the court from the one which obtained to exempt the property in ques-

tion from local taxation in Wyoming. Or again, if in the Lipscomb case, 244 U. S. 346 (appellee's brief, p. 99), the oil had been sold from the tank car in Tennessee at any station after the car had entered the state, by general or retail sale, and not delivered upon orders previously taken, to persons who were prepared to receive the same in the exact quantities contracted for previous to the shipment, the importer would have been held to have been conducting a general business in the state of Tennessee and his property subject to taxation and the other local laws of that state.

This point is squarely decided in a case which is decisive of every proposition involved in this lawsuit and should settle once for all the contentions of the appellees. We refer to the case of *Brown v. Houston*, 114 U. S. 622. In that case coal was imported into Louisiana in much the same manner that the oil was transported in the Lipscomb case, except that the means of transportation of the coal was by flatboats "and was on said boats on which it had just arrived and afloat on the Mississippi river; that it was held by Brown and Jones to be sold for account of the plaintiffs (the importers) by the boatload, and that since then more than half of it had been exported from this country on foreign steamships and the balance of it sold into the interior of the state for plantation use by the flatboat load." The question decided was whether the coal was subject to local taxation, and the court said (p. 632):

"It was not a tax imposed upon the coal as a foreign product, or as the product of another state than Louisiana, nor a tax imposed by reason of the coal being imported or brought into Louisiana, nor a tax imposed whilst it was in a state of transit through that state to some other place of destination. *It was imposed after the coal had arrived at its destination and was put up for sale. The coal had come to its place of rest for final disposition or use and was a commodity in the markets of New Orleans.* It might continue in that condition for a year, or two years, or only for a day. It had become a part of the general mass of the property in the state, and as such it was taxed for

the current year, as all other property in the city of New Orleans was taxed."

Again, in the case of *Emmett v. The State of Missouri*, 156 U. S. 296, this court held that:

"A statute of a state requiring every peddler to procure a license and pay a tax therefor, and imposing a penalty for peddling without a license, is not repugnant to the power given Congress to regulate commerce as applied to a peddler, within the state, of sewing machines made in another state by a corporation of that state and sent by it to him to sell on its account and as its agent."

In this case, of course, there is involved an additional proposition—that of the right of the state to regulate the business of hawkers or of general peddlers. But there is also involved the proposition that although the sewing machine had been intended at the time of its shipment by the importer from the state of its manufacture for "ultimate delivery to a customer," by its agent in the state of importation, still it must be held that the sales were general sales which accomplished a comingling of the property with the general mass of property in the state.

The case of *Standard Oil Company v. The City of Fredricksburg*, 52 S. E. 817, was a similar one, and the supreme court of appeals of that state followed the foregoing authorities and the *Speed* case, 192 U. S. 508. The facts in that case were as follows: A corporation engaged in the sale of oil brought its oil from a foreign state into Virginia to its storage tanks, and from these it was pumped into a tank wagon of several hundred gallons' capacity, and from this wagon the company's local agent disposed of the oil to regular customers while the wagon was standing in front of or near the customer's door, the oil being paid for to said local agent, and that new customers would be supplied after first receiving their request for oil and the company or agent satisfying itself or himself that the new customer was a desirable addition to

the number of regular customers, and that the company was also a seller of other articles brought into the state by it, intended to be inducive to a larger sale and consumption of its oils. The court held that while the plaintiff oil company was not a merchant, as that term is generally understood, yet it was not engaged in selling oil in the state either in original barrels or from wagons engaged in interstate commerce in such sense as to preclude a city of the state from exacting a license tax upon it.

Both the appellees and the trial court seem to regard it as of some importance that there is what is termed a divergence of view between the supreme court of Kansas and the Public Utilities Commission as to the point at which interstate commerce ceases and local business begins (appellee's brief, p. 41). This arises from the fact that the supreme court referred to the entire pipe line as the original package of gas, while the Public Utilities Commission in its briefs has asserted that there can be no original package for the transportation of gas. We regard this as but another way of expressing the same idea; that is, that gas can not be transported into the state for sale in an original package. The Kansas supreme court meant the same thing when it said that the only possible original package was the pipe line itself. That is to say, if the entire pipe line filled with gas could be brought into the state as one sale it would constitute the only original package possible in the transportation of gas. The appellees themselves say the same (brief, p. 47):

"Natural gas does not come in packages, hence there is no place for the short name for the rule found by the courts in other cases to be convenient. The rule, of course, extends as much to a commodity not capable of confinement in a package as to an article that is, and the importer of natural gas has a right to enjoy the freedom given to him by the constitution just as much as the importer of intoxicating liquor; that is, he has the right to sell it without regulation and without interference by state authorities."

The answer, of course, to this last proposition of the appellees is that the importer does not have a right under the constitution to sell free from state control after his importation ceases. He may sell under such guarantee *at* but *not after* the destination is reached, if he sell the importation as a whole, or if he sell a part of the importation in original packages suitable to the necessities of commerce. Or he may deliver during the journey of importation from the bulk of his commodities without destroying the interstate character of the shipment, if it be done upon orders or contracts previously made for a definite portion of the shipment. But, as many times stated heretofore, the moment he undertakes to enter upon a general sale of the property imported, by contracts entered into subsequent to the beginning of the shipment, then his act amounts to a distribution of his property and a commingling of the same with the mass of property subject to state control.

The trial court attempted to answer the difficulty thus confronting the gas company in its attempt to make the local distribution of gas appear to be an interstate transaction by saying that the applications for gas to the local company became in effect orders for gas, and this statement of the trial court is seized upon by the appellees as a happy solution of their problem. But there is nothing in the transaction or the facts as found by the trial court that warrants this conclusion. The receiver or the transporting company had nothing whatever to do with selecting the customers for the distributing company. They were attached to the local pipe line or detached at the will of the distributing company and the local authorities. There was nothing that compelled them to take more or less gas from day to day than they had taken the day before. At best they could be called nothing more than "regular customers" after their meters and pipe lines had been constructed to receive gas from the local company. Indeed, not only the transportation company was denied the right to select its customers, but even



the local distributing company was compelled to serve the public generally under the local law and by reason of the fact that it was engaged in a public business. This fact alone forbids the transaction from being considered as an order within the meaning of that term as applied to interstate commerce.

We respectfully pray, therefore, that the judgment of the trial court be reversed and that the appellants take such relief in the premises as this court may direct and award.

Respectfully submitted.

FRED S. JACKSON,

*Attorney for the Appellants, The Public  
Utilities Commission for the State of  
Kansas, and the appellant cities of  
the State of Kansas.*



FILED

OCT 30 1918

JAMES D. BAKER

CLERK

# Supreme Court of the United States

October Term, 1918.

No. 277.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS ET AL.,  
*Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed September 30, 1917.

No. 329.

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, ET AL., *Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed January 10, 1918.

No. 330.

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY, ET AL., *Appellants,*

vs.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND GEORGE F.  
SHARITT, RECEIVERS, AND FIDELITY TITLE AND TRUST COMPANY.

Filed January 14, 1918.

No. 353.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS ET AL.,  
*Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed February 6, 1918.

*Appeals from the District Court of the United States for the  
District of Kansas:*

## BRIEF ON BEHALF OF VARIOUS DISTRIB- UTING COMPANIES, APPELLEES.

LEONARD S. FERRY,  
THOMAS F. DURAN,  
M. F. COSGROVE,

*Solicitors for L. G. Trele-  
von, Receiver of The Con-  
sumers Light, Heat and  
Power Company of Topeka,  
Kansas.*

J. M. CHALLIS,

*Solicitor for The Atchison  
Railway, Light and Power  
Company of Atchison,  
Kansas.*

FLOYD HARPER,

*Solicitor for The Leaven-  
worth Light, Heat and  
Power Company of Leaven-  
worth, Kansas.*



# Supreme Court of the United States

October Term, 1918.

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**No. 277.**

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed September 20, 1917.

---

**No. 329.**

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, ET AL., *Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed January 10, 1918.

---

**No. 330.**

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY, ET AL., *Appellants,*

VS.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND GEORGE F.  
SHARITT, RECEIVERS, AND FIDELITY TITLE AND TRUST COMPANY.

Filed January 14, 1918.

---

**No. 353.**

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed February 6, 1918.

*Appeals from the District Court of the United States for the  
District of Kansas.*

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## BRIEF

ON BEHALF OF L. G. TRELEAVEN, RECEIVER OF THE CON-  
SUMERS LIGHT, HEAT AND POWER COMPANY, OF  
TOPEKA, KANSAS, THE ATCHISON RAILWAY, LIGHT  
AND POWER COMPANY, OF ATCHISON, KANSAS, AND  
THE LEAVENWORTH LIGHT, HEAT AND POWER COM-  
PANY, OF LEAVENWORTH, KANSAS.

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## STATEMENT OF FACTS.

The above named distributing companies, on  
whose behalf this statement is filed, hereby approve  
and adopt the Statement of Facts presented on

behalf of John M. Landon, Managing Receiver of The Kansas Natural Gas Company, Fidelity Title and Trust Company, The Kansas Natural Gas Company, and George F. Sharritt, Receiver of The Kansas Natural Gas Company, appellees; and hereby request the Court to consider in addition thereto those portions of the record hereto annexed as Appendix A, which were by accident or mistake omitted from the printed record. The transcript of the original instruments, in which they are found, was duly transmitted to the clerk of this Court and will be found in his files. The facts relative to their omission from the printed record, in so far as known to the distributing companies on whose behalf this statement is filed, are set forth in the affidavit attached to Appendix A.

### ARGUMENT.

The distributing companies on whose behalf this statement is filed hereby approve and adopt the arguments and authorities cited in the briefs, both original and supplemental, on behalf of John M. Landon, Managing Receiver of The Kansas Natural Gas Company, Fidelity Title and Trust Company, The Kansas Natural Gas Company, and George F. Sharritt, Receiver of The Kansas Natural Gas Company, and respectfully request that the judgment and decree of the lower court be sustained on the grounds:

*First.* That the rate established by the Public Utilities Commission of the State of Kansas, designated as the 28-cent rate, is unremunerative and confiscatory, and wasteful and destructive of the property and estate of the distributing companies presenting this brief.

*Second.* That the business of the Receiver of The Kansas Natural Gas Company, the Kansas Natural Gas Company, and of the distributing companies upon the lines of the Kansas Natural Gas Company, as carried on and conducted, is interstate commerce and free from state or municipal control.

*Third.* The distributing companies presenting this statement believe that the arguments and authorities cited, and herein approved and adopted, are conclusive, and that an extended brief on behalf of the distributing companies would burden the Court, lead to useless repetition, and encumber the record.

These distributing companies, therefore, respectfully submit that upon all the facts and authorities cited the judgment of the lower court should be affirmed.

Respectfully submitted,

LEONARD S. FERRY,

THOMAS F. DORAN,

M. F. COSGROVE,

*Solicitors for L. G. Treleaven,  
Receiver of The Consumers  
Light, Heat and Power Com-  
pany, of Topeka, Kansas.*

J. M. CHALLISS,

*Solicitor for The Atchison Rail-  
way, Light and Power Com-  
pany, of Atchison, Kansas.*

FLOYD HARPER,

*Solicitor for The Leavenworth  
Light, Heat and Power Com-  
pany, of Leavenworth, Kansas.*

## **Appendix "A."**

### **AFFIDAVIT.**

*State of Kansas, Shawnee County—ss.*

T. F. Doran, of lawful age, having been first duly sworn, upon oath says:

That he is one of the attorneys for L. G. Treleaven, Receiver of the Consumers Light, Heat and Power Company, of Topeka, Kansas; that upon the appeal of the case of *John M. Landon, Receiver, et al., v. The Public Utilities Commission of the State of Kansas*, being In Equity No. 136-N, of the court below, counsel for said appel-



lant duly served upon affiant, as attorney for L. G. Treleaven, Receiver of the Consumers Light, Heat and Power Company, the following praecipe, setting out the portions of the record appellant desired to have incorporated in the transcript:

"In the District Court of the United States  
for the District of Kansas, First Division.  
John M. Landon, *et al.*, Receivers,  
vs. In Equity,  
The Public Utilities Commission No. 136-N.  
of the State of Kansas *et al.*

**PRAECIPE OF THE APPELLANTS.**

Filed under Rule 8 of the Supreme Court of the United States.

Come now the appellants, in pursuance of Rule 8 of the Supreme Court of the United States, and for the purpose of enabling the clerk to prepare the record for the appeal herein from the decision of the District Court to the Supreme Court, hereby requests the clerk to incorporate the portions of the record into the transcript of the record on such appeal which are hereinafter indicated, to-wit:  
*Pleadings:*

The following parts of the bill of complaint, to-wit:

The title page, caption, and first ten lines of paragraph or division I thereof.

Also paragraphs or divisions III, V, VII, VIII, IX, X, XI, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, and the prayer.

And that there be included also the following exhibits to said bill:

Exhibits A, B, C, F, K and M.

And that of the answer of the Public Util-

ities Commission for the State of Kansas and H. O. Caster, its attorney, there be included in the record the following portions, to-wit:

The title page and opening statement, and of Part I, paragraphs IV, V and VI; of Part II, paragraphs III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXVIII, XXIX, XXX and XXXIII; and that of Part III there be included paragraphs I, II, III, IV and V, and the last sentence of paragraph VI, page 55 of said answer, and also paragraphs VII and VIII; and that of the exhibits to said answer that there be included Exhibits B and C.

That of the supplemental bill of complaint the following parts, to-wit:

The opening statement, omitting caption and including paragraph I, also paragraphs XI, XII, XIII, XIV, XV, XVI and XIX, and the prayer of said supplemental bill. That of the exhibits attached to said supplemental bill there be included Exhibits No. 15 and 16.

That of the answer of the Public Utilities Commission of Kansas to said supplemental bill of complaint there be included:

Paragraph I and paragraphs XI, XII and XIII.

That of the amended answer of the Wyandotte County Gas Company there be included in said transcript the following parts, to-wit:

Paragraph XI on page 15, XII and XIII on pages 16 and 17, and the prayer of said amended answer, and that none of the exhibits be included.

That the amended and supplemental answer of L. G. Treleaven, Receiver of Consumers Light, Heat and Power Company, be included in said transcript, and that of the

exhibits there be included Exhibits A, B, C, D and E, and that all other exhibits be not included.

That there also be included the answer of the Kansas Natural Gas Company, the answer of George F. Sharritt, Receiver, and the answer of the Fidelity Title and Trust Company.

*Evidence:*

That there be included in the transcript of the evidence the statement of evidence prepared under Rule 75 in this cause.

*Opinions:*

That there be included in said transcript the opinion of the court on the temporary injunction and on final hearing.

*Appeal and Allowance:*

That there be included in said transcript the assignments of error of the appellant, the appeal and allowance thereof by the court, and the citation, with the acknowledgments of service.

F. S. JACKSON,

H. O. CASTER,

*Attorneys for Appellants.*

**Acknowledgment of Service.**

We hereby acknowledge service of the foregoing praecipe and notice of its filing this 20th day of July, 1917.

FERRY, DORAN & COSGROVE,

*Attorneys for L. G. Treleven,  
Receiver of The Consumers  
Light, Heat and Power Com-  
pany."*

That immediately thereafter affiant prepared and filed with the clerk of the lower court a

praecipe pointing out additional portions of the record which the Receiver, L. G. Treleaven, deemed necessary for his defense on appeal, as follows:

"In the United States District Court, for the  
District of Kansas, First Division.

John M. Landon, as Receiver of  
the Kansas Natural Gas Com-  
pany, Plaintiff,

In Equity  
136-N.

vs.

The Public Utilities Commission  
of the State of Kansas *et al.*,  
Defendants.

**PRAECIPE.**

Comes now L. G. Treleaven, Receiver of The Consumers Light, Heat and Power Company, by Ferry, Doran & Cosgrove, his attorneys, and files with the clerk of the court this, his praecipe, pointing out additional portions of the record which he deems necessary for his defense on appeal, which should be incorporated in his behalf in the transcript made on appeal of the defendant above named.

First. This defendant and cross-petitioner desires incorporated in the transcript of the record the following exhibits omitted by the defendant, The Public Utilities Commission of the State of Kansas:

'Exhibits F, G and H' of this defendant's amended and supplemental answer.

Second. Exhibits to the evidence introduced by this defendant and cross-petitioner, filed, designated and marked as 'Exhibits L.G.T.-i.

L.G.T.-2, L.G.T.-3, L.G.T.-4, L.G.T.-5, and L.G.T.-6.'

FERRY, DORAN & COSGROVE,  
*Attorneys for L. G. Treleaven, Receiver of The Consumers Light, Heat and Power Company."*

That affiant is advised by the clerk of the lower court that said clerk duly prepared and transmitted all those portions of the record referred to therein, in the following language:

"That the amended and supplemental answer of L. G. Treleaven, Receiver of Consumers Light, Heat and Power Company, be included in said transcript, and that of the exhibits there be included Exhibits A, B, C, D and E, and that all other exhibits be not included."

That in addition thereto said clerk transmitted to the clerk of this Court all those portions of the record pointed out in the praecipe filed by this affiant on behalf of L. G. Treleaven, Receiver.

Affiant further states that neither L. G. Treleaven nor his attorney was present in the lower court when the stipulation shown on pages 1 and 2 of Volume 1 of the printed transcript of the record herein was made, and that neither L. G. Treleaven nor any of his attorneys signed said stipulation, or had any knowledge thereof until the printed record appeared; that when the record thus made up was transmitted by the clerk of the lower court to the clerk of this Court, neither the appellant nor anyone in its behalf served upon

either L. G. Treleaven or his attorneys any statement of the points on which appellant intends to rely, and which he thinks necessary for consideration, as required by paragraph 9 of Rule 10 of the rules of this Court. Affiant assumes, although he does not know, that this omission was in accordance with the provision contained in said stipulation, to the effect that:

"The filing of the statements of errors intended to be relied upon, and parts of the record necessary for the consideration thereof, with the proof of service provided for in Rule 10, are hereby waived."

And affiant further assumes that the clerk of this Court, in printing the record, followed said stipulation; and this affiant says that L. G. Treleaven, Receiver of the Consumers Light, Heat and Power Company, and affiant as one of his counsel, believes that the portions of the record hereinafter set out in this appendix are necessary for full consideration and correct determination of this cause, and respectfully asks that the same be considered in connection with the facts and arguments presented to the Court.

Further affiant saith not.

T. F. DORAN.

Subscribed and sworn to before me this 12th day of October, 1918.

(Seal)

LOUIE M. BAGLEY.

*Notary Public, Shawnee County, Kansas.*

My term expires Nov. 26, 1920.

The portions of the record deemed necessary to the proper defense of L. G. Treleaven, Receiver of the Consumers Light, Heat and Power Company, are as follows:

**First.**

Amended and supplemental answer (including exhibits attached, and therein referred to, and therewith filed) of L. G. Treleaven, Receiver of the Consumers Light, Heat and Power Company, in the court below. The original copy transmitted with the record is on file in the office of the clerk of this Court:

In the District Court of the United States

For the District of Kansas.

First Division.

John M. Landon, as Receiver of the Kansas

Natural Gas Company, Plaintiff,

vs.

In Equity. No. 136-N.

The Public Utilities Commission of the State  
of Kansas et al., Defendants.

**AMENDED AND SUPPLEMENTAL ANSWER OF L. G.  
TRELEAVEN, RECEIVER OF CONSUMERS LIGHT,  
HEAT AND POWER COMPANY.**

Now comes L. G. Treleaven, Receiver of the Consumers Light, Heat and Power Company, a corporation organized and existing under and by virtue of the laws of the state of Delaware, and for his amended and supplemental answer to the bill of complaint and supplemental bill of complaint herein, alleges:

**I.**

That he was duly appointed Receiver of the Consumers Light, Heat and Power Company, a



corporation organized and existing under and by virtue of the laws of the state of Delaware, in an action duly commenced and now pending in this court, wherein Central Trust Company of New York is complainant and Consumers Light, Heat and Power Company is defendant, on the 20th day of August, A. D. 1914, and that he is now, and has been since said 20th day of August, A. D. 1914, the duly appointed, qualified and acting receiver of said Consumers Light, Heat and Power Company.

## II.

That the allegations of fact contained in the original bill of complaint filed herein on December 29, 1915, and the allegations of fact contained in the supplemental bill of complaint filed herein on October 11, 1916, so far as said allegations concern the dealings and relation of this defendant Receiver to the transactions described in said original and supplemental bills of complaint, and so far as the same are material, are true, to the best knowledge and belief of this defendant Receiver, except as otherwise hereinafter set forth and alleged.

## III.

That the Consumers Light, Heat and Power Company is, and for many years last past has been, engaged in the distribution and sale of gas in the cities of Topeka and Oakland, Kansas. That its issued and outstanding capital stock is \$1,000,000, and there are outstanding bonds secured by mortgage or deed of trust which are liens upon the property of the company, aggregating \$1,000,000. That the Consumers Light,

Heat and Power Company has constructed, erected, laid, installed and otherwise acquired, and now owns and is possessed of lands, gas plants and works, and appurtenances and appliances, and also gas mains, pipes, feeders, service pipes, and appliances and appurtenances. *That the actual present value of its physical property devoted at this time to the use or convenience of the public is upwards of \$1,700,000.*

#### IV.

That the city of Topeka, Kansas, is a city of the first class, duly organized under the laws of the state of Kansas, and that the city of Oakland, Kansas, is a city of the third class, duly organized under the laws of the state of Kansas; that the city of Oakland, although a separate municipality, is in fact a suburb of the said city of Topeka, Kansas.

#### V.

That on the 7th day of August, A. D. 1903, the said city of Topeka, Kansas, duly passed, and thereafter on August 15, A. D. 1903, there was approved, Franchise Ordinance No. 2435, authorizing the Continental Oil and Gas Company to supply said city of Topeka and its inhabitants with natural gas for a period of twenty (20) years from the date of the acceptance of said ordinance, subject to the conditions therein contained; a true and correct copy of which ordinance as amended by Ordinance No. 2528 of September 8, A. D. 1904, is hereto attached as Exhibit "A" and made a part hereof. That said ordinance was duly accepted.

## VI.

That said city of Topeka, Kansas, on the 5th day of September, A. D. 1904, duly passed its Franchise Ordinance No. 2525, authorizing the Excelsior Coke and Gas Company to supply said city of Topeka, Kansas, with artificial or manufactured gas for a period of thirty (30) years; that a true and correct copy of said ordinance as amended by Ordinance No. 2532 of October 13, A. D. 1904, is hereto attached as Exhibit "B" and made a part hereof. That prior and subsequent to the passage of the last named ordinance of said city of Topeka, said Excelsior Coke and Gas Company was engaged in the manufacture and distribution of artificial gas to said city and its inhabitants.

## VII.

That about the year 1905 the Kansas Natural Gas Company, of which plaintiff herein is now receiver, constructed and installed a pipe line connecting its natural gas pipe lines with the cities of Topeka and Oakland, Kansas.

## VIII.

That on the 5th day of January, A. D. 1905, Joseph J. Heim of Kansas City, Missouri, and Arnold Kalman of St. Paul, Minnesota, the then owners of the Continental Oil and Gas Company's Franchise No. 2435 of the city of Topeka, above described, entered into a written contract with the Kansas Natural Gas Company for the sale and distribution of natural gas in said city of Topeka; a true and correct copy of which con-

tract is hereto attached as Exhibit "C" and made a part hereof.

#### IX.

That the Consumers Light, Heat and Power Company, by purchase, became the owner of all the rights, privileges and franchises of the Continental Oil and Gas Company under said Ordinance No. 2435 of said city of Topeka.

#### X.

That on the 1st day of May, A. D. 1905, the city of Topeka duly passed and thereafter, on May 3, 1905, there was approved a franchise ordinance, No. 2574, authorizing the Consumers Light, Heat and Power Company, its successors and assigns, to use the works, pipes and mains of the Excelsior Coke and Gas Company in the city of Topeka, for the purpose of selling and distributing natural gas, subject to the conditions therein contained, for a period of twenty (20) years; a true and correct copy of said Ordinance No. 2574 is hereto attached as Exhibit "D" and made a part hereof.

#### XI.

That the Consumers Light, Heat and Power Company thereafter became, and now is, the owner of all the property, rights and franchises of the Excelsior Coke and Gas Company.

#### XII.

That the city of Oakland, Kansas, on July 2, A. D. 1906, duly passed and approved Franchise Ordinance No. 32 of said city, authorizing the Consumers Light, Heat and Power Company,

subject to the conditions therein contained, to distribute and sell to said city of Oakland, and to its inhabitants, manufactured and natural gas, or either of them, for a period of twenty (20) years from the date of the acceptance of said ordinance; a true and correct copy of said Ordinance No. 32 of the city of Oakland is hereto attached as Exhibit "E" and made a part hereof. That said ordinance was duly accepted.

### XIII.

That pursuant to, and under the authority of, the aforesaid ordinance of the city of Topeka, and of said contract, Exhibit "C," the Consumers Light, Heat and Power Company, in the year 1905, began the distribution and sale of natural gas received by it from the Kansas Natural Gas Company's pipe lines, to said city of Topeka and its inhabitants; and that under said Franchise Ordinance No 32 of the city of Oakland, Exhibit "E" hereof, and said contract, Exhibit "C" hereof, the Consumers Light, Heat and Power Company, about the year 1907, began the distribution and sale of natural gas to said city of Oakland and its inhabitants; that since the aforesaid dates it has been furnishing and distributing natural gas to said cities and their inhabitants in such quantities as it has been able to procure from the Kansas Natural Gas Company. That said supply of natural gas was reasonably sufficient for a limited period and the service rendered reasonably satisfactory to the consumers, but that the returns therefrom have never yielded to the Consumers Light, Heat and Power Company, or to this Re-

ceiver, an adequate return on the investment of the Consumers Light, Heat and Power Company. This defendant further alleges that, due to the failure to receive a sufficient supply of natural gas, such business has become very unsatisfactory to consumers and unprofitable to the Consumers Light, Heat and Power Company, and said company has sustained heavy losses, and that, on account thereof, on application of the bondholders of said Consumers Light, Heat and Power Company, this defendant was, on the 20th day of August, A. D. 1914, duly appointed receiver of the Consumers Light, Heat and Power Company by this court.

#### XIV.

That the supply of natural gas has continued to decrease from year to year, and as a result thereof the losses of said Consumers Light, Heat and Power Company, and of this Receiver as such, have constantly increased. That said Consumers Light, Heat and Power Company and its Receiver have honestly, faithfully and diligently performed all their obligations under said franchises and contract, and have used every means within their power to secure an adequate supply of natural gas from the Kansas Natural Gas Company. That this Receiver, in the case of *John M. Landon and R. S. Litchfield, as Receivers of the Kansas Natural Gas Company, v. City of Lawrence et al.*, pending before the Public Utilities Commission for the State of Kansas, duly filed his application for an order directing and requiring said receivers of the Kansas Natural Gas Company to furnish a reasonably sufficient supply of natural gas to

meet the demands of the consumers in said cities of Topeka and Oakland, Kansas; but that no action has ever been taken upon said application by the Public Utilities Commission for the State of Kansas and no relief obtained therefrom. That this Receiver has made repeated demands upon the Kansas Natural Gas Company and its receivers for a sufficient supply of natural gas, but that said company and said receivers have failed, neglected and refused to deliver to this defendant Receiver a sufficient supply of natural gas, and have in writing declared their inability to do so, as appears from letter dated March 6, 1916, written by J. M. Landon, the plaintiff herein, to this defendant; a true and correct copy of which letter is attached as Exhibit "F," and made a part hereof.

#### XV.

This defendant further alleges that by reason of the failure of the Kansas Natural Gas Company and its receivers to furnish a reasonably sufficient supply of natural gas, this defendant has been compelled, and said receivers of the Kansas Natural Gas Company have directed him from time to time, to notify the inhabitants of the cities of Topeka and Oakland, Kansas, that the supply of gas was insufficient to meet their demands, and that they should provide themselves with other fuel, and that as a result thereof large numbers of customers and prospective customers of the Consumers Light, Heat and Power Company have abandoned the use of natural gas, wholly or in part. That the income of this defendant, as a consequence thereof, has been greatly diminished



and the business of supplying natural gas has been practically destroyed, and the profits of the Consumers Light, Heat and Power Company have been eliminated and heavy losses have been incurred.

# XVI.

That from the date of beginning the distribution and sale of natural gas in said cities of Topeka and Oakland, as hereinbefore alleged, the Consumers Light, Heat and Power Company continued to sell natural gas in said cities at a joint rate of 25 cents net per thousand cubic feet, as fixed for the original period in the contract, hereinbefore referred to, attached hereto as Exhibit "C," down to and until the taking effect on the 10th day of January, A. D. 1916, of the joint rate of 28 cents net per thousand cubic feet fixed by the Public Utilities Commission for the State of Kansas, in its order dated the 10th day of December, A. D. 1915; a copy of which order is hereto attached as a part hereof, marked Exhibit "G." That the losses of the Consumers Light, Heat and Power Company, operating under the joint rate of 25 cents net per thousand cubic feet, distributed between the Kansas Natural Gas Company and the Consumers Light, Heat and Power Company, two-thirds to the former and one-third to the latter after deducting operating expense, depreciation, taxes and bond interest, were as follows:

1913.....	\$41,399.66
1914.....	49,693.76
1915.....	65,960.74

That the bond interest of \$50,000 annually, included in the figures for each of the above years, was not paid for the years 1914 and 1915.

#### XVII.

This defendant further shows and represents to the court that although the Consumers Light, Heat and Power Company and this defendant Receiver as such were defendants duly summoned in and were present during the hearing of the Public Utilities Commission for the State of Kansas, pursuant to which said joint rate of 28 cents was established by the said commission, as set forth in Exhibit "G" hereof, neither said Consumers Light, Heat and Power Company nor this defendant Receiver as such was permitted to introduce any evidence or make any showing of the value of the property of said company devoted to public use or of the rate necessary to furnish an adequate return upon such value; that said Public Utilities Commission for the State of Kansas never, during said hearing, or at any other time, upon its own initiative or otherwise, made any inquiry into, or investigation of, the value of the property of the Consumers Light, Heat and Power Company devoted to the use and convenience of the public or of the rate necessary to furnish an adequate return upon such value, and that said joint rate of 28 cents was arbitrarily fixed and established by said Public Utilities Commission for the State of Kansas against this defendant without any evidence whatever and without any consideration of its rights in the premises. This defendant Receiver represents and shows to the

court that said 28-cent rate, in so far as the same applied to the Consumers Light, Heat and Power Company and to this defendant as its receiver, is illegal and void, and amounts to a taking of the property of the Consumers Light, Heat and Power Company in the hands of this Receiver without due process of law, in violation of the Constitutions of the United States and of the State of Kansas, and is, therefore, void and unenforceable against this defendant.

#### XVIII.

This defendant further shows that the Public Utilities Commission for the state of Kansas fixed said joint rate upon the theory or assumption that two-thirds ( $2/3$ ) of said rate should be paid to the Kansas Natural Gas Company, or its receiver, and one-third ( $1/3$ ) thereof to this defendant. This defendant further shows that said Public Utilities Commission made no investigation whatever to determine whether the division of the rate between the Kansas Natural Gas Company, or its receiver, and this defendant, as above described, was equitable, just or fair as against this defendant and this defendant charges that said division of the rate is not equitable, just or fair as against this defendant, but on the contrary is illegal, unjust and discriminatory; that this defendant is entitled to a much larger proportion or percentage of said rate than one-third ( $1/3$ ) thereof.

#### XIX.

This defendant further shows that although said 28 cent rate is a joint rate, it is also a single, indivisible rate for the service rendered to the Cities

of Topeka and Oakland and their inhabitants; that it is legally impossible to determine a fair and equitable rate for such service without an investigation and determination of the total fair value of the property of this defendant, plus the value of the proportion of the property of the Kansas Natural Gas Company devoted to the public use of furnishing such service to the Cities of Topeka and Oakland and their inhabitants. This defendant shows that the two companies are entitled to have a rate fixed which will yield an adequate return upon such total fair value of the entire property devoted to the furnishing of such service; that the proper proportion or division of such rate as between the two companies rendering such service can only be arrived at by taking the proportion which the value of the property of each of said companies so devoted to the rendering of such service bears to the value of the entire property devoted to the public use of furnishing such service to the Cities of Topeka and Oakland and their inhabitants, as aforesaid.

## XX.

This defendant further shows that the said joint rate of 28 cents net per thousand cubic feet fixed by the Public Utilities Commission for the State of Kansas, as aforesaid, continued in effect from the 10th day of January, A. D. 1916, until the temporary injunction issued by this court, Judges Sanborn, Booth and Campbell sitting, restraining the enforcement of said rate, became effective on August 14, A. D. 1916, and thereafter until the present rates established by John M. Landon,

Receiver of the Kansas Natural Gas Company were installed and collected by this defendant on and after the September, A. D. 1916, meter readings. This defendant alleges that the present value of the property of the defendant upon which an adequate return must be allowed is upwards of \$1,700,000, and that the said so-called 28 cent joint rate established by the Public Utilities Commission for the State of Kansas utterly failed to yield to the Consumers Light, Heat and Power Company and to this receiver as such a reasonable or adequate return on the investment of the Consumers Light and Power Company in said cities of Topeka and Oakland, Kansas. That the Consumers Light, Heat and Power Company and this receiver as such have sustained heavy losses, operating under said 28 cent rate. That said rate is unreasonable, unjust, non-compensatory and confiscatory of the property and estate of the Consumers Light, Heat and Power Company in the hands of this receiver under the order of this court, and this receiver represents and shows to the court that a continuance of the use and distribution of natural gas in the cities of Topeka and Oakland, Kansas, under said 28 cent rate established by the Public Utilities Commission for the state of Kansas, and under the division of said rate between the Kansas Natural Gas Company on the basis of two-thirds ( $\frac{2}{3}$ ) thereof to said company, as aforesaid, is, and will continue to be, improvident, wasteful and destructive of the estate in the hands of this receiver and in the custody of this court, and is a legal and equitable fraud upon the creditors of the Consumers Light,

Heat and Power Company, and this defendant charges that upon the present supply of natural gas delivered by the Kansas Natural Gas Company to the Consumers Light, Heat and Power Company in the hands of this receiver, or upon any supply that may be furnished through the capacity of the present pipe lines, the 28 cent rate complained of by the plaintiffs herein cannot and will not at any time, under the division thereof above referred to, yield to the Consumers Light, Heat and Power Company a reasonable or adequate return on its investment, as aforesaid, or upon any valuation whatsoever, but is, and will continue to be, non-compensatory, unremunerative and confiscatory.

## XXI.

This defendant further alleges that the collection, transportation, distribution and sale of natural gas by the Kansas Natural Gas Company and its receiver and by the Consumers Light, Heat and Power Company and its receiver, jointly, in the manner in which said business is now and has been conducted, is interstate commerce and is free from the control or regulation of the Public Utilities Commission for the state of Kansas, or any other state authority; that the attempts of said Public Utilities Commission to regulate and control said business, and to regulate and control the prices at which natural gas collected, transported and delivered into the cities of Topeka and Oakland, Kansas, shall be sold in said cities are unwarranted and a direct interference with, and an undue burden upon interstate commerce and are in violation of Article I, Section 8 of the Constitu-

tion of the United States. This defendant alleges that by reason thereof the so-called 28 cent rate attempted to be fixed by the Public Utilities Commission for the State of Kansas, is unlawful and void. This defendant alleges and shows to the court that this court in this case (Judges Sanborn, Booth and Campbell sitting), held, in an opinion reported in 234 Fed. 164:

"(1) That the gas purchased or procured in Oklahoma, transported from Oklahoma, and sold or delivered by the receiver or by the gas company to parties in Kansas or Missouri, is an article of interstate commerce, as is the gas procured in Kansas and sold or delivered by them, or either of them, to parties in Missouri; (2) that this gas, which is probably at least 95 per cent of all the gas the receiver or the company handles, does not lose its interstate character by the fact that a small portion, probably not exceeding 4 per cent, of the gas they handle is procured and delivered in Kansas, is an article of intrastate commerce, and is inseparably mingled in the pipes with the interstate gas; (3) that the purchase or procuring of interstate gas in Oklahoma, its transportation, sale, and delivery by the receiver or the gas company, to parties in Kansas and Missouri, is interstate commerce, and the receiver and the company are engaged in interstate commerce; (4) that the enforcement by a state through its officers of any legislative act preventing interstate commerce in this article of interstate commerce, either by a direct prohibition of such commerce in this article by state law, or by an inhibition of a sale of the article in the state at any price whatever, or at any price



above a price so low that the laws of trade make it impossible to purchase or procure it in another state and to sell and deliver it in the prohibiting state at that price with profit, substantially burdens and unduly interferes with interstate commerce in violation of the commerce clause of the Constitution of the United States."

## XXII.

This defendant receiver specifically refers to the allegations of the bill of complaint herein, and hereby adopts the allegations thereof, and of the supplemental bill of complaint filed herein, in so far as the same support this answer, and this defendant alleges that the contracts and franchises referred to in said bill of complaint and particularly the contract between the Kansas Natural Gas Company and the Consumers Light, Heat and Power Company, a copy of which contract is attached hereto as "Exhibit C," in so far as the same affect the rates which may be charged for natural gas, in said cities of Topeka and Oakland, Kansas, by this defendant, are illegal and void for all the reasons set forth in said original and supplemental bills of complaint herein, and should be set aside and held to have no binding force or effect upon this defendant or the Consumers Light, Heat and Power Company; and this defendant further alleges that said contracts, and particularly the contract attached hereto as "Exhibit C," have been held to be void and of no binding effect in an opinion and order of Judge Thomas J. Flannelly of the District Court of Montgomery County, Kansas, a copy of which

opinion and order is attached hereto as a part hereof, marked "Exhibit H."

### XXIII.

This defendant receiver further shows and represents to the court that he has been informed by arguments heard in this court, by newspaper reports and by reports of conferences held with the Public Utilities Commission for the State of Kansas that negotiations are now pending by which the stock, property and assets of the Kansas Natural Gas Company are to be sold to the Doherty interests, known as the Empire Gas and Fuel Company or the Wichita Natural Gas Company, and that negotiations, both secret and public, are being had with the Public Utilities Commission for the state of Kansas with a view to fixing rates to be collected for natural gas sold in Topeka and Oakland and elsewhere; that negotiations are being had and plans formed and executed to dismiss this case from this court without final judgment herein; that all of said plans and negotiations for fixing rates and plans for the dismissal of this case are being carried forward without any consideration whatever being given to the rights of this defendant, or the Consumers Light, Heat and Power Company herein. This defendant alleges that the issues presented by this answer constitute a counter-claim arising out of the transaction which is the subject-matter of the suit, and alleges that the issues presented by the original and supplemental bills of complaint herein cannot be decided without a determination of the rights of this defendant, and of the issues presented by this

answer. This defendant shows that under the Federal Equity Rules he was obligated to state any counter-claim arising out of the transaction which is the subject-matter of the suit, and this defendant charges that the obligation so imposed upon him carries with it the corresponding right on the part of this defendant to insist upon a determination of any issue arising out of the transaction which is the subject-matter of the suit and which this defendant was obligated to state in his answer. This defendant charges that, although the complainant herein may not be compelled to continue the prosecution, as complainant, of the controversy set forth in the original and supplemental bills of complaint herein, said complainant cannot ask or require a dismissal of the entire litigation, and this defendant receiver charges that he is entitled to, and will, insist upon a determination of the issues raised by this answer without reference to the continued *prosecution by the Receiver of the Kansas Natural Gas Company, as complainant, of the controversy set forth in the original and supplemental bills of complaint herein*; and this defendant will insist that the Receiver of Kansas Natural Gas Company reply to the issues raised by this answer or in default thereof, that a decree be entered against said receiver; and this defendant will insist that the other parties against whom this defendant prays relief in this answer and who were made parties to this litigation by the complainant in his original and supplemental bills of complaint, be likewise compelled to reply and defend hereto. *This defendant alleges that he is entitled to have the contract be-*

between the Kansas Natural Gas Company and the Consumers Light, Heat and Power Company ("Exhibit C" hereof) declared null and void; that he is entitled to have judgment herein, that the business in which the Consumers Light, Heat and Power Company is engaged, through this defendant as its receiver, is interstate commerce, free from interference, regulation or control by the Public Utilities Commission for the state of Kansas, its attorneys and agents, or any other state authority, and this defendant is entitled to an injunction herein, on account thereof, against the Public Utilities Commission for the state of Kansas, its attorneys and agents, parties hereto, and against the attorney general of the state of Kansas, and his assistants, parties hereto, prohibiting and enjoining each and all of them from enforcing, or attempting to enforce, against this defendant *any rate* whatever, and this defendant is entitled to an injunction herein against the said Public Utilities Commission for the state of Kansas, its attorneys and agents, and against the attorney general of the state of Kansas, and his assistants, restraining and enjoining them, and each of them, from enforcing or attempting to enforce against this defendant the 28 cent rate or any of the penalties of the laws of the state of Kansas for his refusal to obey the orders of the Public Utilities Commission for the state of Kansas, or for failure to comply with, or to enforce and collect *any rates that may be established, or attempted to be established by said state authorities*, and prohibiting and enjoining each and all of said parties from interfering with this de-

fendant in the enforcement and collection of a just and remunerative rate for natural gas sold and delivered in said cities of Topeka and Oakland, Kansas; and this defendant further alleges and shows to the court that he is entitled to a decree that one-third ( $1/3$ ) of the 28 cent rate established by the Public Utilities Commission for the State of Kansas, as aforesaid, is an unjust, unfair and discriminatory division of such rate between the plaintiff Receiver of the Kansas Natural Gas Company and this defendant, and that the return to this defendant from the said 28 cent rate, divided between the Kansas Natural Gas Company and this defendant on the basis aforesaid, is non-compensatory, unreasonable and confiscatory of the property and estate of the Consumers Light, Heat and Power Company in the hands of this receiver as such; and this defendant further alleges that he is entitled to a decree that, notwithstanding the extensions which have been made and are being made into the gas fields by the Receiver of the Kansas Natural Gas Company, under an order of this court, the supply of natural gas has been, is now, and will, in the future, be inadequate and insufficient to enable this defendant, as Receiver of the Consumers Light, Heat and Power Company to earn or collect a just and adequate return on the investment of said Consumers Light, Heat and Power Company in said cities of Topeka and Oakland, Kansas, under said 28 cent rate, divided on the basis of two-thirds ( $2/3$ ) to the Kansas Natural Gas Company, and one-third ( $1/3$ ) to this defendant.

## XXIV.

This defendant Receiver further answering shows and represents to the court that S. M. Brewster, Attorney-General of the state of Kansas, and the Public Utilities Commission for the state of Kansas, and the individual members thereof are conspiring and confederating together for the purpose of securing the dismissal of this case, and have filed a motion in the District Court of Montgomery County, Kansas, asking that court to dismiss the case there pending, and praying for an order commanding and directing John M. Landon, receiver of the Kansas Natural Gas Company, plaintiff herein, to dismiss this cause in this court; and this defendant is informed and alleges the fact to be that said motion will be presented to the District Court of Montgomery County, Kansas, on the first day of February, A. D. 1917; and this defendant alleges that the purpose and intent of said Attorney-General of the state of Kansas and of the Public Utilities Commission for the state of Kansas is to secure the dismissal of this case for the purpose of preventing this defendant and other defendants similarly situated from securing the relief herein prayed and to which they are justly entitled; and this defendant further shows and represents to the court that the accomplishment of such purpose would be a legal and equitable fraud upon this defendant and a denial of justice without hearing; that this defendant has been put to large expense and trouble in and about preparing and presenting evidence in this case; and this defendant further shows that the dismissal

of this cause at this time in the manner and for the purposes planned by the parties aforesaid would compel the bringing of another action by this defendant, and would cause this defendant grave expense, trouble and annoyance in the collection, production and presentation of the evidence which has already been introduced in this case and which is necessary to a full determination of the rights of this defendant herein; that the expense thereof would be practically prohibitive of justice, result in a multiplicity of suits, and would amount to an equitable fraud, and would be prejudicial to this defendant in the independent action which he would be compelled to bring; and this defendant therefore alleges that he is entitled as a matter of equity and right to the benefits of the evidence already presented herein and to present his evidence and have final judgment entered herein in his behalf.

Wherefore, this defendant receiver prays:

1. That the contract heretofore existing between the Kansas Natural Gas Company and the Consumers Light, Heat and Power Company (Exhibit "C" hereof), be by this court set aside, and declared to be unlawful, null and void and of no binding force and effect as against the Consumers Light, Heat and Power Company and this defendant receiver; and that the Kansas Natural Gas Company, its receivers, John M. Landon and George F. Sharritt, its and their officers, agents, servants and employees, and each and all of them, be restrained and enjoined from attempting to en-



force said contract or any claim or right thereunder.

2. That the division of the 28-cent rate on the basis of two-thirds ( $2/3$ ) thereof to the Kansas Natural Gas Company and one-third ( $1/3$ ) thereof to the Consumers Light, Heat and Power Company be decreed to be unjust, unfair and discriminatory against the Consumers Light, Heat and Power Company and this receiver, and that the Kansas Natural Gas Company, its receivers, John M. Landon and George F. Sharritt, its and their officers, agents, servants and employees, and each and all of them, be restrained and enjoined from collecting, or attempting to collect, two-thirds ( $2/3$ ) of said 28-cent rate.

3. That the business of the Consumers Light, Heat and Power Company and of this receiver as such, be declared by this court to be interstate commerce, free from regulation and control as to rates, or otherwise, by the Public Utilities Commission for the state of Kansas, or any other state authority; that the Public Utilities Commission for the state of Kansas, and Joseph L. Bristow, C. F. Foley and John M. Kinkel, as the Public Utilities Commission for the state of Kansas, be restrained and enjoined from regulating or attempting to regulate the business of the Consumers Light, Heat and Power Company, and from fixing or attempting to fix rates which the Consumers Light, Heat and Power Company, or this receiver as such, shall or may charge for natural gas sold in the cities of Topeka and Oakland, Kansas, and that the 28-cent rate fixed by said

Public Utilities Commission for the state of Kansas be declared to be non-compensatory, unreasonable, confiscatory, null and void as to the Consumers Light, Heat and Power Company and as to this defendant receiver, and that said Public Utilities Commission for the state of Kansas, and Joseph L. Bristow, C. F. Foley and John M. Kinkel, as the Public Utilities Commission for the state of Kansas, H. O. Castor, as attorney for said Public Utilities Commission for the state of Kansas, and S. M. Brewster, as Attorney General of the state of Kansas, his and their assistants and each and all of them, be restrained and enjoined from enforcing and collecting and from attempting to enforce or collect any of the penalties fixed by the statutes of the state of Kansas for refusal of said Consumers Light, Heat and Power Company and this defendant as its receiver, to comply with the order of said Commission in fixing said 28-cent rate, or for refusing to comply with any other orders made by said Commission to compel the enforcement of said rate. And that pending the final determination of the issues herein set forth, the temporary injunction heretofore issued herein against said parties restraining and enjoining them from enforcing or attempting to enforce said 28-cent rate, pending final hearing, be continued in full force and effect.

4. That the cities of Topeka and Oakland, Kansas, and each of them, and their attorneys and representatives, be restrained and enjoined from enforcing or attempting to enforce collection of said 28-cent rate as against the Consumers Light,

Heat and Power Company and of this defendant receiver, and from enforcing, or attempting to enforce, any of the penalties fixed by the ordinances of said cities or the statutes of the state of Kansas, for refusal of the Consumers Light, Heat and Power Company, or this defendant receiver, to comply with said laws or ordinances or any orders made by any state or municipal authorities thereunder.

5. This defendant receiver further prays that the plaintiff herein, John M. Landon, receiver, and the defendants herein, the Public Utilities Commission for the State of Kansas, Joseph L. Bristow, C. F. Foley and John M. Kinkel as the Public Utilities Commission for the State of Kansas, S. M. Brewster, as Attorney General of the State of Kansas, H. O. Castor, as attorney for the Public Utilities Commission for the State of Kansas, George F. Sharritt, as receiver of the Kansas Natural Gas Company, the Kansas Natural Gas Company, the City of Topeka, Kansas, and the City of Oakland, Kansas, and each and every of them, be required to plead to this answer within ten days from the date of filing hereof, setting up any defense thereto they may have or claim to have, and that this court make such orders under the equity rules of this court as shall be just and proper relative thereto.

6. That this defendant may have such other or further or different relief in the premises as the

nature of the case may require and as shall be equitable and just.

L. G. TRELEAVEN,  
*Receiver of Consumers Light, Heat  
and Power Company.*

By FERRY, DORAN & COSGROVE,

MEAGHER, WHITNEY, RICKS & SULLIVAN,  
*Solicitors for said Receiver.*

T. F. DORAN,

JESSE J. RICKS,  
*Of Counsel.*

*State of Kansas, County of Shawnee—ss.*

L. G. Treleaven, of lawful age, being first duly sworn, on his oath states that he is the receiver of Consumers Light, Heat and Power Company, and that he has read the above and foregoing amended and supplemental answer and is familiar with the contents thereof and that the allegations therein contained are true.

L. G. TRELEAVEN.

Subscribed and sworn to before me this 30th day of January, A. D. 1917.

LOUIE M. BAGLEY,

(Seal)

*Notary Public.*

Commission expires Nov. 26, 1920.

### **Exhibit "A."**

ARTICLE 2—CONTINENTAL OIL AND GAS COMPANY,

(Took effect August 18, 1903.)

ORDINANCE NO. 2435.

*An Ordinance granting to the Continental Oil and Gas Company of Topeka, Kansas, its successors*

and assigns, for a period of twenty years, the right to construct, maintain and operate works for natural gas, together with the right to use all streets, avenues and public grounds of the City of Topeka, Kansas, for the purpose of laying their mains and pipes, supplying and delivering to said City of Topeka and the inhabitants thereof, gas for manufacturing, heating and illuminating and for all other purposes for which natural gas is or may be used during said period; and to regulate the price thereof.

*Be it ordained by the Mayor and Councilmen of the City of Topeka:*

Sec. 521. RIGHTS GRANTED. Sec. 1. That the Continental Oil and Gas Company of Topeka, Kansas, is hereby granted the right and privilege to use all streets, avenues, alleys and public grounds of the City of Topeka, Kansas, except the Kansas avenue bridge across the Kansas river, including all additions that hereafter may be made thereto, for the purposes of laying their mains and pipes to furnish to the said City of Topeka and the inhabitants thereof, natural gas for the term of twenty years from the date of the acceptance of this ordinance, as hereinafter provided, and shall have the right and authority to open and use the streets, avenues, alleys and public grounds of the said City of Topeka for the introduction of, and repairing and taking up of mains, pipes and lines laid for said purposes; *Provided*, That no mains or distributing pipes shall be laid in parking grounds.

Sec. 522. LOCATION OF MAINS. Sec. 2. That all mains and leading pipes from which gas is distributed throughout the said City of Topeka shall be placed not less than fifteen inches beneath the surface of the earth, when said mains and pipes are upon the traveled streets; and not less than six feet from the curb line, subject to the direction of the city engineer.

Sec. 523. LAYING MAINS; EXCAVATIONS. Sec.

3. That in the laying of said mains and pipes, and the exercise of the rights hereby granted, no street, alleys, or public grounds shall be at any time unnecessarily obstructed, and no water pipes, gas pipes or sewer now laid or which may hereafter be laid by said city or by any authorized person or corporation shall be interfered with or obstructed in any unnecessary manner, and all excavations or openings made therein by said the Continental Oil and Gas Company shall, within a reasonable time, be repaired and placed in as good condition as before such excavations or openings were made, or as it is possible to do, under the direction of the city engineer of said city, and shall thereafter be kept in such condition satisfactory to said city engineer: *Provided*, That if any excavation, opening or ditch in any of the streets, alleys or public grounds shall be left open or unrepaired, or any unnecessary opening or obstruction be left thereon by the said the Continental Oil and Gas Company, in violation of this section, the said city may cause such excavations, openings or ditches to be repaired and the obstruction to be removed, and the expense thereof shall be charged to and collected from the said the Continental Oil and Gas Company: *And further provided*, That in the laying of said mains and pipes the said the Continental Oil and Gas Company shall not make excavations in more than three blocks at any one time.

Sec. 524. MAINS; REMOVAL; CHANGE. Sec. 4. Said the Continental Oil and Gas Company, or their successors or assigns shall upon notice from the city engineer, remove or change at its expense, any gas mains, pipes or service pipes laid by them which may be in the way of, or interfere with the construction or erection of any public building or other public structure within said city.

Sec. 525. WORK BEGUN; COMPLETED. Sec. 5. That the said the Continental Oil and Gas Com-

pany, its successors and assigns, shall on or before the first day of March, A. D. 1905, commence the actual constructive work of carrying out the provisions of this franchise, and shall within three years from the acceptance of this ordinance complete the laying of the mains and pipes and be able to furnish gas in the principal parts of said city. (Sec. 5, as amended by Sec. 1, Ordinance No. 2528; September 8, 1904.)

Sec. 526. GAS RATES. Sec. 6. The said company shall not charge for the use of gas it may furnish to said city, or any of the inhabitants thereof, during said twenty years, a price greater than 45 cents per thousand feet for domestic purposes, and 30 cents per thousand feet for manufacturing purposes.

Sec. 527. SERVICE PIPES; WHO TO PAY FOR. Sec. 7. That for the purpose of supplying said city and citizens with natural gas, said the Continental Oil and Gas Company shall, at its own expense, furnish and lay all pipes necessary to convey the gas to the curb line of any property to be supplied, and all expense from the curb line shall be maintained and paid for by the owner or tenant.

Sec. 528. SERVICE TO CITY; TERMS. Sec. 8. For and in consideration of the rights, privileges and franchises hereby granted by the said City of Topeka, the said the Continental Oil and Gas Company, while continuing in the enjoyment thereof, shall furnish free of expense to the said City of Topeka, gas in sufficient quantities for light and heat for one building containing a council chamber and office rooms for the transaction of the city business, and one auditorium. The said the Continental Oil and Gas Company shall also provide and furnish to said City of Topeka gas for any number of incandescent lights, according to the American Meter Company's standard for all night lighting, which may be required by said city, and at such rates as may be agreed upon, not exceeding



fifty cents per light per month, payable monthly; the city to furnish burners, lamp posts, and to provide, at its own expense for lighting, extinguishing, cleaning and keeping said street lights in good order and repair, said lights not to burn to exceed twelve hours during any twenty-four hours.

Sec. 529. DAMAGES, ETC.: CITY PROTECTED. Sec. 9. The said the Continental Oil and Gas Company shall be liable to said City of Topeka for any and all damages and costs which said city may sustain or be compelled to pay by reason of the rights and privileges hereby granted, or on account of any excavation, opening or ditch in the streets, alleys or public grounds left open or un-repaired, or any obstruction thereof by said company, or that may, in any manner, result from the negligence of said company in the construction or operation of their gas lines, or exercise in any manner of said rights.

Sec. 530. COMPANY PROTECTED BY ORDINANCE. Sec. 10. Said city council shall, from time to time, pass such ordinances as may be necessary for the protection of the rights and property of said company, and for the enforcement of all reasonable rules and regulations which may be made by said company.

Sec. 531. ORDINANCE A CONTRACT. Sec. 11. This ordinance and the written acceptance thereof by the said the Continental Oil and Gas Company shall constitute a contract between the City of Topeka and the Continental Oil and Gas Company, and shall extend to, and be mutually binding upon, the said City of Topeka and the Continental Oil and Gas Company, its successors and assigns.

Sec. 532. FORFEITURE. Sec. 12. Upon the failure or refusal of the said the Continental Oil and Gas Company to comply with any of the terms and provisions of this ordinance on its part, this

ordinance and all the franchises, rights and privileges conferred thereunder, shall, at the option of the City of Topeka be forfeited and the same shall become null and void saving to the said the Continental Oil and Gas Company, or its successors or assigns the benefit of any delay caused by riot, strikes, injunctions or other *bona fide* legal proceedings, such delays not to exceed three years.

Sec. 533. FILE MAPS OR PLATS. Sec. 13. The said the Continental Oil and Gas Company or its successors and assigns shall be, and are required to file a map or plat with the city engineer, showing the location and size of all gas mains and distributing pipes laid in the said City of Topeka, and said map or plat shall be corrected every six months, showing all additional mains and distributing pipes laid.

Sec. 534. METER INSPECTION; EXPENSE. Sec. 14. The City of Topeka may at any time inspect, or cause to be inspected, the meters in use by the said the Continental Oil and Gas Company, and the expense of such inspection shall be charged to the said the Continental Oil and Gas Company and be paid by them: *Provided*, That such charges shall not exceed the sum of one hundred dollars in any one month.

Sec. 535. HOW GOVERNED, AMOUNT OF GAS. Sec. 15. The said the Continental Oil and Gas Company, and their successors and assigns, shall be subject to all general ordinances, rules and regulations of the City of Topeka now in force or hereinafter adopted in regard to gas companies and street excavations, and shall furnish not less than ten million cubic feet of natural gas in every thirty days.

Sec. 536. ACCEPTANCE; COST OF PUBLICATION. Sec. 16. That within ten days after the passage and approval of this ordinance, the said the Continental Oil and Gas Company shall file with the

city clerk of the City of Topeka an acceptance in writing of the provisions and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized to administer oaths; and at the same time, or prior thereto, the said company shall pay into the treasury of the City of Topeka, a sufficient sum of money to pay for the publication of this ordinance, and unless such acceptance is filed, this ordinance shall become null and void.

Sec. 537. GUARANTEE; MONEY DEPOSIT. Sec. 17. At or prior to the time of the acceptance of this ordinance said the Continental Oil and Gas Company shall deposit with the city treasurer of the City of Topeka, the sum of one thousand dollars as a guarantee that said the Continental Oil and Gas Company will carry out the terms and provisions of section 5 of this ordinance, and if said the Continental Oil and Gas Company shall fail on and before the first day of March, A. D. 1905, to commence the actual constructive work of carrying out the provisions of this franchise; or shall fail within three years from the acceptance of this ordinance to complete the laying of the mains and pipes and be able to furnish gas in the principal parts of said city, then the said sum of one thousand dollars shall be forfeited to and become the property of the City of Topeka, saving to said the Continental Oil and Gas Company the benefit of any delay caused by riot, strike, injunctions or other *bona fide* legal proceedings, such delays not to exceed three years. But if said the Continental Oil and Gas Company shall comply with the said terms of said section 5, as above set forth, then the said sum of one thousand dollars shall be returned to said the Continental Oil and Gas Company. A failure to deposit said sum of one thousand dollars as above provided, shall work a forfeiture of this franchise and the same

shall become null and void. (Sec. 17, as amended by Sec. 2, Ordinance No. 2528; September 8, 1904.)

TAKE EFFECT. Sec. 18. This ordinance shall take effect and be and remain in force from and after its publication in the official city paper.

Passed the Council August 7, 1903.

Approved August 15, 1903. W. S. Bergundthal, Mayor.

Attest: J. H. Squires, City Clerk.

### **Exhibit "B."**

ARTICLE 4—EXCELSIOR COKE AND GAS COMPANY.

(Took effect September 30, 1904.)

ORDINANCE NO. 2525.

*An Ordinance* granting the Excelsior Coke and Gas Company, of Topeka, Kansas, its successors and assigns, the use of the streets, avenues, alleys and public grounds for gas mains and laterals to be used in supplying the City of Topeka and its inhabitants with artificial or manufactured gas for light and heat and other purposes, and fixing the maximum rate for the sale of said gas.

*Be it ordained by the Mayor and Councilmen of the City of Topeka:*

Sec. 555. RIGHTS GRANTED. Sec. 1. That the Excelsior Coke and Gas Company of Topeka, its successors and assigns, is hereby granted the right and privilege of using the public streets, avenues and alleys, and public grounds of the City of Topeka, for the purpose of laying down pipes and mains for the conveyance of artificial or manufactured gas in and through the said city for use of said city and its inhabitants, for the period of thirty years from the passage and approval of this ordinance, and the rights heretofore acquired by said Excelsior Coke and Gas Company in the

streets, avenues and alleys and public grounds of the City of Topeka are hereby extended during said period of thirty years, subject to all the provisions, conditions and qualifications as provided in this ordinance.

Sec. 556. GOVERNED BY ORDINANCE. Sec. 2. That in making any and all improvements and excavations, and in exercising any and all rights and privileges granted by this ordinance, the same shall be done by said gas company in accordance with the ordinances of said city, and in strict compliance with each and all of the conditions, terms and directions, and subject to each and all of the penalties and liabilities imposed by the ordinances of the City of Topeka. All excavations and other work or improvements affecting the use of the streets, avenues, alleys and public places of the city shall be done under the general direction and supervision of the city engineer of said city.

Sec. 557. DAMAGES, ETC. CITY PROTECTED. Sec. 3. That said the Excelsior Coke and Gas Company shall save said city harmless from all costs, damages and expenses for the payment of which said city may become liable to any person, company or corporation by reason of the granting of the rights and privileges herein, or by reason of the construction or operation of said gas plant or by reason of said company's failing to conform to or comply with any of the provisions or requirements herein, or in any other of the lawful ordinances of said city.

Sec. 558. GAS RATES. Sec. 4. That the Excelsior Coke and Gas Company, its successors and assigns, shall never charge any of the inhabitants of said city, during the period of this grant, more than one dollar and twenty-five cents per thousand cubic feet of gas furnished by said company: *Provided, however,* That when the sales of gas in any one year shall reach 200,000,000

cubic feet, then commencing with the beginning of the following year the price charged shall never thereafter exceed one dollar and twenty cents per thousand cubic feet, and when the sales of gas in any one year shall reach 400,000,000 cubic feet, then commencing with the following year the price charged shall never thereafter exceed one dollar and ten cents per thousand cubic feet, and when the sale of gas in any one year shall reach 800,000,000 cubic feet, then commencing with the beginning of the following year the price charged shall never thereafter exceed one dollar per thousand cubic feet. Said company shall not at any time during the continuance of this franchise charge the City of Topeka for gas used a higher rate than the lowest current rate charged any of its customers. (Sec. 4 as amended by Sec. 1, Ordinance No. 2532; October 13, 1904.)

Sec. 559. FILE REPORTS, MAPS, ETC. Sec. 5. As a consideration for the granting of this franchise said the Excelsior Coke and Gas Company shall during the month of January, 1905, and during the months of January and July each year thereafter, file with the city clerk of said city a verified report covering the business of said company for the preceding six months, which said report shall show improvements made and cost thereof; amount of gas manufactured and amount sold; amount and cost of fuel used and amount of by-products produced, the disposition thereof and revenue received therefrom; the number of miles of mains and meters in use; also showing the total amount of capital invested in the plant and total receipts and expenditures. Within thirty days after the completion of the improvements and extensions, hereinafter provided to be made, the said company shall file in the office of the city engineer of said city a map or plat showing the location, size and kind of all gas mains laid in

said city, and said company shall each year thereafter furnish to said city engineer supplemental maps, showing the location, size and kinds of mains laid subsequent to the last report.

Sec. 560. NET EARNING: MAXIMUM RATES. Sec. 6. As a consideration for the granting of this franchise said the Excelsior Coke and Gas Company shall annually, from and after the acceptance of this ordinance, pay into the city treasury of the City of Topeka ten per cent. of its annual net earnings over and above ten per cent. earned by said the Excelsior Coke and Gas Company on its investment and in consideration thereof, all contracts, rights, privileges, licenses and franchises, hereby granted to said the Excelsior Coke and Gas Company shall continue in force for a period of thirty years from and after the date of the passage and approval of this ordinance. The Mayor and Council of the City of Topeka shall, at all times during the existence of the grant, contract and privileges in this ordinance contained, have the right by ordinance to fix a reasonable schedule of maximum rates to be charged by the said the Excelsior Coke and Gas Company within said city: *Provided, however,* That said Mayor and Council shall at no time fix a rate that will prohibit said company from earning at least ten per cent. (10%) on its capital invested in said City of Topeka, over and above its reasonable operating expenses and expense for maintenance and taxes.

Sec. 561. ACQUISITION OF PLANT; PROCEEDINGS. Sec. 7. That upon the termination of said franchise, at the conclusion of said period of thirty years, the said City of Topeka may acquire title to said Excelsior Coke and Gas Company's grant, rights and privileges, as well as all the property pertaining thereto, in the manner following, that is to say: The said City of Topeka may, upon



the termination of this grant, file a petition in the District Court of Shawnee County, Kansas, against said Excelsior Coke and Gas Company, or against any successors or assigns of said Excelsior Coke and Gas Company, which petition shall contain a general description of the plant or property, setting forth the interest or property rights of said corporation or others therein, as nearly as may be done, and praying that the city may be permitted to acquire title thereto in the manner provided by an act of the legislature of the State of Kansas, approved March 13, 1903, entitled, "An act relating to cities of the first class and repealing Chapter 37 of the Laws of 1881, and all acts amendatory and supplemental thereto, and Chapter 82, Laws of 1897, and all act amendatory and supplemental thereto in so far as the same relate to cities of the first class."

Thirty days notice shall be given to all persons interested in said property at the time for the hearing of said application, by publication in three successive issues of some weekly newspaper of the City of Topeka, having general circulation therein, the first publication to be made in said paper not less than thirty days prior to the time of said hearing; and notice shall be further given by delivering a copy of the notice, so as aforesaid to be published, to the manager in the charge of the said the Excelsior Coke and Gas Company's property if such manager can be found within the county of Shawnee; that in such proceedings, petition and notice, it shall not be necessary to state the names of any of the parties interested as defendants, except those of the reputed owner or owners.

That after said notices have been served and made as hereinbefore provided, the said property shall be appraised and acquired and paid for by the said city in strict accordance with the require-

ments and provisions of said act, approved March 13, 1903, relating to cities of the first class, hereinbefore referred to, and the procedure therein directed shall be in all respects complied with and followed.

Sec. 562. EXTENSIONS; FREE METERS, ETC.; COMMENCEMENT; COMPLETION. Sec. 8. And as a further consideration for the granting of this franchise, said the Excelsior Coke and Gas Company is to improve its gas plant and increase its capacity and enlarge and extend its gas mains and services so as to furnish gas to portions of said city not now supplied; and said company is to put in service pipes and meters free of charge to the consumers. Said company is to commence the work of improving its plant and extending its mains and services within three months of the taking effect of this ordinance, and the same is to be fully completed within eighteen months after commencing said work. (Sec. 8, as amended by Sec. 1, Ordinance No. 2532; October 13, 1904.)

Sec. 563. IMPROVEMENTS; GUARANTEE; MONEY DEPOSIT. Sec. 9. And as a further consideration for the granting of this franchise, said the Excelsior Coke and Gas Company agrees and binds itself to make improvements and extensions aforesaid costing the *bona fide* sum of at least one hundred and seventy-five thousand dollars (\$175,000.00); and as a guaranty that it will make said improvements and extensions and expend the said sum of one hundred and seventy-five thousand dollars (\$175,000.00) in doing so, said the Excelsior Coke and Gas Company shall, at or prior to the time of the acceptance of this ordinance, deposit with the city treasurer of said city the sum of ten thousand dollars (\$10,000.00), the conditions of which deposit shall be as follows: If the said company shall fail to commence the work of improvement and extension, as hereinbefore provided

within three months from the taking effect of this ordinance, or shall fail to expend the said sum of one hundred and seventy-five thousand dollars (\$175,000.00) in making said improvements and extensions in said city within eighteen months from the time of commencing said work, then the said sum of ten thousand dollars (\$10,000.00) shall thereby become forfeited to and become the money and property of the City of Topeka, and the same shall be turned into the general revenue fund of said city; but if said company shall commence the said work of improvement and extension within three months from the taking effect of this ordinance, and shall expend the said sum of one hundred and seventy-five thousand dollars (\$175,000.00) in said work of improvement and extension within eighteen months from the time of commencing said work, then the sum of ten thousand dollars (\$10,000.00) shall thereupon be returned to said company. A failure to deposit the said sum of ten thousand dollars (\$10,000.00) at or prior to the time of the acceptance of this ordinance shall work a forfeiture of this franchise and the same shall thereby become null and void. At the expiration of eighteen months after construction has commenced the mayor and council shall have the right to examine the books of said company in order to determine whether the amount of one hundred and seventy-five thousand dollars (\$175,000.00) has been expended according to the terms of this ordinance. (Sec. 9 as amended by Sec. 1, Ordinance No. 2532; October 13, 1904.)

Sec. 564. LIMITED TO ARTIFICIAL GAS. Sec. 10. It is understood that this is a franchise granted to said company to manufacture and furnish artificial or manufactured gas in said city and not to furnish natural gas, and that said city does not hereby relinquish any of its rights to contract for a supply of natural gas by said com-

pany under the laws of Kansas; and it is especially understood that the rates herein provided for apply to artificial or manufactured gas and not to natural gas, and that the said city does not relinquish its right to regulate and fix a fair and reasonable maximum rate for natural gas, which may at any time be furnished to said city or its inhabitants.

Sec. 565. FORFEITURE. Sec. 11. Upon the failure or refusal of said the Excelsior Coke and Gas Company to comply with any of the provisions of this ordinance or any other lawful ordinance of said city regulating and governing gas companies the rights and privileges herein granted shall be forfeited and this ordinance shall thereupon become null and void.

Sec. 566. MAKE RULES AND REGULATIONS. Sec. 12. Said the Excelsior Coke and Gas Company shall have the right to make all reasonable rules and regulations for the prevention of loss or waste in the conduct and management of its business and the sale and distribution of gas to its customers, as may from time to time be deemed necessary.

Sec. 567. COURT COSTS TO BE PAID. Sec. 13. As a condition for the passage of this ordinance, said the Excelsior Coke and Gas Company hereby agrees to pay the sum of two thousand five hundred dollars (\$2,500.00) toward the payment of court costs adjudged, or that may be adjudged, against the City of Topeka in the suit of the Excelsior Coke and Gas Company against the City of Topeka, No. 7938 in the circuit court of the United States for the district of Kansas; the said costs to include the sum of two hundred and twenty-five dollars (\$225.00) already deposited in costs in said court. And in case the said costs do not amount to the sum of two thousand five hundred dollars (\$2,500.00) the said company shall pay all of said costs, including said sum of

two hundred and twenty-five dollars (\$225.50) already paid by said city; said payment of costs to be made as soon as the same are determined and become payable. If said company should fail to make payment of costs as herein provided, this franchise shall be null and void.

Sec. 568. ACCEPTANCE; CONTRACT. Sec. 14. That within thirty days after the passage and approval of this ordinance, said the Excelsior Coke and Gas Company shall file with the city clerk of said city its acceptance in writing of the provisions, terms and conditions of this ordinance, which said acceptance shall be duly acknowledged before some officer authorized to administer oaths. This ordinance, unless so accepted, shall become null and void, but when so accepted, shall be and constitute a contract between the City of Topeka, and said Excelsior Coke and Gas Company, its successors and assigns, subject to the provisions and limitations hereinbefore set forth.

Sec. 569. REPEAL. Sec. 15. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

TAKE EFFECT. Sec. 16. This ordinance shall take effect and be in force from and after its acceptance by the Excelsior Coke and Gas Company, as aforesaid, and its publication in the official city paper.

Passed the Council August 1, 1904.

Approved.....

The mayor's vote on this ordinance was presented to the city council September 5, 1904, and on roll call the ordinance was passed over the mayor's veto by the following vote: Ayes, Councilmen Kutz, Ryder, Griley, Holliday, Rice, Howe, Shimer, Swendson and Hughes—9. Noes, Neil—1. Absent, Green and Nellis—2.

Attest: J. H. Squires, City Clerk.

(Acceptance of Ordinance filed Sept. 30, 1904.)

**Exhibit "C."**

THIS AGREEMENT MADE AND ENTERED INTO this Fifth day of January, A. D. 1905, by and between the KANSAS NATURAL GAS COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, party of the first part, and JOSEPH J. HEIM, of Kansas City, Missouri, and ARNOLD KALMAN, of St. Paul, Minnesota, parties of the second part, WITNESSETH:

THAT, WHEREAS, the party of the first part is the owner of a large acreage of gas leases, with a number of gas wells drilled thereon, in the gas belt of Kansas, and desires to find a market for its product; and

WHEREAS, the parties of the second part, are the owners, by assignment, of an ordinance in Topeka, Kansas, known as "Ordinance No. 2435, entitled:

"An ordinance granting to the Continental Oil and Gas Company of Topeka, Kansas, its successors and assigns, for a period of Twenty (20) years, the right to use the streets, avenues and public grounds of Topeka, Kansas, for the purpose of laying their mains and pipes, supplying and delivering to the said City of Topeka and the inhabitants thereof, for manufacturing, illuminating and heating, and for all other purposes for which natural gas is used, during the said period, and to regulate the price thereof." Passed by the Council of the city of Topeka, August 7th, 1903. Approved by the Mayor, August 15th, 1903. Amended by Ordinance No. 2528; said amendment passed by the Council, September 5th, 1904, and approved by September 6th, 1904, by the Mayor of the City of Topeka, Kansas; and

WHEREAS, It is the intention and purpose of the parties of the second part to construct a complete system of pipe lines under said ordinance in the

said city of Topeka, and they desire to secure a supply of gas for the said city and its inhabitants.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH; That the party of the first part hereby agrees to lay and complete, or cause to be laid and completed within one year from and after January 1st, 1905 (unavoidable delays excepted), a pipe line for conveying natural gas from the gas fields of Kansas to a point at the city limits of the city of Topeka, Kansas, and to install and maintain at said point a reducing and regulating station for the delivery of gas into the mains and pipe line system of the parties of the second part in the said city of Topeka, Kansas.

That it will for and during the term of Eighteen (18) years from and after August 15, 1905, supply and deliver through the said pipe lines and through said reducing and regulating station, natural gas in sufficient volume to maintain a pressure, not to exceed Four (4) ounces, on the principal main lines of the low pressure system, in said city, that will, at all times fully supply the demand for all purposes of consumption, as provided in this contract, and at such prices per thousand cubic feet as are hereinafter agreed upon, or may hereafter be agreed upon, in accordance herewith. However, as the production of gas from the wells, and the conveying of it over long distance, is subject to accidents, interruptions and failures, the party of the first part does not, by this contract, undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein but only to furnish such a supply for such a period of time as the wells and pipe lines supplying gas to the parties of the second part are capable of supplying, and in case of its inability to fully supply all of the cities and towns with which it is connected, the gas supplied under this control shall, at all times, be a pro rata share



of the total deliveries of gas. And it is expressly understood and agreed by the parties of the second part and the party of the first part, that the party of the first part shall not be liable for any loss, damage or injury to the parties of the second part that may result directly or indirectly from such shortages or interruptions; but said party of the first part agrees to use diligence to supply the said parties of the second part with a constant and adequate supply of merchantable gas for all consumers, that the parties of the second part may secure within the corporate limits of the city of Topeka, Kansas, as the said limits now exist or may be hereafter established by law.

The party of the first part further agrees, that if it should secure the franchise in the city of Topeka, for which it has now made application, that it will assign the same to the said parties of the second part at actual cost.

The party of the first part also further covenants and agrees, that it will furnish gas free of expense to the said second parties, in sufficient quantities for light and heat for one building, containing a Council chamber and office rooms for the transaction of the City business and one auditorium, in accordance with the requirements of the aforesaid ordinance.

The said parties of the second part, for and in consideration of the covenants and agreements of the party of the first part, hereby covenant and agree to procure, construct, maintain and operate, during the continuance of this contract, a system of pipe lines in, through and along such streets, avenues, alleys and public grounds in said city, as may be necessary; to supply said city and all its inhabitants who may desire to purchase and use natural gas for any purpose with such gas, and the low pressure system of said pipe lines shall be of sufficient size to deliver an ample supply of gas to

the said city of Topeka and all of its inhabitants at all times, with a pressure not to exceed Four (4) ounces on the principal main lines of said low pressure system; to construct and maintain all necessary appliances and connection, and service lines; to keep said appliances, lines and pipe connections in good repair and serviceable condition, to prevent leakage, waste or escaping of gas, and to extend the mains for new consumers whenever they can secure an average of one responsible consumer for each one hundred feet of such line, to make proper connections with and attachments to the pipe line of said party of the first part at said reducing stations of the said party of the first part; to locate and furnish an office at some convenient point in said city, to be selected by the said second parties; to employ and pay all necessary clerks and employees required to conduct and carry on the business of furnishing and supplying natural gas to all consumers in said city; to make all contracts for supplying natural gas to consumers; to use its best endeavors to secure consumers, and to build up and extend said business by advertising, soliciting by agents and otherwise, and to do all things necessary to manage and conduct said business and furnish natural gas to all consumers in said city during the continuance of this contract.

Said parties of the second part covenant and agree with said party of the first part, to use first class material in the construction of their pipe line and other work, and to construct the same in a good and workmanlike manner; to assume all expense, cost, labor and risk incurred in the construction, operation and management of said pipe lines and business within the corporate limits of said city, from their connection with the pipe line of the party of the first part, and to pay all taxes and assessments of every kind whatsoever

on all of the property in said city, and that they will (unavoidable delay excepted), have said plant, so to be constructed, fully completed, and will receive gas from the said party of the first part, and begin its distribution to consumers upon the completion of said first party's line to the city limits, as herein agreed, not later than January 1st, 1906.

IT IS FURTHER COVENANTED AND AGREED, by and between the said party of the first part, and said parties of the second part, that the prices to be charged and collected for all natural gas furnished and sold to consumers within the said city under this contract, during the continuance of the same, shall be regulated and fixed by said party of the first part, but that the price to be fixed shall in no case, be less than Twenty-eight (28) cents per thousand cubic feet, for the first two (2) years after the gas is turned into the lines, and for the three (3) succeeding years, not less than Thirty-three (33) cents per thousand cubic feet, and thereafter not less than Thirty-eight (38) cents per thousand cubic feet, for all gas sold to be used for domestic purposes, and not to exceed Fifty (50) cents per light per month, for each incandescent light used for street lighting according to the American Meter Company's standard for all night lights; subject to a discount of three (3) cents per thousand feet when payment is made on or before the tenth of the month, for gas consumed during the preceding month.

That said parties of the second part shall pay to the said party of the first part, at the General Office of said party of the first part, wherever the same may be located, on or before the Fifteenth (15th) day of each and every month during the continuance of this contract, Sixty-six and two-thirds ( $66 \frac{2}{3}$ ) per cent. of its gross earnings from the sales of natural gas during the preceding

month, for street lighting and domestic purposes, less the amounts of uncollectible bills, when the delinquent party has been shut off for default of payment thereof, within thirty (30) days after maturity of such bill or bills, and all reasonable efforts have been made to collect such delinquent bills without success. If, at any subsequent time or times, any bill or bills which are deemed uncollectible shall be paid in whole or in part, said parties of the second part shall pay to the said party of the first part, Sixty-six and two-thirds ( $66 \frac{2}{3}$ ) per cent. thereof, hereinbefore stipulated to be paid by them to the said party of the first part. Contracts for sales of gas for manufacturing and other purposes, may be made at such special rates as may be agreed upon by the parties hereto, and the price to be paid to the party of the first part for the gas used therefore, shall be such as may be mutually agreed upon by the parties hereto, at the time of making said contract.

IT IS FURTHER COVENANTED AND AGREED by and between the party of the first part and the parties of the second part that the said parties of the second part will do or procure to be done all plumbing necessary to make service connections between main and house for consumers, free of cost to the consumers; furnish all meters to be used by the consumers and set the same free of cost to the consumers; require all consumers to sign a contract for gas, before connections are made with their pipe line or gas turned into the house or service pipes of such consumers; that all gas sold shall be supplied through meters of approved design; that such meters shall be read and inspected once each month, and shall be kept in such working order and efficiency by said second parties that each meter shall register within Two (2) per cent. of the actual amount of gas passed

through it. That the parties of the second part will, at all times, permit the officers or authorized agents of the party of the first part to inspect their mains, pipes, regulators, meters and appliances, for the purpose of verifying their monthly statements, as herein provided, and for the purpose of determining the condition of said mains, pipes, regulators, meters and other appliances; and further, that they, the parties of the second part, will forward to the party of the first part, a weekly record of the number of contracts made and canceled, and the number of meters set, connected and disconnected, together with the total number of consumers at the end of each week, and will make and keep at its office a copy of such contracts, together with a full and complete record of the same, and of all meters used, and will also keep at the said office such books of accounts as will clearly and fully show all accounts and contracts with consumers, and all other transactions and matters relating to the business of the said parties of the second part, which said system of accounts, books, contracts and records, shall be subject to the approval of the party of the first part, and which, together with any and all other papers relating to or connected with the business matter of the said parties of the second part under this agreement and contract, shall be at all reasonable and proper times, day and night, open to examination and inspection by the officers, agents, attorneys and employes of said party of the first part, and that the said parties of the second part will, by their agents and employes, aid and assist said officers, agents, attorneys and employes of the said party of the first part in making such examination and inspection, whenever requested to do so by them.

While this agreement shall remain in force, the parties of the second part shall purchase of the party of the first part all the gas necessary to supply the city of Topeka, Kansas, and its inhabitants, and the business houses and manufacturing plants therein, except that, in the event of the party of the first part's failure to supply gas, as herein provided, said parties of the second part may secure gas from other sources until the first party shall supply gas, as herein provided; and the party of the first part shall not supply gas to any other firm, corporation or individual which may be a competitor of the second parties in selling and distributing gas in the said city of Topeka, Kansas.

IT IS FURTHER COVENANTED AND AGREED, by and between the said party of the first part and the said parties of the second part, that the said parties of the second part will, at the end of each and every calendar month, during the continuance of this contract, deliver to said party of the first part, at the general office of the said party of the first part, a statement showing in detail, the amount collected for gas sold and delivered to consumers during said month, and also, the amount of all bills for gas sold and delivered during the said month which have not been paid.

IT IS FURTHER COVENANTED AND AGREED, by and between the said party of the first part, and the said parties of the second part, that, if the parties of the second part shall, for a period of Thirty (30) days neglect or fail to pay said party of the first part any money due it under this contract, or shall neglect and fail to perform faithfully and fully each and every covenant and agreement herein stipulated to be performed by the said parties of the second part this contract shall at the option of the said party of the first part, be cancelled and an-

nulled and all rights of said parties of the second part hereunder forfeited, and said party of the first part, shall in such cases, have the right to enforce by action or actions, at law or in equity, the payment of any money due or to become due to it, the said party of the first part, and any claim for damages, or other claim or claims that the said part of the first part may have against the said parties of the second part by reason of the premises.

AND IT IS FURTHER AGREED AND COVENANTED, by and between said party of the first part and the said parties of the second part, that all of the covenants and agreements and stipulations hereinbefore set out to be kept and performed by said parties of the second part shall be binding upon and enforceable against their heirs and assigns by the party of the first part, its successors and assigns, and that all of the covenants, agreements and stipulations hereinbefore set out to be kept and performed by said party of the first part shall be binding and enforceable against its successors and assigns, by the said parties of the second part, their heirs and assigns; and that this agreement may be assigned by the parties of the second part, to a corporation organized to undertake the work covenanted and agreed to be performed by the said parties of the second part, but the said corporation accepting the assignment from said second parties shall not assign the same, without the consent, in writing, of the said party of the first part, its successors and assigns.

IN TESTIMONY WHEREOF, the said KANSAS NATURAL GAS COMPANY has hereunto caused its corporate name and seal to be affixed by R. M. Snyder, its Vice-President, and John S. Scully, Jr., its Secretary; and the said JOSEPH J. HEIM and ARNOLD KALMAN have hereunto attached their hand



and seals on the day and year heretofore written and set out.

KANSAS NATURAL GAS COMPANY,

By R. M. Snyder,  
Vice-President.

Attest:

John S. Scully, Jr.,  
Secretary.

(Seal)

Joseph J. Heim (Seal)  
Arnold Kalman (Seal)

Witnesses:

Hugh C. Moul,  
E. Moye Elick.

### Exhibit "D."

ARTICLE 5—EXCELSIOR COKE AND GAS COMPANY  
AND CONSUMERS LIGHT, HEAT AND POWER  
COMPANY.

(Took effect May 4, 1905.)

ORDINANCE NO. 2574.

*An Ordinance* authorizing the Excelsior Coke and Gas Company of Topeka, a corporation, its successors and assigns, to permit the Consumers Light, Heat and Power Company, a corporation, its successors and assigns, to use the works, pipes and mains of said the Excelsior Coke and Gas Company of Topeka, within the City of Topeka, for the purpose of distributing and selling the natural gas by said Consumers Light, Heat and Power Company, its successors and assigns, within said City of Topeka.

*Be it ordained by the Mayor and Councilmen of the City of Topeka:*

Sec. 570. RECITALS; RIGHTS GRANTED; CONDITIONS. Sec. 1. Whereas The Consumers Light, Heat and Power Company, a corporation, has, by purchase and assignment, become the owner of an

ordinance of the City of Topeka, No. 2435 entitled "An ordinance granting to the Continental Oil and Gas Company of Topeka, Kansas, its successors and assigns, for a period of twenty years, the right to construct, maintain and operate works for natural gas, together with the right to use all streets, avenues and public grounds of the City of Topeka, Kansas, for the purpose of laying their mains and pipes, supplying and delivering to said City of Topeka, and the inhabitants thereof, gas for manufacturing, heating and illuminating, and for all other purposes for which natural gas is or may be used during said period, and to regulate the price thereof," as amended by ordinance of said City of Topeka No. 2528, entitled "An ordinance amending sections 5 and 17 of an ordinance entitled, 'An ordinance granting to the Continental Oil and Gas Company of Topeka, Kansas, its successors and assigns, for a period of twenty years, the right to construct, maintain and operate works for natural gas, together with the right to use all streets, avenues and public grounds of the City of Topeka, Kansas, for the purpose of laying their mains and pipes, supplying and delivering to said City of Topeka, and the inhabitants thereof, gas for manufacturing, heating and illuminating, and for all other purposes for which natural gas is or may be used during said period, and to regulate the price thereof,'" and of all the rights and privileges thereunder, or granted thereby; and

Whereas, said Consumers Light, Heat and Power Company has begun the work of construction of its system of pipes and mains, in accordance with said ordinance; and

Whereas, said the Excelsior Coke and Gas Company of Topeka, is the owner of a system of works, mains and pipes within said City of Topeka, used for the purpose of distributing and

selling within said city, artificial or manufactured gas; and,

Whereas, said the Excelsior Coke and Gas Company of Topeka, and said Consumers Light, Heat & Power Company are willing, with the consent of said City of Topeka, to arrange between themselves for the use of the system of works, mains and pipes of said the Excelsior Coke & Gas Company of Topeka by said Consumers Light, Heat & Power Company, its successors and assigns, for the distribution and sale of natural gas within said City of Topeka, during the continuance and maintenance of a sufficient supply of such natural gas:

The City of Topeka does hereby consent that said the Excelsior Coke and Gas Company of Topeka, its successors and assigns, may, by lease or other contract, permit said Consumers Light, Heat & Power Company, its successors and assigns, to use, maintain and operate the system of works, mains and pipes of said the Excelsior Coke and Gas Company of Topeka, within the City of Topeka, for the purpose of distributing and selling natural gas, within said city, under the ordinances now owned as aforesaid by said Consumers Light, Heat and Power Company, and that the acquisition of works, mains and pipes of said the Excelsior Coke and Gas Company of Topeka, for the purpose aforesaid, and the supplying of consumers with natural gas therefrom, shall, to that extent, be taken and held to be a sufficient compliance, by said Consumers Light, Heat and Power Company, its successors and assigns, with the obligation resting upon them to lay and construct mains and pipes for the distribution of natural gas within said City of Topeka, and that so long as such mains and pipes shall be used by said Consumers Light, Heat and Power Company, its successors or assigns, for the supplying of natural gas there-

from to consumers within said City of Topeka, said the Excelsior Coke and Gas Company of Topeka, its successors and assigns, shall be relieved from the obligation resting upon them to supply artificial or manufactured gas therefrom to consumers within said city.

But it is understood and agreed that the provisions of Section 8 of the franchise contract of the Excelsior Coke and Gas Company in regard to free service pipes and meters shall govern, and that all service pipes and meters used by the Continental Oil and Gas Company or the Consumers Light, Heat and Power Company, or their successors or assigns, shall be put in free of charge to consumers.

As a consideration for the granting of the rights and privileges herein, the said Consumers Light, Heat and Power Company, binds and obligates itself, its successors or assigns to have natural gas in the mains and to be ready to furnish natural gas in the mains in the City of Topeka on or before January 1st, 1906; saving to said company, its successors or assigns the benefit of any delays caused by riots, strikes, floods or *bona fide* legal proceedings.

And as a guarantee of good faith and performance, the said Consumers Light, Heat and Power Company, its successors or assigns, agree to deposit with the city treasurer of said city at or prior to the time of the acceptance of this ordinance, the sum of \$5,000.00 in cash, the conditions of which said deposit are as follows: If said the Consumers Light, Heat and Power Company, its successors or assigns, shall fail to have natural gas in the mains and to be ready to furnish natural gas in the mains in the City of Topeka on or before January 1st, 1906, subject to the saving clause hereinbefore set forth, then the said sum of \$5,000.00 shall be forfeited to and become the

property and money of the City of Topeka, and shall be turned over to the general revenue fund of said city; but if said Consumers Light, Heat and Power Company, its successors or assigns shall have natural gas in the mains and be ready to furnish natural gas in the mains in the City of Topeka on or before January 1st, 1906, subject to the said saving clause hereinbefore set forth, then the said sum of \$5,000.00 shall be returned to said company, its successors or assigns.

Sec. 571. FAILURE OF NATURAL GAS. Sec. 2. If at any time, for any reason, said Consumers Light, Heat and Power Company, its successors or assigns, shall, on account of the failure of a sufficient supply of natural gas, or otherwise, cease or be unable to supply consumers, within said City of Topeka, with natural gas through said mains and pipes, said the Excelsior Coke and Gas Company of Topeka, its successors or assigns, shall immediately resume the supply of artificial or manufactured gas to consumers within said city in accordance with its obligations now existing in that behalf, so long as such failure of the supply of natural gas shall continue.

Sec. 572. ACCEPTANCE. Sec. 3. Unless said the Excelsior Coke and Gas Company of Topeka and said Consumers Light, Heat and Power Company shall, within twenty (20) days after this ordinance takes effect, file with the city clerk of said city, their written acceptance of this ordinance, and deposit the \$5,000.00 in cash as hereinbefore provided for, this ordinance shall become null and void; and upon such acceptance being filed, and the deposit of said \$5,000.00 in cash as aforesaid, this ordinance shall become a valid and binding contract between said City of Topeka and said the Excelsior Coke and Gas Company of Topeka and Consumers Light, Heat and Power Company, their respective successors and assigns.

TAKE EFFECT. Sec. 4. This ordinance shall take effect and be in force from and after its publication in the city official paper.

Passed the council May 1st, 1905.

Approved May 3d, 1905.

W. H. Davis, Mayor.

Attest: J. H. Squires, City Clerk.

(Acceptance of this ordinance filed by each of the foregoing companies on May 16, 1905.)

### **Exhibit "E."**

Published in the OAKLAND BLADE, July 6, 1906.  
ORDINANCE NO. 32.

*An Ordinance* granting to the Consumers Light, Heat and Power Company, a corporation, its successors and assigns, for a period of twenty (20) years, the right to construct, maintain and operate gas works together with the right to use all streets, avenues, alleys, parkways and public grounds and places, in the City of Oakland, Kansas, for the purposes of laying, maintaining and operating mains and pipes for supplying and distributing manufactured and natural gas, or either of them, in said City of Oakland for illuminating, heating, manufacturing and other purposes and fixing the maximum rates for the sale thereof.

*Be it ordained by the Mayor and Councilmen of the City of Oakland, Kansas:*

Section 1. That subject to all the provisions, conditions and qualifications of this ordinance, the Consumers Light, Heat and Power Company, a corporation, its successors and assigns, is hereby granted the right and privilege of constructing, acquiring, operating and maintaining gas works in said City of Oakland for the purpose of manufacturing gas to be used for illuminating, heating, manufacturing and other purposes, and of constructing, acquiring, laying, using and maintaining

in, through and along the public streets, avenues, alleys, parkways and public grounds and places within the present and future limits of said City of Oakland, mains and pipes for distributing, supplying and selling manufactured and natural gas, or either of them, for illuminating, heating, manufacturing and other purposes, to the said City of Oakland and the inhabitants thereof, for transmitting and conveying the same through mains and pipes for the purposes of distributing and supplying manufactured and natural gas, or either of them, for illuminating, heating, manufacturing and other purposes, to other municipalities and territory and the inhabitants thereof, for the full period of twenty (20) years from the date of the acceptance of this ordinance, as hereinafter provided.

Section 2. That in making any and all improvements and excavations, and in exercising any and all rights and privileges, granted by this ordinance, the same shall be done by said Consumers Light, Heat and Power Company, its successors and assigns, in accordance with the lawful ordinances of said City of Oakland, and in strict compliance with each and all of the conditions, terms, and directions, and subject to each and all of the penalties and liabilities imposed by the lawful ordinances of said City of Oakland. All excavations, and other work or improvements, affecting the use of the streets, avenues, alleys, parkways and public grounds and places of said City of Oakland, shall be done under the general direction and supervision of the city engineer of said city.

Section 3. That said Consumers Light, Heat and Power Company, its successors and assigns, shall save said City of Oakland harmless from all costs, damages and expenses for the payment of which said city may become liable to any person, company or corporation, by reason of the



granting of the rights and privileges herein or by reason of the construction, operating or maintenance of said gas plant or by reason of said company's failing to conform to, or comply with, any of the provisions or requirements herein or in any other of the lawful ordinances of said city.

Section 4. That said Consumers Light, Heat and Power Company, its successors and assigns, shall not, during said period of twenty (20) years charge any of the inhabitants of said City of Oakland more than one dollar and twenty-five cents (\$1.25) per thousand cubic feet of manufactured gas, furnished by said company, or more than forty-five cents (45c) per thousand cubic feet of natural gas furnished by said company for domestic purposes, or more than thirty cents (30c) per thousand cubic feet of natural gas furnished by said company for manufacturing purposes, nor shall said company charge the inhabitants of Oakland a higher rate than is being charged in City of Topeka. Said company, its successors and assigns shall not, at any time during said period of twenty (20) years, charge said City of Oakland for gas used by said city, a higher rate than the lowest current rate charged any of its consumers for the same kind of gas used for domestic purposes.

Section 5. That said Consumers Light, Heat and Power Company, its successors and assigns, shall also provide and furnish to said City of Oakland natural gas, so long as said company shall be able to supply same, for any number of incandescent lights, according to the American Meter Company's standard for all night lighting, which may be required by said city, and at such rates as may be agreed upon, not exceeding fifty cents (50c) per light per month, payable monthly; said city to furnish lamp posts, burners and equipment and to provide, at its own expense for lighting, extin-

guishing, cleaning and keeping said street lights in good order and repair, said lights not to burn to exceed twelve (12) hours during any twenty-four (24) hours.

Section 6. Said Consumers Light, Heat and Power Company, its successors and assigns, shall lay not less than eight (8) miles of gas mains within said City of Oakland within eighteen (18) months from the date of the acceptance of this ordinance as hereinafter provided.

Section 7. Said Consumers Light, Heat and Power Company, its successors and assigns, shall have the right to charge any consumer of its gas a minimum charge of fifty cents (50c) per month per meter for each and every month in which the consumption of gas shall amount, at current rates, to less than fifty cents (50c) per meter.

Section 8. Said Consumers Light, Heat and Power Company, its successors and assigns, shall have the right to make all reasonable rules and regulations for the prevention of loss or waste in the conduct and management of its business and the sale and distribution of gas to the consumers as may from time to time be deemed necessary and may make and enforce, as part of the conditions upon which it will supply gas to consumers, such reasonable rules and regulations as are consistent with the law.

Section 9. That within ten (10) days after the passage and approval of this ordinance, the said Consumers Light, Heat and Power Company shall file with the City Clerk of said City of Oakland its acceptance, in writing, of the provisions, terms and conditions of this ordinance, which said acceptance shall be duly acknowledged before some officer authorized to administer oaths. This ordinance, unless so accepted, shall become null and void, but, when so accepted, shall be and constitute a contract between said City of Oakland and said Con-

sumers Light, Heat and Power Company, its successors and assigns, subject to the provisions and limitations hereinbefore set forth.

Section 10. This ordinance shall take effect and be in force from and after its acceptance by said Consumers Light, Heat and Power Company, as aforesaid, and its publication in the official city paper.

Passed the Council July 2, 1906.

Approved July 2, 1906.

(Seal)

DON COFFMAN, *Mayor.*

F. E. BROWN, *City Clerk.*

### **Exhibit "F."**

Kansas Natural Gas Company,

Independence, March 6, 1916.

Mr. L. G. Treleaven, Receiver,

Consumers Light, Heat and Power Co.,

Topeka, Kansas.

Dear Sir:—

In reply to your letter of March 3rd, regarding the gas service, will say that at our hearing before the Public Utilities Commission last April, we told the Commission that the rate must be increased in order to give service. We said it would be necessary to construct about 60 miles of 16" pipe line in order to get gas; that we were now carrying the gas 250 miles and that we had to reach new fields in order to get a supply. The same condition exists today that did a year ago. We cannot make extensions at the present rate, and unless extensions are made there will be no gas.

The price of pipe has increased, and a 16" line built this summer will cost us \$3,000.00 a mile more than it would if we had built it last summer. The war conditions have stimulated the smelters. In every place they have increased the size of their plants, new smelters are being constructed, and

where two years ago they could not pay more than 8c for gas they are now ready and willing to pay 12c, and in fact the smelter people tell me that they would pay 15c rather than to do without it.

The Governor of the State and the Public Utilities Commission all had this information a year ago. We are still fighting for a higher rate, and if we don't get it there will be no more gas next winter than we had this winter.

Yours very truly,

(Signed) J. M. LANDON,

*Receiver.*

### **Exhibit "G."**

At a regular session of the Public Utilities Commission of the State of Kansas, held at its office in Topeka, Kan., this 10th day of December, A. D. 1915.

JOSEPH L. BRISTOW,

JOHN M. KINKEL,

C. F. FOLEY,

*Commissioners.*

JOHN M. LANDON and R. S. LITCHFIELD, Receivers  
for Kansas Natural Gas Company, a Corporation,  
Complainants,

vs.

THE CITIES OF LAWRENCE, TOPEKA, KANSAS CITY,  
LEAVENWORTH, ATCHISON, OAKLAND, MERRIAM,  
OLATHE, EDGERTON, LE LOUP, PRINCETON,  
WELDA, FORT SCOTT, PARSONS, PITTSBURG,  
WEIR, COLUMBUS, ALTAMONT, COFFEYVILLE,  
MOUND CITY, ELK CITY, TONGANOXIE, BALDWIN,  
ROSEDALE, LENEXA, GARDNER, WELLSVILLE,  
OTTAWA, RICHMOND, COLONY, THAYER,  
GALENA, CHEROKEE, SCAMMON, OSWEGO, LIBERTY,  
CANEY, MOUND VALLEY, INDEPENDENCE,  
REDFIELD;

THE LAWRENCE CITIZENS LIGHT & POWER COM-  
 PANY,  
 THE CONSUMERS LIGHT, HEAT & POWER COM-  
 PANY,  
 L. G. TRELEAVEN, Receiver of The Consumers  
 Light, Heat & Power Company,  
 THE WYANDOTTE COUNTY GAS COMPANY,  
 WILLARD J. BREIDENTHAL and JOHN F. OVER-  
 FIELD, Receivers for the Wyandotte County Gas  
 Company,  
 THE LEAVENWORTH LIGHT, HEAT & POWER COM-  
 PANY,  
 THE ATCHISON RAILWAY, LIGHT & POWER COM-  
 PANY,  
 THE HOME LIGHT, HEAT & POWER COMPANY,  
 THE KANSAS GAS & ELECTRIC COMPANY,  
 THE O. A. EVANS & COMPANY,  
 THE TONGANOXIE GAS & ELECTRIC COMPANY,  
 CENTRAL GAS COMPANY,  
 THE COFFEYVILLE GAS & FUEL COMPANY,  
 THE UNION GAS & TRACTION COMPANY,  
 THE WEIR GAS COMPANY,  
 THE OTTAWA GAS & ELECTRIC COMPANY,  
 THE ELK CITY GAS & FUEL COMPANY,  
 THE PARSONS NATURAL GAS COMPANY,  
 THE AMERICAN GAS COMPANY,  
 THE FORT SCOTT GAS COMPANY,  
 THE OLATHE GAS COMPANY,  
 THE LIBERTY GAS COMPANY,  
 FORT SCOTT & NEVADA LIGHT, HEAT, WATER &  
 POWER COMPANY,  
 THE CENTRAL GAS COMPANY,  
 GUNN PIPE LINE COMPANY,  
 THE MORAN GAS COMPANY, and  
 THE KANSAS FARMERS GAS COMPANY,  
 Respondents.

## Docket 1035.

## ORDER.

This case being at issue upon the complaint and application for rehearing, and the responses filed, and having been duly heard and submitted by the parties, October 27, 1915, and full investigation of the matters and things involved having been had, and the Commission having on this 10th day of December, 1915, made and filed its opinion containing its findings of fact and conclusions thereon, which said opinion is hereby referred to and made a part thereof;

IT IS THEREFORE BY THE COMMISSION ORDERED, that the complainants are authorized to file with the Public Utilities Commission and collect the following schedule of net rates for the sale of natural gas by them, or through their distributing companies, to the public in the state of Kansas, to-wit:

For domestic gas in Montgomery county, except Elk City, 23 cents per thousand cubic feet; for domestic gas in Elk City, 25 cents per thousand cubic feet; for boiler gas in Montgomery county, 10 cents per thousand cubic feet; for domestic gas in all other counties and cities other than those supplied by the Gunn Pipe Line, 28 cents per thousand cubic feet; and to all consumers supplied by the Gunn Pipe Line, 30 cents per thousand cubic feet; and for all boiler gas, except in Montgomery county,  $12\frac{1}{2}$  cents per thousand cubic feet.

IT IS FURTHER ORDERED, that the parties hereto be authorized and permitted to make a minimum charge of 50 cents per month per subscriber, for readiness to serve; that the complainants receive their contract share of the collections for gas actually delivered and the residue of the minimum bill, when there is any, shall go to the distributing company. Collection rules and the rules relating

to loss arising from uncollected accounts shall remain as at present until further ordered.

IT IS FURTHER ORDERED, that the parties hereto are hereby authorized and permitted to discontinue the furnishing or supplying of so-called free gas to cities, notwithstanding it may be furnished in compliance with ordinances or franchise agreements.

That the parties hereto are further authorized and permitted to discontinue the furnishing or supplying of free gas to any person or corporation for any reason whatsoever.

This order shall become operative and effective within thirty days after the service of a duly certified copy thereof.

BY ORDER OF THE COMMISSION.

Carl W. Moore, *Secretary*.

O. K.

Joseph L. Bristow,

John M. Kinkel,

C. F. Foley,

*Commissioners*

### **Exhibit "H."**

IN THE DISTRICT COURT OF MONTGOMERY  
COUNTY, KANSAS.

State of Kansas,

*Plaintiff,*

vs.

No. 13476

The Independence Gas

Company *et al.*,

*Defendants.*

Findings of Fact, Conclusions of Law and Order  
on the Validity and Adoption by the Receiver  
of the Supply Contracts Between the Kansas  
Natural Gas Company and the Various Dis-  
tributing Companies.

Now on this 16th day of October, A. D. 1916,  
this cause comes on for hearing on the applica-



tion of John M. Landon, as Receiver of the Kansas Natural Gas Company, for instructions regarding the supply contracts between the Kansas Natural Gas Company and the various distributing companies, whether the Receiver has by his acts adopted said contracts, and the motions of Wyandotte County Gas Company, the Kansas City Pipe Line Company, the Kansas Natural Gas Company, and the State of Kansas. And the court, after hearing the evidence and the argument of counsel, and being fully advised in the premises, makes the following findings, reserving for future determination the other questions submitted:

1. The Kansas Natural Gas Company, prior to April 30, 1912, had supply contracts with the following distributing companies, to-wit:

Elk City Oil & Gas                      Elk City, Kansas.

Company,

Coffeyville Gas & Fuel      Coffeyville, Kansas

Co.,

Liberty Gas Company,      Liberty, Kansas.

American Gas Com-      Altamont, Kan.

pany,

Oswego, Kan.

Columbus, Kan.

Scammon, Kan.

Galena & Empire, Kan.

Cherokee, Kan.

Weir City Gas Com-      Weir City, Kan.

pany,

Home Light, Heat &

Power Co.,

Kansas Gas & Electric      Pittsburg, Kan.

Co., lessee,

Parsons Natural Gas      Parsons, Kan.

Co.,

O. A. Evans & Co.      Thayer, Kan.

(Thayer Gas Plant),

Union Gas & Traction Company,	Colony, Kan. Welda, Kan. Richmond, Kan. Princeton, Kan. Baldwin, Kan. Wellsville & LeLoup, Kan. Edgerton, Kan. Gardner, Kan. Lenexa, Kan. Merriam & Shawnee, Kan.
Ottawa Gas & Electric Co.,	Ottawa, Kan.
Citizens Light, Heat & Power Co.,	Lawrence, Kan.
Consumers Light, Heat & Power Co.,	Topeka, Kan.
Ft. Scott Gas & Electric Co.,	Ft. Scott, Kan.
Tonganoxie Gas & Electric Co.,	Tonganoxie, Kan.
Leavenworth Light, Heat & Power Co.,	Leavenworth, Kan.
Atchison Ry., Light & Power Co.,	Atchison, Kan.
Wyandotte County Gas Co.,	Kansas City, Kan.
Olathe Gas Company,	Olathe, Kan.
Kansas City Gas Company,	Kansas City, Mo.
St. Joseph Gas Company,	St. Joseph, Mo.
Weston Gas Company,	Weston, Mo.

Fort Scott & Nevada  
Light, Heat, Water  
& Power Company.

Moran, Kan.  
Bronson, Kan.  
Nevada, Mo.  
Deerfield, Mo.

Oronogo Gas Company, Oronogo, Mo.  
Carl Junction Gas Com- Carl Junction, Mo.  
pany,  
Joplin Gas Company. Joplin, Mo.

2. Certain of said contracts were declared illegal by the Supreme Court of Kansas on April 30, 1912, and Kansas Natural was enjoined from operating under them. (See Exhibit "A" hereto attached.) Except in the case of the Leavenworth Company, no new contracts were ever executed with the distributing companies. When the Receivers were appointed by the United States Court for Kansas Natural on October 9, 1912, there were no valid contracts with the distributing companies except with Leavenworth. This court on February 15, 1913, found all the contracts with the distributing companies to be illegal, and there appears to be no reason for changing its findings in that respect. (See pages 12, 13 and 24 of said findings as printed.) Neither the Receivers of this court, nor of the United States Court, appointed for Kansas Natural, have ever adopted any of said contracts, nor have any of said Receivers operated under them, but have continued to transport gas to said distributing companies under a method of dealing similar to that employed by the Kansas Natural. Such arrangement was temporary and not intended to be permanent or binding upon the said Receiver. In the distribution of natural gas through said distributing companies, the Receiver of this court, and of the said United States Court, treated the supply contracts the same as they did the lease

of the Kansas City Pipe Line Company, and in *Kansas City Pipe Line Company v. Fidelity Title & Trust Company* (217 Fed. 187, l. c. 195), the United States Circuit Court of Appeals held that this Receiver had not by his method of conducting the business adopted the lease-contract of the Kansas Natural with the Pipe Line Company.

3. That all of said distributing contracts contain provisions substantially as follows:

"That whereas the party of the first part is the owner of a large acreage of gas leases with a number of gas wells drilled thereon in the gas belt of Kansas, and desires to find a market for its product. \* \* \*

Now, therefore, this agreement witnesseth: That the party of the first part agrees to lay and complete \* \* \* a pipe line for conveying natural gas from the gas fields of Kansas to a point at the city limits of the City of ..... \* \* \*

However, as the production of gas from the wells, and the conveying of it over long distances, is subject to accidents, interruptions and failures, the party of the first part does not, by this contract, undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such a supply for such a period of time as the wells and pipe lines supplying gas to the parties of the second part are capable of supplying, and in case of its inability to fully supply all of the cities and towns with which it is connected, the gas supplied under this contract shall, at all times, be a *pro rata* share of the total deliveries of gas. And it is expressly understood and agreed by the parties of the second part and the party of the first part, that the party of the first part shall not be liable for any loss, damage or injury to the parties of the second part that may result directly or indirectly from such shortages or interruptions; but said

party of the first part agrees to use diligence to supply the said parties of the second part with a constant and adequate supply of merchantable gas for all consumers. \* \* \*

At the time these contracts were entered into and the franchises granted, it was a matter of common knowledge that the natural gas was to be transported from the gas field in and north of Montgomery County, Kansas. Since the execution of said contracts the Kansas Natural Gas Company and its Receiver have year by year been obliged to extend their pipe lines farther and farther south to secure an additional supply of gas, the production by the Receiver in Kansas having diminished to less than 5 per cent of all the gas furnished by him. The securing of natural gas in Oklahoma at the points where the Receiver is now securing the bulk of the natural gas supplied was not in contemplation of the parties at the time the contracts were made. These supply contracts are improvident, wasteful and destructive of the property under the control of the Receiver. It is no longer possible to furnish even an appreciable supply of gas from the wells of the Kansas Natural Gas Company or those under its control. It was the intention of the parties under the foregoing provisions that the supply mentioned under such contract was to be from the "wells and pipe lines" of the Kansas Natural, in Kansas, and when the time came that the supply of gas did not come from the wells of the Kansas Natural, then the happening of the event mentioned in the above condition of the contract occurred and the contract by its own terms ceased to be binding upon the parties thereto.

4. The contracts with the Wyandotte County Gas Company and the Kansas City Gas Company are almost identical in terms. These contracts were originally made with the Kansas City Pipe

Line Company. The contract with the Wyandotte County Gas Company is dated February 1, 1906, while that with the Kansas City Gas Company is dated December 3, 1906, the latter contract supplanting the contract of November 17, 1906, between the same parties. Both of these contracts contain the provision mentioned in Finding No. 3, and also contain the following provision:

"So long as the party of the first part is able to supply the same, the party of the second part agrees to buy from the party of the first part all the gas it may need to fully supply the demand for domestic consumption in the said City of Kansas City, Kansas, or elsewhere in Wyandotte County, and to pay to the party of the first part for the natural gas it shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of its gross receipts from the sale of such natural gas in said City of Kansas City, or elsewhere in Wyandotte County, and thereafter a sum equal to sixty-two and one-half per cent of such gross receipts. The party of the second part makes no agreement with the party of the first part respecting the rates at which it shall sell natural gas to any consumers in Kansas City, Kansas, or elsewhere in Wyandotte County, but expressly reserves to itself the right to charge its consumers for natural gas any rates not exceeding those mentioned in said ordinance which it may agree upon with such consumers; but if it shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the

second part, as aforesaid, for gas so sold, the party of the first part shall be under no obligations to furnish the gas so sold at such lower prices, and the party of the second part shall be at liberty to obtain the same from such other sources as it may find available."

The contract with the Kansas City Gas Company substitutes the words "Kansas City, Missouri," for "Kansas City, Kansas," and "Jackson County" for "Wyandotte County." The further exclusive provision was inserted in the contract:

"It is agreed between the parties hereto that if at any time during the period of said ordinance while the party of the second part is buying from the party of the first part all the natural gas it is distributing and selling in the said City of Kansas City, Kansas, and elsewhere in Wyandotte County, the said party of the first part, its assigns, lessee or lessees, shall furnish any natural gas to any person or corporation for use in supplying said City of Kansas City, Kansas, or any of its inhabitants, and any city, town or village, or their inhabitants elsewhere in Wyandotte County, with such gas, otherwise than under this agreement, then, and in any such case, the provision contained in Section No. 2 hereof in the following words: 'but if it shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation therefor sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part as aforesaid, for gas so sold, the party of the first part shall be under no obligation to furnish the gas so sold at such lower prices,' shall at once become inoperative and



cease to have any effect, but the party of the first part, its assigns, lessee or lessees, shall be bound to supply and deliver to the party of the second part natural gas to fully supply the demand for all purposes of consumption in said City of Kansas City, Kansas, and elsewhere in Wyandotte County, for sixty or sixty-two and one-half per cent, as the case may be, of the gross receipts of the party of the second part from the sale of natural gas in said City of Kansas City, Kansas, and elsewhere in Wyandotte County, at any prices for which the said party of the second part may choose to sell the same."

A like provision was inserted in the contract with the predecessors of the Kansas City Gas Company. Both of these distributing contracts containing exclusive provisions, are violative of the statutes of the State of Kansas and the United State and against public policy and therefore void.

5. The obligations of these two contracts were assumed by the Kansas Natural under the lease of January 1, 1908, between the Kansas City Pipe Line Company and the Kansas Natural, the pertinent terms of said lease being as follows:

"The lessee agrees that if the gas wells hereby demised situated in the territory of the Lessor do not furnish a sufficient volume of gas, or if the pipe line of the Lessor shall not have a delivery capacity sufficient to supply the demands for gas in the cities of Kansas City, Kansas, and Kansas City, Missouri, it, the Lessee, will supplement said gas supply from its own wells up to an amount equal to fifty (50) per cent of the gas which by the use of due diligence in connecting existing wells and drilling new ones, it may be able to produce from the territory now or hereafter controlled by it; and will construct at its own cost and expense, or, so far as any of the bonds of the

Lessor in this lease referred to may be available for the purpose, at the cost and expense of the Lessor, the additional pipe lines necessary for the delivery of gas to supply such demands, whether from the Lessor's or the Lessee's territory. Provided, however, that if the expectation of continuance of the supply of gas shall not be sufficient to warrant the laying of an additional pipe line at any time, the Lessee shall not be required to do so, whatever the demand for gas in said cities; Provided, further, that it is the intent of the parties that the provisions of this clause shall not be so construed as to in effect require the Lessee to lay a line for manufacturing purposes mainly or only."

It appears from the foregoing that the Kansas Natural Gas Company only assumed to furnish gas so long as there was a supply available in the territory contiguous to the line of the Kansas City Pipe Line Company. There is now no natural gas available in appreciable quantities in such territory. By the terms of the lease with Pipe Line Company, the Kansas Natural agreed to supplement the supply of the gas from the gas wells situated in the territory of the lessor by natural gas produced from the wells drilled by Kansas Natural in territory controlled by it. The Kansas Natural has done so. The Receiver now, however, is producing no appreciable amount of gas from said territory, but the natural gas now furnished by him is nearly all purchased in Oklahoma at far distant points from producing companies over which the Receiver has no control. Neither the Receiver nor the Kansas Natural is now able to furnish any appreciable supply of gas from either the wells situated in the territory of the Pipe Line Company or wells in territory controlled by the Kansas Natural.

6. The Kansas Supreme Court in the case of *State v. Wyandotte County Gas Company*, 88 Kan. 165, and the *United States Supreme Court in Wyandotte County Gas Company v. State*, 231 U. S. 622, decided that the City of Kansas City, Kansas, never had power to make the contract with the Wyandotte County Gas Company fixing rates, and that the ordinance passed by the City of Kansas City, Kansas, attempting to make such contract is void. Under these decisions the supply contract is invalid, the consideration having failed.

7. The Kansas Supreme Court in the case of *State ex rel. v. Litchfield*, 97 Kan. 592, decided that a distributing company, which is an agent of the Kansas Natural, cannot rely upon the franchise ordinance made for the purpose of fixing rates, it having been abrogated by the Public Utilities Act of Kansas, in so far as the question of rates is concerned. Since these supply contracts are all based upon the franchise ordinances (which are in general made a part of the supply contracts) and the consideration for the delivery of gas by the Kansas Natural is the collection by the distributing companies of the maximum rates prescribed in such ordinances in the respective cities, and such ordinances are now abrogated and the rates prescribed therein can no longer be collected, and have not been collected by the distributing companies for the several years last past, and since they have not made settlement with the Receiver on the basis of the franchise rates, these supply contracts are not binding on the Receiver.

#### CONCLUSIONS OF LAW.

1. That neither the Receiver of this court, nor the Receivers of the United States Court have by their acts or otherwise adopted any of the supply contracts with the various distributing companies.

2. That the supply contracts with the distribut-

ing companies, whose plants are located within the State of Kansas, are invalid, illegal and void, being in violation of the laws of this state and of the United States, and are not binding on the Receiver.

3. That the supply contracts with the distributing companies, whose plants are located in the State of Missouri, are invalid, illegal and void, being in violation of the laws of the State of Missouri and of the United States, and are not binding on the Receiver.

4. That the conditions mentioned in the various supply contracts upon the happening of which the contracts were to become inoperative and void have long since occurred, and the Receiver is unable to furnish the distributing companies with gas under the terms of said supply contracts.

5. That the said supply contracts are improvident, wasteful and destructive of the estate of the Kansas Natural Gas Company and should be disavowed.

#### ORDERS.

It is therefore considered, adjudged and decreed that none of the distributing contracts aforesaid are binding upon, or effective against, said Receiver, and that he should not, and is hereby forbidden to, deliver natural gas to any of said distributing companies under the distributing contracts formerly existing between the Kansas Natural Gas Company and said distributing companies, respectively; and he is hereby ordered to deliver natural gas to such of said distributing companies as will receive the same at the rates and prices, and on the terms named in the schedule of rates and prices heretofore promulgated by said Receiver to said distributing companies, respectively; and the acts of said Receiver, in promulgating said schedules are hereby approved.

And this Court recognizing that its power does not extend beyond the State of Kansas, hereby directs said Receiver to present to the United States District Court for the District of Kansas, First Division, the foregoing findings of fact and conclusions of law and this order, and to pray said Federal Court for such orders as will effectuate the law applicable to the Kansas Natural property in Missouri and Oklahoma, and thus bring the same in operative harmony with the Kansas Natural property in Kansas, to the end that the public may be served and said property preserved.

THOS. J. FLANNELLY,

*Judge.*

### **Second.**

Section H of Exhibit — to the evidence of L. G. Treleaven, Receiver (being the report of Henry I. Lea), copy of which is on file with the clerk of this court as part of the record, gives a detailed statement of the reproduction cost and rate-making value of the property of The Consumers Light, Heat and Power Company for the years 1907 to 1916, inclusive, and shows that the value was—

For 1908.....	\$1,265,741.85
For 1909.....	1,317,499.13
For 1910.....	1,376,002.72
For 1911.....	1,421,311.58
For 1912.....	1,471,272.27
For 1913.....	1,540,906.85
For 1914.....	1,663,588.81
For 1915.....	1,783,461.59
For 1916.....	1,917,523.00

And the letter of transmittal found in said exhibit shows that the present depreciated value of

said company, figured on the basis of depreciable property, only, is \$1,763,068.00.

Section D of said Exhibit — shows that under the various rates which have been in force since 1908 (after fully setting out operating cost, depreciation and taxes, etc.) the Consumers Light, Heat and Power Company has failed to earn an adequate return on the proper rate-making value of the company, and that since 1913 it has failed to earn an amount sufficient to pay bond interest, as follows:

Short, 1913.....	\$37,252.79
Short, 1914.....	48,035.76
Short, 1915.....	61,897.08
Short, 1916.....	42,454.48
Short, 1917.....	40,814.48

Said exhibit further shows that the amount of outstanding bonds on the property is one million dollars.

### **Third.**

Special attention is called to Section 6 of Exhibit "A" to the amended and supplemental answer of L. G. Treleven, Receiver of Consumers Light, Heat and Power Company, being the franchise ordinance under which natural gas is distributed in the city of Topeka, which provides that:

"The said company shall not charge for the use of gas it may furnish to said city, or any

of the inhabitants thereof, during said twenty years, a price greater than 45 cents per thousand feet for domestic purposes, and 30 cents per thousand feet for manufacturing purposes."

Respectfully submitted,

LEONARD S. FERRY,

THOMAS F. DORAN,

M. F. COSGROVE,

*Solicitors for L. G. Treleavan,  
Receiver of The Consumers  
Light, Heat and Power Com-  
pany of Topeka, Kansas.*

J. M. CHALLIS,

*Solicitor for The Atchison Rail-  
way, Light and Power Company  
of Atchison, Kansas.*

FLOYD HARPER,

*Solicitor for The Leavenworth  
Light, Heat and Power Com-  
pany of Leavenworth, Kansas.*



FILED

OCT 2 1918

JAMES D. MAHER,  
CLERK.

# Supreme Court of the United States

October Term, 1918.

No. 277.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS, ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed September 10, 1917.

No. 329.

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, ET AL., *Appellants,*

VS.

JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL GAS COMPANY,  
ET AL.

Filed January 10, 1918.

No. 330.

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY, ET AL., *Appellants,*

VS.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND GEORGE F.  
SHARITT, RECEIVERS, AND FIDELITY TITLE AND TRUST COMPANY.

Filed January 14, 1918.

No. 332.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed February 6, 1918.

*Appeals from the District Court of the United States for the  
District of Kansas.*

## BRIEF

ON BEHALF OF JOHN M. LANDON, MANAGING RECEIVER  
OF KANSAS NATURAL GAS COMPANY, FIDELITY TITLE  
& TRUST COMPANY, KANSAS NATURAL GAS COM-  
PANY, AND GEORGE F. SHARITT, RECEIVERS OF  
KANSAS NATURAL GAS COMPANY, APPELLEES.

CHARLES BLOOD SMITH,  
*Solicitor for Fidelity Title &  
Trust Company, Appellee.*

R. A. BROWN,  
T. S. SALATHIEL,  
*Solicitors for Kansas Natural  
Gas Company, Appellee.*

JOHN H. AYWOOD,  
ROBERT STONE,  
GEORGE T. McDERMOTT,  
AUSTIN M. COWAN,  
CHESTER I. LONG,  
*Solicitors for John M. Landon,  
Managing Receiver of Kan-  
sas Natural Gas Company,  
Appellee.*

JOHN J. JONES,  
*Solicitor for George F. Shar-  
itt, Receiver of Kansas Nat-  
ural Gas Company, Appellee.*



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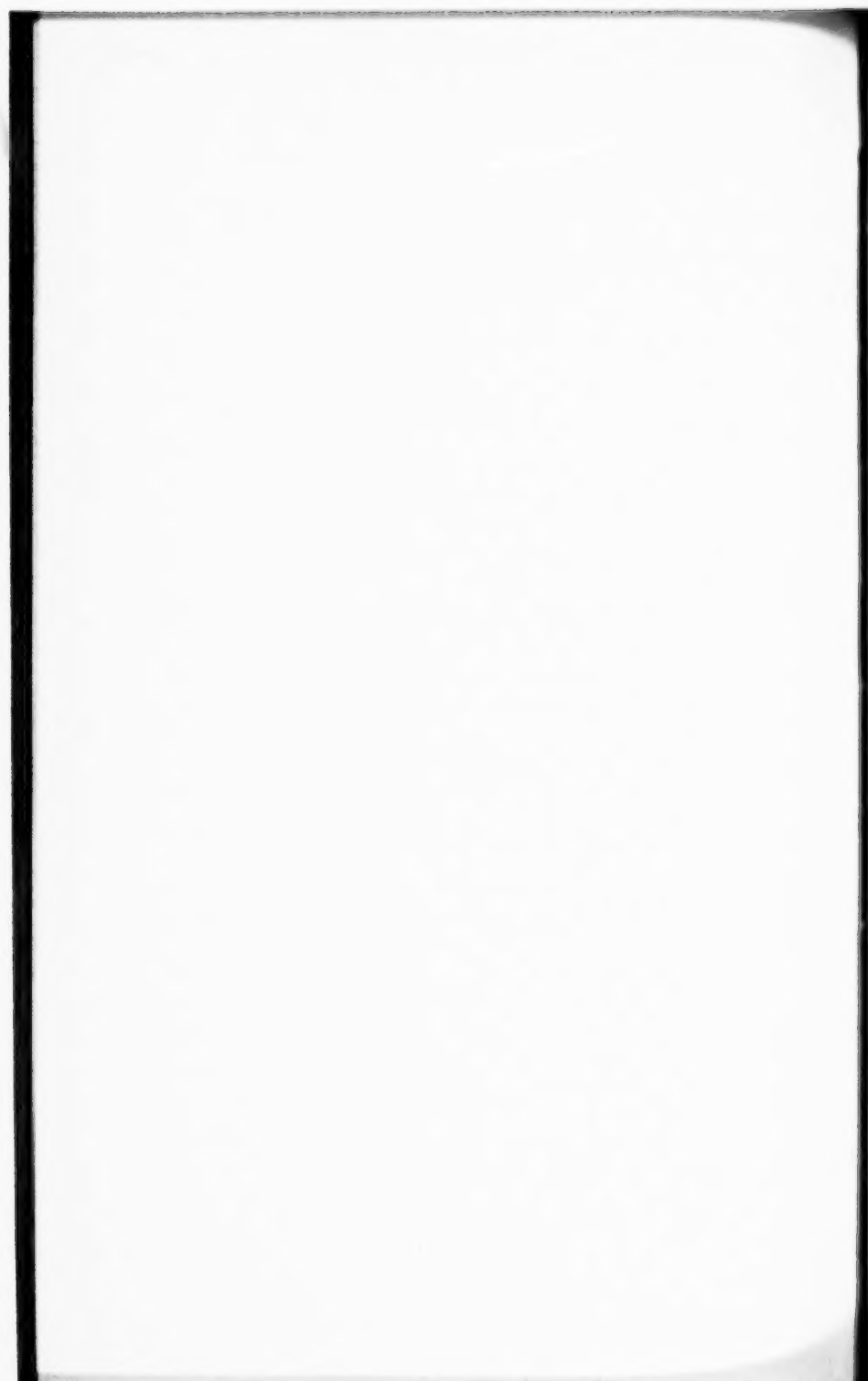
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# Supreme Court of the United States

October Term, 1918.

---

**No. 277.**

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed September 20, 1917.

---

**No. 329.**

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, ET AL., *Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed January 10, 1918.

---

**No. 330.**

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY, ET AL., *Appellants,*

VS.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND GEORGE F.  
SHARITT, RECEIVERS, AND FIDELITY TITLE AND TRUST COMPANY.

Filed January 14, 1918.

---

**No. 353.**

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS, ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed February 6, 1918.

---

*Appeals from the District Court of the United States for the  
District of Kansas.*

---

**BRIEF**

ON BEHALF OF JOHN M. LANDON, MANAGING RECEIVER  
OF KANSAS NATURAL GAS COMPANY, FIDELITY TITLE  
& TRUST COMPANY, KANSAS NATURAL GAS COM-  
PANY, AND GEORGE F. SHARITT, RECEIVER OF  
KANSAS NATURAL GAS COMPANY, APPELLEES.

---

**STATEMENT OF FACTS.**

Owing to the extent of the litigation and com-  
plications in this case, we deem it advisable to  
make a separate statement of facts on behalf of

these appellees. References are to pages of the printed record. In order to avoid confusion we shall refer to the parties as they were arranged in the court below.

On January 5, 1912, suit was commenced in the District Court of Montgomery County, Kansas, by the Attorney General of the State of Kansas against The Kansas Natural Gas Company and other corporations, under the Anti-Monopoly Statute of the State of Kansas. (Rec., p. 13.) During the pendency of that suit, and on or about October 7, 1912, John L. McKinney, a stockholder and a holder of certain second mortgage bonds of The Kansas Natural Gas Company, filed a bill in the United States District Court for the District of Kansas, No. 1351 Equity, alleging the insolvency of The Kansas Natural Gas Company and praying the appointment of Receivers to take possession of and manage its property. (Rec., p. 14.) The Kansas Natural Gas Company confessed the allegations of the bill, and receivers were appointed on October 9, 1912, and within ten days thereafter, pursuant to requirements of Sec. 56 of the Judicial Code, the receivership was extended to the property of The Kansas Natural Gas Company within the Western District of Missouri and the Eastern District of Oklahoma. On February 3, 1913, suit was filed in the United States District Court for the District of Kansas by the Fidelity Title & Trust Company to foreclose the mortgage held by it upon the property of The Kansas City Natural Gas Company. This suit is No. 1-N, Equity, of said court. On the same date, on motion, the receivership therefore existing in



suit No. 1351 was extended on the same terms and conditions to said suit No. 1-N, Equity. (Rec., p. 14.)

On February 15, 1913, the District Court of Montgomery County, Kansas, entered judgment against The Kansas Natural Gas Company and appointed receivers therefor. Thereafter, the state receivers made application to the United States District Court for the District of Kansas for the possession of the property of The Kansas Natural Gas Company within the State of Kansas, claiming the prior jurisdiction of the District Court of Montgomery County, Kansas, over the subject matter, and this application was granted (206 Fed. 772). The judgment was affirmed by the Circuit Court of Appeals (209 Fed. 300), and on January 1, 1914, the property of The Kansas Natural Gas Company situated in the State of Kansas was delivered to the state receivers. (Rec., p. 15.) Thereafter, the state receivers made further application to the United States District Court for the District of Kansas for the delivery to them of the property located in Oklahoma and Missouri. This application was denied.

On appeal, the Circuit Court of Appeals directed that inasmuch as the system must be operated as a unit, the property in Missouri and Oklahoma should be turned over to the state receivers (217 Fed. 187.) This was done. However, in turning over the property to the state receivers the United States District Court for the District of Kansas retained potential possession of the property, and issued an injunction preventing any one except the state receivers interfering with

the property or handling it, and directing that the property should be returned to it after the state receivers surrendered possession. (Rec., p. 16.) The state receivers were immediately appointed ancillary receivers of the United States District Court for the District of Kansas for all properties and assets of The Kansas Natural Gas Company situated in the states of Oklahoma and Missouri. (Rec., pp. 18, 1018.)

On December 17, 1914, all parties concerned in the suits 1351 Equity and 1-N Equity in the United States District Court for the District of Kansas, and the parties concerned in the suit pending in the District Court of Montgomery County, Kansas, entered into an agreement called the Creditors' Agreement (Exhibit "A" to bill of complaint, Rec., p. 1009), whereby it was agreed that the state receivers should manage the property for six years upon the condition named therein in reference to the paying off of the various securities and the procuring of a compensatory rate for gas transported and sold. This agreement is of record in the United States District Court for the District of Kansas and the District Court of Montgomery County, Kansas. (Rec., p. 1018.)

On December 30, 1912, the United States District Court for the District of Kansas fixed a schedule of prices to be charged by the receivers to the distributing companies at the gates of the cities. The order was suspended and never put into effect. In January, 1913, the attorney for the Public Utilities Commission of the State of Kansas brought a proceeding before that body under

the Public Utilities Act of 1911, which act required the maintenance of rates in force on the 1st day of January, 1911, until changed by the Public Utilities Commission (bill of complaint, Rec., p. 20), and the Public Utilities Commission in that proceeding denied the federal receivers the right to increase the rates in force January 1, 1911. (Rec., p. 21.)

On July 10, 1913, the Public Utilities Commission of Kansas made an order that the federal receivers make certain extensions of the pipe lines of said companies. The receiver asked the United States District Court for the District of Kansas for instructions. The State of Kansas was represented in said proceedings. Judge Marshall held that the extensions were to be made in Oklahoma, that the business of the receiver was interstate commerce, and therefore the whole subject was beyond the jurisdiction of the Public Utilities Commission of Kansas and directed the receiver not to make the extensions. The opinion of the court is reported in 219 Fed. 614. No appeal was taken from this determination.

In April, 1915, the state receivers, pursuant to the Creditors' Agreement hereinbefore mentioned, made application to the Public Utilities Commission of Kansas to increase the rates charged since January 1, 1911. On July 16, 1915, the Public Utilities Commission of Kansas rendered its opinion (Rec., p. 22), fixing a rate of twenty-eight cents to consumers in Kansas, but made the establishment of this schedule contingent upon the establishment of the same schedule of rates in Mis-

souri by the Public Service Commission of that state. This schedule was arrived at by considering the requirements of the Creditors' Agreement and taking the life of the natural gas field as six years from January 1, 1915. Numerous errors were charged to have been made in the findings of the Public Utilities Commission of Kansas, and the order was sought to be set aside in a proceeding had in the District Court of Montgomery County, Kansas, in which it was attempted to make the Public Utilities Commission of Kansas a party. The Public Utilities Commission objected to the service and stood on their objection. The case proceeded to trial and the court made certain findings of fact (Rec., p. 22) and enjoined the enforcement of the order of the Public Utilities Commission and ordered in a rate of thirty cents. An appeal was taken by the Public Utilities Commission to the Supreme Court of the State of Kansas, and also an original proceeding in mandamus was instituted in the latter court by the Commission to compel the plaintiff receiver to observe the order of the Public Utilities Commission. The Supreme Court of Kansas on October 4, 1915, decided that the District Court of Montgomery County, Kansas, did not have proper service upon the Public Utilities Commission and therefore the District Court's order was void. The Supreme Court also held that there was no order of the Public Utilities Commission outstanding which should be enforced, and denied the writ of mandamus. (96 Kas. 372.)

A rehearing before the Public Utilities Commission was had by the receiver, and on December

10, 1915, the Public Utilities Commission rendered its opinion (Exhibit "K," Rec., p. 53) establishing a rate of 28 cents. This rate was made on a rate-making basis. The opinion was dissented from by one of the three members of the Board. Commissioner Foley in his dissenting opinion assailed the majority opinion, and stated that the 28-cent rate was not sufficient. (Rec., p. 81.)

Thereupon, plaintiff receiver put into force under protest the 28-cent rate ordered by the Public Utilities Commission, and immediately brought this suit, alleging the order was unreasonable and amounted to an undue interference with the interstate commerce conducted by the receiver. Bill of complaint states that the order is unreasonable in the following respects, to-wit: that the valuation placed by the Public Utilities Commission of Kansas on physical property is entirely too low; that the Commission has failed to allow any sum for "going value," "going concern value" or "cost of attaching the business"; has not allowed any return on the value of the leaseholds and property used in the production of gas; has made various errors in its computations; has allowed only a six per cent return on the investment, when the rate should have been ten per cent, owing to the hazardous nature of the business; has made no allowance for the necessary extension of the gas mains in Oklahoma each year; had computed the life of the field twelve years from January 1, 1915, when it should have been six years; has placed too high a "scrap value" on the plant, and has not made proper allowance for the amortization or depreciation of the plant.

This suit is also brought against the Public Service Commission of the State of Missouri because of concerted action by the Public Service Commission of Missouri with the Public Utilities Commission of the State of Kansas, and decisions and announcements of the Public Service Commission of Missouri that it will not permit a higher rate to be charged for natural gas delivered to consumers in Missouri than is charged to consumers in the border cities of Kansas. Also because it has suspended all increased rates.

This suit is also brought in the United States District Court for the District of Kansas as dependent upon and ancillary to suits No. 1-N Equity and 1351 Equity, to protect the property in the possession of the United States District Court for the District of Kansas in the states of Oklahoma and Missouri and to prevent the enforcement of the excessive penalties which might be assessed against the plaintiff receiver should he disobey the orders of the Public Utilities Commission of Kansas and the Public Service Commission of Missouri (see Rec., pp. 31, 39) and to prevent the taking of property in the hands of the ancillary receiver of said court without due process of law.

The amount in controversy exceeds the value and sum of \$3,000.00.

John L. McKinney and the Fidelity Title & Trust Company, plaintiffs in the suits in the federal court to which this action is ancillary and in which the receivers were appointed, have filed cross-bills asking the same relief prayed for by the plaintiff receiver, John M. Landon. George

F. Sharitt, one of the receivers originally appointed by the federal court, and who was retained as receiver by that court after the property was delivered to John M. Landon (originally appointed as receiver by the state court), also has filed a cross-bill asking for the same relief prayed for by John M. Landon. No one of these three cross-complainants was a party to the suits in the Supreme Court of the State of Kansas.

On the 20th day of March, 1916, R. S. Litchfield, one of the state receivers, died, and thereafter John M. Landon was made the sole receiver by the District Court of Montgomery County, Kansas, of The Kansas Natural Gas Company, and was made the sole ancillary receiver of the United States District Court for the District of Kansas for the property in Oklahoma and Missouri. These orders were entered in this cause and the suit ordered to proceed in the name of John M. Landon as the sole plaintiff.

After the filing of the bill of complaint as above set forth, the Public Utilities Commission of the State of Kansas filed a supplemental petition in the mandamus suit brought in the Supreme Court of the State of Kansas, seeking to enjoin the prosecution of the suit in the federal court and demanding that the plaintiff receiver, John M. Landon, be required to comply with the order of the Public Utilities Commission. The plaintiff receiver thereupon attempted to remove the case to the federal court. On the hearing the Supreme Court of the State of Kansas decided that the proceeding was not removable, that there was no order of the Public Utilities Commission which the plaintiff



receiver had refused to obey, that the United States District Court for the District of Kansas was a court of competent jurisdiction to determine the reasonableness of the rate established by the Commission, and had jurisdiction of this suit. (96 Kan., p. 837.) The Supreme Court of Kansas further decided that there was nothing before it for determination and dismissed the suit. (96 Kan. 833.)

The application for temporary injunction was heard by Circuit Judge Sanborn, District Judges Campbell of the Eastern District of Oklahoma and Booth of the District of Minnesota. The Missouri defendants as well as the Kansas defendants attacked the jurisdiction of the court, but all motions testing the jurisdiction of the court were overruled. (See opinion by Circuit Judge Sanborn, 234 Fed. 154.)

On June 3, 1916, a preliminary injunction was granted against the Kansas defendants, including the Public Utilities Commission of that state. (Decree, Rec., p. 294; opinion, Rec., p. 298.) Opinion reported in 234 Fed. 154.

The relief prayed for was granted on the ground that the 28-cent rate was unreasonable under the Kansas statute, confiscatory and deprived the plaintiff receiver of the property in his possession in violation of the Constitution of the United States. The three judges expressed the unanimous opinion that the plaintiff receiver was engaged in interstate commerce and that such interstate commerce was substantially burdened and unduly interfered with by the order of the Kansas Public Utilities Commission. (Rec., p. 306.)

On October 11, 1916, a supplemental bill was filed by John M. Landon as plaintiff receiver, setting forth additional acts of various defendants (especially of the Missouri Public Service Commission) amounting to a substantial burden and undue interference with the interstate commerce conducted by him. (Rec., p. 343.) On June 5, 1917, John M. Landon was discharged as receiver of the District Court of Montgomery County, Kansas, and all the property in his possession as receiver was returned to the United States District Court for the District of Kansas. John M. Landon was appointed as the active managing receiver of the property by the United States District Court for the District of Kansas. (Rec., p. 1029.)

Subsequently, after the taking of much evidence, a decree was entered in this suit by Judge Booth on July 5, 1917, permanently enjoining the enforcement of the 28-cent rate as unreasonable under the Kansas statute, confiscatory and taking property without due process of law under the Federal Constitution, and as an interference with interstate commerce conducted by the plaintiff receiver. The relief was granted not only in favor of the plaintiff receiver, but also in favor of the cross-complainants, The Kansas Natural Gas Company, George F. Sharitt as receiver, the Fidelity Title & Trust Company, and others. (Rec., p. 602.) The opinion of Judge Booth on the issues involved, including a summary of the evidence, is found at page 564 of the record. (242 Fed. 675.)

In a later hearing, involving the Missouri de-

fendants, a decree was entered permanently enjoining the Public Service Commission of Missouri and the other Missouri defendants from substantially burdening and unduly interfering with the interstate commerce conducted by the plaintiff receiver in the state of Missouri. (Rec., p. 621.) The opinion of Judge Booth, entered August 13, 1917, is found at page 615 of the record. (245 Fed. 950.) The court also held in this latter opinion that the contracts between the distributing companies and The Kansas Natural Gas Company had never been adopted by the plaintiff receiver or the court and were not binding upon the plaintiff receiver.

In October, 1916, John M. Landon, as receiver of the state court, had asked the District Court of Montgomery County, Kansas, for instructions as to the binding force and effect of these same contracts. That court determined that the contracts were not binding on the receiver of The Kansas Natural Gas Company. (Rec., p. 548.) An appeal was taken from that judgment to the Supreme Court of Kansas, where the appeal was dismissed, the court stating that there was no substantial difference between the views of the Supreme Court and the order made by the District Court. (102 Kan. 712, l. c. 717.)

An original proceeding of mandamus was instituted in the Supreme Court of the State of Kansas in September, 1916, by the Public Utilities Commission to compel the plaintiff receiver of The Kansas Natural Gas Company, the City of Olathe and The Olathe Gas Company to continue the method of doing business at Olathe until consent

to change should be granted by the Public Utilities Commission. Previous to this the City of Olathe, the plaintiff receiver, and The Olathe Gas Company, the distributing company at that point, had all agreed upon a change in practice, but the consent of the Public Utilities Commission was not secured. The Supreme Court of the State of Kansas directed that the old method of doing business be continued until the same was lawfully superseded by some court of competent jurisdiction. 100 Kan. 593, l. c. 597. Upon a supplemental hearing and the showing that Judge Booth in his decree of August 13, 1917, had decided that the distributing contracts were not binding on the plaintiff receiver, the court dismissed the proceeding. (See appendix to this brief, p. 137.)

From the decrees of July 5, 1917, and August 13, 1917, certain of the Kansas and Missouri defendants have instituted these appeals.

A controlling question in this case is whether or not the plaintiff receiver is engaged in interstate commerce of a national character in the gathering together, transportation and delivery of natural gas produced in Oklahoma to consumers in Kansas and Missouri.

The method of carrying on the natural gas business by plaintiff receiver is set out on pages 17, 18, 19 and 20 of the bill of complaint. (Rec., pp. 18-19.) Briefly, it is this:

Natural gas is furnished by the plaintiff receiver to thirty-seven cities in the state of Kansas and eight cities in the state of Missouri. These include the principal cities in eastern Kansas and western Missouri. The eight cities in Missouri,

however, consume approximately 60 per cent of all the gas produced and sold by the plaintiff receiver, while the thirty-seven cities in Kansas consume only about 40 per cent of all the gas produced and sold by the plaintiff receiver.

This is the same pipe line system as was under consideration in the case of *Haskell v. Kansas Natural Gas Company*, 224 U. S. 217, 32 S. Ct. 442; in *West v. Kansas Natural Gas Company*, 221 U. S. 229, 31 S. Ct. 564, and in *Haskell v. Cowham*, 187 Fed. 403, quoted with approval by this Court in *West v. Kansas Natural Gas Company*, *supra*. In those cases the gathering lines in Oklahoma and in Kansas, together with the main trunk lines extending from Oklahoma through Kansas into Missouri, were under consideration, and this Court decided that the gathering of the gas and transporting it from Oklahoma into Kansas constituted interstate commerce of a national character, with which the states could not interfere. The question now before this Court is whether the transportation of natural gas through those same gathering lines and the main trunk line to consumers in Kansas and Missouri continues to be interstate commerce until the natural gas is delivered to the consumers' burners. The extent and course of the pipe line system at the time of the institution of this suit is shown in Exhibit "Q." (Rec., p. 1142.) The course of gas in transportation from the well to the consumer is explained pictorially by Exhibit "R." (Rec., p. 1142.) The transportation and sale of natural gas includes the following factors: (1) Wells in the field; (2) gathering lines; (3) trunk

lines; (4) distributing company lines; (5) service lines. Each of these are shown in Exhibit "R" above referred to. This Court has already determined that the transportation of natural gas, so far as the first three factors are involved, constitutes interstate commerce of a national character. The only phases of the matter which this Court has not directly determined are the distributing company lines and the service lines.

It must be borne in mind that there is no stoppage at the connection between the distributing company lines and the main trunk lines. The two are joined together and gas moves from one to the other without any interruption. The same is true of the passage of gas from the distributing company lines into and through the service lines.

Approximately 85 per cent of all the natural gas transported and sold by plaintiff receiver is produced in Oklahoma. It is piped from various pools in Oklahoma, as far south as the county of Tulsa in that state, through the system of pipe lines belonging to the Kansas Natural Gas Company and subsidiary companies. No natural gas is sold to consumers in Oklahoma. The natural gas is started on its journey from Oklahoma with the purpose and intent of being transported and delivered to consumers in the states of Kansas and Missouri. The natural gas flows under its natural pressure so far as possible until the pressure becomes so light that the speed is greatly diminished, and then it is run into compressors, which are no more than rapidly moving pistons which compress the natural gas to a high pressure from which it is liberated and speeds on its way

much more rapidly than before. The compressors act as accelerators. There are no reservoirs or storage tanks along the lines operated by the plaintiff receiver, and the natural gas through this unit system of pipe lines is conducted to the city limits of the various cities in Kansas and Missouri, where the pipe lines of plaintiff receiver connect with the local distributing pipe lines which belong to distributing companies in the various cities. There is no interruption of the flow of the natural gas in the change from one pipe line to another, but the natural gas continues to flow under its own pressure to and through the meters of the consumers to the stoves and lamps where it is consumed. The gas moves continuously from the moment it starts on its way from the wells until it is consumed in the various cities.

The plaintiff receiver accepts as his part of the revenue in general  $66\frac{2}{3}$  per cent of the amount collected from the consumers. The local distributing company gets the balance for its services. Prior to the receivership, this division was by virtue of contracts with the distributing companies, but these contracts were declared illegal and not binding on the receiver, but the method, though not the percentage, of division of the revenue has continued the same. Except in Independence, Kansas, the receiver does not operate within the city limits of any city or distribute natural gas. The Kansas Natural Gas Company and its receivers have never been parties to any of the franchises granted the local distributing companies, nor has its receivers ever adopted the terms of any of the franchises.



Fifteen per cent of the natural gas consumed in Kansas and Missouri comes from wells in the state of Kansas. This natural gas is turned into the pipe line system operated by the plaintiff at various points, and is commingled with the natural gas of Oklahoma, so that the two cannot be separated. Of all the natural gas sold by plaintiff, 60 per cent is sold to consumers in Missouri and 40 per cent to consumers in Kansas. So of the 15 per cent of natural gas produced in Kansas 60 per cent is sold to consumers in Missouri and 40 per cent to consumers in Kansas. Forty per cent of the 15 per cent amounts to 6 per cent. Thus only 6 per cent of the total natural gas sold by plaintiff is both produced and sold in Kansas.

The method of transportation used by plaintiff receiver is the most efficient and quickest science has invented to carry natural gas from the point of production to the consumers' burners.

**Citations to Cases Involving Different Phases of  
the Kansas Natural Gas Controversy.**

*McKinney v. Kansas Natural Gas Company*, 206 Fed. 772. Opinion by Judge Marshall determining that the receiver appointed by the District Court of Montgomery County, Kansas, was entitled to the possession of the property in Kansas.

*McKinney v. Landon*, 209 Fed. 300. Affirmance by the Circuit Court of Appeals of the judgment of Judge Marshall in 206 Fed. 772.

*Kansas City Pipe Line Company v. Fidelity Title & Trust Company*, 217 Fed. 187. Decision by the Circuit Court of Appeals, Eighth Circuit, holding the entire pipe line system in Oklahoma, Kansas and Missouri constitutes a unit and should be operated as a matter of comity by the receivers appointed by the District Court of Montgomery County, Kansas.

*Fidelity Title & Trust Company v. Kansas Natural Gas Company*, 219 Fed. 614. Decision by Judge Marshall on application of federal receiver for instructions as to making extensions in Oklahoma ordered by the Public Utilities Commission of Kansas, holding that the business conducted by the receiver was interstate commerce and extensions not subject to the control of the Public Utilities Commission.

*State ex rel. v. Flannelly*, 96 Kan. 372. Decision by the Supreme Court of Kansas that the District Court of Montgomery County, Kansas, did not have jurisdiction of the Public Utilities Commission and its order setting aside the 28-

cent rate as void; also holding that the rate prescribed by the Public Utilities Commission was admittedly too low and would not be enforced by the court. This opinion contains dictum to the effect that the business conducted by the receiver is not interstate commerce—at least not of a national character.

*State ex rel. v. Flannelly*, 96 Kan. 833. Decision dismissing the case reported in 96 Kan. 372, and holding that the United States District Court for the District of Kansas is a court of competent jurisdiction under the Kansas statute to determine the reasonableness of the 28-cent rate.

*Landon v. Public Utilities Commission*, 234 Fed. 154. Opinion by three judges upon application for temporary injunction holding that the court has jurisdiction of both Kansas and Missouri defendants and that the 28-cent rate is unreasonably low and confiscatory; also stating that the receiver is engaged in interstate commerce and not subject to state regulation.

*State ex rel. v. Litchfield*, 97 Kan. 592. A determination that the plaintiff receiver and distributing company cannot change the practice at Olathe without consent of the Public Utilities Commission.

*State ex rel. v. Kansas Natural Gas Company*, 100 Kan. 593. Decision by the Supreme Court of Kansas on the Olathe situation, holding that the method of distributing gas at Olathe should be observed by plaintiff receiver and the distributing company until superseded by a lawful order.

Final judgment in the above case dismissing

the suit and recognizing that the United States District Court for the District of Kansas had superseded the Olathe contract.

*State v. Gas Company*, 102 Kan. 712. Decision dismissing the appeals of the Wyandotte County Gas Company and others from the judgment of October 16, 1916, of the District Court of Montgomery County, Kansas, holding the supply contracts not binding on the receiver.

*Landon v. Public Utilities Commission*, 242 Fed. 658. Opinion by Judge Booth on final hearing holding the 28-cent rate unreasonable and confiscatory and that the plaintiff receiver is engaged in interstate commerce, which is not subject to regulation by state authorities.

*Landon v. Public Utilities Commission*, 245 Fed. 950. Opinion by Judge Booth holding that the Missouri defendants should be enjoined from interfering with the interstate commerce conducted by plaintiff receiver and also holding that the supply contracts are not and never were binding on plaintiff receiver.

*St. Joseph Gas Company v. Barker*, 243 Fed. 206. Opinion by three judges on the St. Joseph Gas Company suit against the Public Service Commission of Missouri.

**The United States District Court for the District of Kansas has jurisdiction over the Kansas and Missouri defendants in this cause because this suit is ancillary and dependent upon suits pending in such court.**

The situation at the time of the institution of this suit is very clearly set forth by Circuit Judge Sanborn, speaking for the three judges at the time of the application for temporary injunction, on the challenge to the jurisdiction of the court. (234 Fed. 154.) After referring to the history of the litigation in the federal court, the appointment of the receivers, and the turning over of the property in Kansas to the Kansas state court, Judge Sanborn says (pp. 155, 156):

"The fact then developed that the property in Kansas, the property in Missouri, and the property in Oklahoma constituted a unit, and that it should not be divided into its three parts and separately operated, without that very spoliation and destruction that is alleged may come from non-compensatory rates, without a depreciation of the value of the property and an impracticability of wise and beneficial operation. At this time the properties in Oklahoma and Missouri were still within the jurisdiction and complete control of this court, and the court in Kansas had not then and never has had any inherent power, nor could the state of Kansas give it any power, to take, manage or control the property in Oklahoma or Missouri. It was in the power of this court at that time to order its receiver, Mr. Sharitt, to operate

the property in Oklahoma and Missouri in harmony with the receiver in Kansas. It was in its power to appoint a master, and to direct that he should see that the receiver of this court should operate in that way. It was in its power to appoint the same man receiver that had been appointed by the Kansas court, and to direct him to operate in harmony with himself; and upon consideration of the facts and circumstances the court came to the conclusion that the wise method of operation was to appoint the same man whom the Kansas court had appointed receiver of the Kansas property its receiver of the Missouri and Oklahoma property, ancillary to the receivership in this court. The Kansas property was delivered over, because the Kansas receiver, the receiver appointed by the Kansas court, had the primary right to take it, to enable that court to discharge its duty, leaving the reversion of the property and the control of it, subject to that temporary operation of the Kansas court, still within the jurisdiction of this court. This court, therefore, appointed the same man who was the receiver of the Kansas court the receiver of this court of the Oklahoma and Missouri property. I say the Kansas receiver because, although two receivers, I know, were appointed, one of them has deceased. It is more convenient to treat this matter as though there was only one receiver in Kansas then, as there is only one now.

Now, whenever it appears to the receiver of this court, or of any court, which has control or management of property of this character, that there is danger of its destruction or depreciation by the wrongful act of

any one, it is the duty of that receiver to apply to the court, whose hand he is, to protect that property from such destruction or interference. And pursuant to that duty this receiver, whose only power over the Oklahoma and Missouri property is derived from this court, has applied to this court by this dependent bill to exercise its power to prevent the depreciation of the property in his possession.

It is the opinion of the court that under these circumstances, however desirous the court might be to renounce or avoid the exercise of power or jurisdiction, it cannot lawfully do so, and that, if the allegations of this bill are true (a question that of course must be hereafter determined), this court has jurisdiction to exercise all the power that it had in the beginning over the property in Missouri and Oklahoma, and over the reversion of the property in Kansas, to prevent the depreciation of any of that property by the wrongful acts of anyone. \* \* \*

Of the contention of the Missouri defendants that the United States District Court for District of Kansas had no jurisdiction of them, Judge Sanborn expressed the judgment of the three judges in these words:

"The Missouri defendants claim that they are not within the jurisdiction of this court, because the process of this court was served on them within the state of Missouri, and not within the state of Kansas. The court is of the opinion that this is one of those cases referred to in Section 56 of the Judicial Code, that the original jurisdiction which this court



obtained by the filing of the original bills and the appointment of the receivers in the original suits still inheres in this court, subject, as has already been said, to the operation of the property in Kansas temporarily until that court shall have discharged its duty in the anti-trust case, and that the power which was invested in this court by the filing of those bills and the orders thereon, copies of which were filed in the federal courts in Oklahoma and Missouri, gave to this court the power to issue its process in any suit brought in aid of the original suits, for the purpose of the protection and administration of the property, to any of the jurisdictions which were ancillary to the original jurisdiction in those suits, and consequently to the defendants in the state of Missouri. This statute says:

'In any case coming within the provisions of this section, in which a receiver shall be appointed, process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within the same district.'

Missouri is within this circuit, and the court is of the opinion that the process was properly issued and served."

It may be noted in addition that the order surrendering the property to the Kansas court retained the potential possession in the United States District Court for the District of Kansas of the property. (Rec., p. 1003.) At the time the decrees here involved were entered the property in Kansas had been returned by the state court to the court below.

Requiring a public utility to operate property under unreasonable and non-compensatory rates is the taking of the property. This taking of the property in piecemeal is just as much an interference with the possession of this court, which has control of and the custody of the property, as though such property was seized by a sheriff on execution under the writ of another court. Anyone who unlawfully interferes with the administration of the property in the possession of a court or attempts to take property without the consent of that court, is subject to such court. Such court may also entertain a proceeding to prevent interference with the property under its control.

If the Public Service Commission of Missouri has required, or is requiring, the plaintiff to keep in force and effect unreasonable rates, or interferes with the plaintiff putting into effect reasonable and compensatory rates, then the United States District Court for the District of Kansas, by reason of its possession, has the right to entertain this bill as ancillary and dependent upon the suits pending in that court wherein the possession of the property of The Kansas Natural Gas Company is held. A federal court of equity has jurisdiction to hear and determine whether an order of a Public Service Commission is compensatory where the penalties for not obeying the order are unreasonable. This alone is sufficient to give the court jurisdiction, and it would give it jurisdiction, not only of the corporation commission, but of all of the officers whose duty it is under the law to enforce such penalties. (*Phoenix Railway Co. v. Geary et al.*, 36 Sup. Ct. Rep. 45, 239 U. S. 277.)

The plaintiff has alleged that the penalties prescribed by the act of the state of Missouri applicable to the situation here involved are unreasonable.

As the bill of complaint not only alleges a taking of the property in violation of the Fourteenth Amendment and an interference with interstate commerce conducted by the plaintiff, but also alleges that the action of the Public Service Commission of Missouri, the Attorney General of Missouri and the attorney of the Public Service Commission of Missouri, amounts to an interference with the property under the control of the court below, it has jurisdiction to determine whether or not the property in its possession is being interfered with and taken without its consent and permission.

Now, it is elementary that a proceeding to prevent an interference with the property in the possession of a court, either actual or potential, is not an original suit, but is in the nature of a dependent or ancillary bill, even though it is filed as an independent action.

In *Krippendorf v. Hyde*, 4 Sup. Ct. Rep. 27, 110 U. S. 276, suit was filed on the equity side to restrain the payment of money under an attachment on the law side. The suit in the law case was based on diversity of citizenship. The lower court dismissed the bill on the ground that it did not have jurisdiction, the plaintiff and defendant being residents of the same state. This Court reversed the lower court, saying that the bill was dependent upon and ancillary to the law case and

the court derived jurisdiction from the law case.  
This Court said:

"The bill in this case is not to be treated as an original bill in equity, for, as such, it could not be maintained. It is altogether ancillary to the principal action at law in which the attachment issued, and should be regarded as merely a petition in that cause, or dependent upon it and connected with it, as petition *pro interesse suo*, or of intervention in an equity or an admiralty suit, asserting a claim to property or a fund in court, the subject of the litigation, which, owing to the peculiar relations between the courts of the states and of the United States, is a necessary resort to prevent a failure of justice, and furnishes in such cases a certain adequate and complete remedy against injurious abuses of the process of the court, by supplying a means, in the principal suit, of trying the title to property in the custody of the law.

The character of the bill as related to the principal case is well explained in *Minnesota Co. v. St. Paul Co.*, 2 Wall. 609, 633, where it is stated 'that the question is not whether the proceeding is supplemental and ancillary or is independent and original in the sense of the rules of equity pleading, but whether it is supplemental and ancillary, or is to be considered entirely new and original in the sense which this court has sanctioned, with reference to the line which divides the jurisdiction of the federal courts from that of the state courts. No one, for instance, would hesitate to say that, according to the English chancery practice, a bill to enjoin a judgment at law is an original bill in the chancery sense of the word. Yet this court has decided many

times that when a bill is filed in the Circuit Court to enjoin a judgment of that court, it is not to be considered as an original bill, but as a continuation of the proceeding at law; so much that the court will proceed in the injunction suit without actual service of subpoena on the defendant, and though he be a citizen of another state, if he were a party to the judgment.'

\* \* \* \* \*

It is in this light, we think, that the court below should have regarded the present bill, not as an original bill invoking the general jurisdiction of the court of equity, but as an ancillary and dependent bill, equivalent in effect and purpose to a petition in the attachment proceeding itself, incident to and dependent upon it.

The form of proceeding, indeed, must be determined by the circumstances of the case. If the original cause, in which the process has issued, or the property or fund is held, is in equity, the intervention will be by petition *pro interesse suo*, or by a more formal, but dependent bill in equity, if necessary."

In *White v. Ewing*, 15 Sup. Ct. Rep. 1018, 159 U. S. 36, an ancillary suit was instituted by a receiver against various debtors of a corporation, many of whom were non-residents of the district within which the suit was brought. In most instances there was a lack of diversity of citizenship, and less than the jurisdictional amount was involved. All of the debtors were joined as defendants in one bill. Under this state of facts the Circuit Court of Appeals certified the following question to this Court for its determination:

"Had the Circuit Court of the United States in a general creditors' suit properly pending therein, for the collection, administration and distribution of the assets of an insolvent corporation, the jurisdiction to hear and determine an ancillary suit instituted in the same cause by its receiver, in accordance with its order, against debtors of such corporation, so far as in said suit the receiver claimed the right to recover from any one debtor a sum not exceeding \$2,000."

This Court determined that the Circuit Court did have jurisdiction, as the suit was ancillary and dependent upon the suit in which the receiver was appointed, and therefore the jurisdictional facts were to be determined by that suit.

See also Foster's Federal Practice, Vol. I, p. 146, 5th ed.; *Root v. Wookworth*, 14 Sup. Ct. Rep. 139, 150 U. S. 401, 413; *Brun v. Mann*, 151 Fed. (8th C. C. A.) 145; *Guardian Trust Company v. Kansas City Southern Railway Co.*, 146 Fed. 337, (8th C. C. A.); *Campbell v. Golden Circle Min. Co.*, 141 Fed. 610 (8th C. C. A.); *Ferguson v. Omaha, etc.*, 227 Fed. 513 (8th C. C. A.).

The other Missouri defendants are necessary in order to permit of a final determination of the case, and are therefore properly included. It therefore appears that the court below has jurisdiction of the Missouri defendants.

**As the United States District Court for the District of Kansas has jurisdiction of the Kansas defendants, there is no misjoinder of causes.**

The objections made by the Public Utilities Commission and the Attorney General of Kansas as to the joinder of the Missouri defendants are not tenable, for the reason that neither of them is injured thereby. (Story, Eq. Pl., Sec. 544; Foster's Federal Practice, 5th ed., Sec. 143, page 509, and cases cited.)

Not only is this suit ancillary to the suits pending in the United States District Court for the District of Kansas, in which it has retained potential possession of the property within the state of Kansas, but, in view of the constitutional questions involved, it has jurisdiction of the Kansas defendants on that ground also. The fact that the order of the Public Utilities Commission is alleged to be confiscatory and the penalties provided for failure to obey the same are unreasonable, gives the court jurisdiction aside from the questions of taking the property without compensation and the interference with interstate commerce alleged by the plaintiff.

Potential possession has been referred to in *Boatmen's Bank v. Fritzen*, 135 Fed., p. 666, (8 C. C. A.) where it was said:

"Moreover, even if the state court had acquired and yet retained *potential* jurisdiction of the personal property in the Weldon suit, it had not taken or sought to take, and it had



not acquired, the actual custody and possession of it."

See also *McKinney v. Kansas Natural Gas Co.*, 206 Fed. 772, p. 780, for use of the word "potential."

That the pipe line system is one entire unit which cannot be operated separately and must be treated as a whole, has been determined by the Eighth Circuit Court of Appeals in *Kansas City Pipe Line Company v. Fidelity Title & Trust Company*, 217 Fed. 187, p. 195. The cities and distributing companies of Kansas and Missouri are necessarily made parties in order to reach a final determination in this suit. The cities are attempting to interfere with the possession of this Court of the property in the hands of plaintiff as an officer of the court. But aside from that, as the property is one unit, interference or injury to the property by various persons may be enjoined in one suit. (*Arthur v. Oakes*, 63 Fed. 310; *Foster's Fed. Prac.* (5th Ed.), Sec. 141, pp. 506, 495.)

The case also comes clearly within Equity Rule 26, which provides for the uniting of causes of action where it appears that such joinder will promote the convenient administration of justice.

Equity rule 26 reads as follows:

"The plaintiff may join in one bill as many causes of action, cognizable in equity, as he may have against the defendant. But when there is more than one plaintiff, the causes of action joined must be joint, and if there be more than one defendant the liability must be one asserted against all of the material de-

*fendants, or sufficient grounds must appear for uniting the causes of action in order to promote the convenient administration of justice. If it appear that any such causes of action cannot be conveniently disposed of together, the court may order separate trials."*

It is the contention of the Kansas Public Utilities Commission that it can fix the rate in Kansas and the Missouri Public Service Commission can fix the rate across the line. Thus we have this public utility subjected to the control of two masters, each striving to get the greatest possible service at a price a little lower than the other, and therefore at the other's ultimate expense.

The Public Service Commission of Missouri has announced and decided that it will not permit any higher rate to be charged in the cities in Missouri than in the border cities of Kansas. This condition is intolerable. The situation demands and admits only of a uniform system or plan of control. The property cannot be dealt with except as a unit. Hence this case falls clearly within Equity Rule 26, and the whole matter should be determined in one plenary suit.

**The question of the control of the Kansas Public Utilities Commission over the interstate commerce conducted by plaintiff is not *res adjudicata*.**

The principal question in this case is interstate commerce. If the commerce conducted by plaintiff receiver is interstate from point of origin to the consumers' burners and national in character, the decree below must be affirmed. We feel the concise and able exposition on the subject of interstate commerce presented by Judge Booth in his opinion in this case (Rec., pp. 588-599) is all persuasive and conclusive. We, however, beg the court's indulgence, in referring to and quoting from some of the cases cited by him and pointing out their peculiar applicability to the facts in this suit.

The character of the commerce conducted by the plaintiff receiver in the transportation of natural gas through the system of pipe lines here involved has been before this Court twice, the Circuit Court of Appeals, Eighth Circuit, once, the Supreme Court of Kansas twice, and the United States District Court for the District of Kansas three times. The Supreme Court of Kansas in its dicta has disagreed with the decisions of the federal courts.

At the outset we are confronted with the contention that the question of interstate commerce, so far as this receiver is concerned, is *res adjudicata*. The contention of the defendants and the answers thereto are so well stated by Judge Booth

in his opinion in the court below that we take the liberty to quote his language (242 Fed. 679; Rec., p. 588):

"It is further claimed on the part of the commission that the question in interstate commerce is *res adjudicata*, having been passed upon by the Supreme Court of the State of Kansas in the case of the *State ex rel v. Flannelly*, 96 Kan. 372.

This contention on the part of the defendant that the question of interstate commerce is *res adjudicata* was presented to the enlarged court, and argued at length, upon the application for a preliminary injunction. That court in its opinion took occasion to discuss the matter, and reached the conclusion that the question was not *res adjudicata*. It is not necessary to repeat what was then said, but it will be sufficient simply to make reference thereto. See 234 Fed. 152.

It is earnestly contended, however, by counsel for the commission, that sufficient consideration was not given by the court to the fact that State Supreme Court of Kansas upon the first hearing in the mandamus matter, No. 21324, though denying the writ, nevertheless retained jurisdiction. The position of counsel for the commission seems to be that the retention of jurisdiction by the State Supreme Court involved necessarily a finding on the question of interstate commerce, and rendered that question *res adjudicata*.

There are at least two answers to this contention. First, the retention of jurisdiction by the State Supreme Court in the mandamus matter was not necessarily based upon such a finding as is now claimed, for there was in the mandamus proceeding another independent

matter which did not necessarily involve the question of interstate commerce, namely, the character of the service which the receiver should be compelled to furnish. The mandamus petition contained a distinct prayer for relief in regard to this latter matter. On the first hearing the court could grant no relief in respect to this matter for the same reason that it could grant no relief in regard to the rate matter, namely, that there was before it no order made by the commission. That the Supreme Court retained jurisdiction in the mandamus proceeding, partly at least on account of this matter of service is apparent from the opinion of the court rendered on the second hearing. At this time also it appeared that the commission had made no order in regard to the character of the service. The Supreme Court said:

'Since it is now conceded that the Public Utilities Commission has made no order requiring the defendants to furnish better or more efficient service the court would not be justified in granting the writ nor in longer retaining the proceeding.'

Second, there was in the mandamus proceeding no 'final judgment' entered of such a character as would render any question in the proceedings *res adjudicata*, or which could be carried by the receiver to the Supreme Court for review. See

*Louisiana Nav. Co. v. Oyster Commission*,  
226 U. S. 99.

*McLish v. Roff*, 141 U. S. 661.

Furthermore the Fidelity Title and Trust Company, trustee under the mortgage made by The Kansas Natural Gas Company, was not a party to the mandamus proceedings, and

was not bound by the judgment entered therein; and it might in subsequent litigation to which it was a party, raise any of the questions involved in the mandamus proceedings. See

*Keokuk Western R. R. v. Missouri*, 152 U. S. 301.

*Old Colony Trust Co. v. Omaha*, 230 U. S. 100.

*Louisville Trust Co. v. Cincinnati*, 76 Fed. 296.

*Williamson v. City of Clay Center*, 237 Fed. 329.

The Trust Company is a party to the present suit, and has at all stages insisted that the business carried on by the receiver is interstate commerce, and not subject to the regulation or control of the Public Utilities Commission of Kansas."

The opinion of the Supreme Court of Kansas, reported in 96 Kan. 372, was delivered on October 4, 1915. In the later decision (96 Kan. 833) in the same case the Supreme Court of Kansas dismissed the suit. The order of the Public Utilities Commission attacked in the court below was dated December 10, 1915, and was not made until after the decision in *State ex rel. v. Flannelly*, 96 Kan. 372. Hence the question of the order of December 10, 1915, is not *res adjudicata*. *State ex rel. v. Leavenworth*, 75 Kan. 787, 790; *Shepherd v. Kansas City*, 81 Kan. 369; *Railway Company v. Cherryvale*, 87 Kan. 57, 62.

The Supreme Court in *State ex rel. v. Flannelly*

nely, 96 Kan. 833, recognizes that the order of December 10, 1915, presented a new cause of action and that its decision as to the former order did not control. In this case, which also relates to the order of December 10, 1915, the opinion of October 4, 1915, would not control.

It is the judgment of the court which controls the question of *res adjudicata* and not the reasons assigned for the judgment. In *Bank v. Brigham*, 61 Kan. 727, p. 731, the Supreme Court of Kansas has stated the doctrine in these words:

"The conclusiveness of a judgment of a court does not exist in the reasons for it, but exists in the judgment itself. The estoppel resides in the judgment and not in the explanatory reasons for rendering it. It not infrequently happens that the decision of an appellate tribunal affirming the judgment of an inferior court is based upon different grounds than those upon which the lower tribunal rested its decision. In such cases the mere opinion of the reviewing court is not *res adjudicata*. It is argumentative only."

The above decision was followed in *State v. Hornaday*, 62 Kan. 334, 337, where it was said:

"In the case of *Hornaday v. The State* (a former decision), the District Court had enjoined the board of trustees from accepting conveyances and making payment for a site which had been bargained for by the legislative committee. Its judgment was affirmed by this court. In the opinion of this court one of the reasons for affirming the judgment of the District Court was that the board of



trustees itself, and not the legislative committee, was authorized to purchase or condemn and make payment for the selected site. Now, this expressed view of the law did not constitute the judgment of this court nor of the District Court, it only constituted a reason for the judgment. As such it is not an estoppel.

\* \* \* \* \*

Estoppels, therefore, where they exist, must be found in the declared and recorded judgments of the courts and not in their argumentative reasoning."

The judgment of October 4, 1915, was that the writ of mandamus be refused. As we have seen, the judgment controls, not the opinion of the court assigning reasons for it. As the judgment did not authorize the Public Utilities Commission of Kansas to exercise any authority over the plaintiff, the question of interstate commerce did not become *res adjudicata*. The Public Utilities Commission of Kansas cannot claim that its assumption of authority over plaintiff as to interstate commerce was affirmed by the order of the Supreme Court of Kansas which refused to compel the plaintiff to obey such order.

In *Railway Company v. Cherryvale*, 87 Kan. 57, p. 62, the Supreme Court of Kansas announced a similar conclusion:

"The further contention that the decision in the former case is a final adjudication of the right to impose the tax can not be sustained. The refusal to enjoin the improvement of this traveled way because no injury

was shown is not an adjudication that the place so improved is a public street."

So in this instance a refusal by the Supreme Court to grant a writ of mandamus compelling the plaintiff herein to obey an order of the Public Utilities Commission is not an adjudication that the Public Utilities Commission has authority to make such an order. It is the judgment which controls, not the reasons assigned for it. Under the decisions of the Supreme Court of Kansas its judgment of October 4, 1915, is not *res adjudicata*.

Whatever may be the position of the plaintiff in this case the judgment of October 4, 1915, is not controlling upon the defendants, Kansas Natural Gas Company and the Fidelity Title & Trust Company, and George F. Sharitt, the receiver originally appointed by the Federal Court, all of whom have filed cross bills praying for the same relief sought by the plaintiff. These parties are entitled to have this question determined, and as they were not parties to the suit in the Supreme Court of Kansas they are not bound by that decision. The privity of the mortgagee with the mortgagor respects only the estate as it existed at the date of the mortgage. It cannot be affected by a decree against the mortgagor to which he is not a party. (*Secor v. Singleton*, 41 Fed. 725; *Louisville Trust Company v. Cincinnati*, 76 Fed. 293, 296, 22 C. C. A. 234; *Laighton v. City of Carthage*, 175 Fed. 145, p. 150.)

The dictum in the opinion of the Supreme Court of Kansas may be persuasive, but it is not controlling. This court will follow its own determination of the questions as set forth in *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 31 S. Ct. 564.

**The sale to Kansas and Missouri consumers of natural gas produced in Oklahoma is interstate commerce, as is also the sale to consumers in Missouri of natural gas produced in Kansas.**

We shall first review the contentions of those Kansas defendants who deny that the plaintiff receiver is engaged in interstate commerce. Counsel for the Public Utilities Commission state their contention in these words, 242 Fed. 679 (Rec., p. 588):

"Our position is, however, that the receiver being a public utility under the laws of Kansas, and actually engaged in a domestic and local business within the state, and employing local franchise in the local sale and distribution of gas, thereby commingling its property with the general property of the state, is unquestionably engaged in intrastate commerce, and has unquestionably taken away from the transaction of importing gas into the state and the sale of the same to customers, all of the interstate features which might have existed had the company not employed local agencies for the sale of gas in said state."

It is admitted by all that the transportation of natural gas by the receiver from Oklahoma into Kansas and thence into Missouri and from Kansas into Missouri is interstate commerce, but it is insisted that at some point before the gas reaches the ultimate consumer the transaction has ceased to be interstate commerce. There is a divergence

of view between the Supreme Court of the State of Kansas and counsel for the Public Utilities Commission of the State of Kansas as to the point at which the interstate commerce transaction loses its character as such. 242 Fed. 682. (Rec., p. 591.) The Supreme Court of Kansas, in *State v. Landon*, adopted the "original package" idea. (96 Kan. 372.) It said:

"The original package of gas is broken when the first gas is taken out of the pipe lines and sold in this state. Thereafter the gas ceases to be an article of interstate commerce."

And again:

"Interstate commerce is at an end when the bulk of the imported gas is broken up for indiscriminate distribution to individual purchasers at retail sale."

The Supreme Court of Kansas also says that even though the business conducted by the plaintiff receiver be interstate commerce, yet it is of such a local character as to be subject to state control, in the absence of regulation by Congress. In the later case of *State ex rel. v. Gas Company*, 100 Kan. 593, l. c. 597 (decided subsequent to the first opinion rendered by Judge Booth in this cause), the Supreme Court of Kansas stresses that part of its former dictum asserting that the interstate business conducted by the plaintiff receiver is of a local character and subject to the control of state authorities until Congress has acted upon the subject.

On the other hand, counsel for the Public Utilities Commission of Kansas claim the transaction loses the character of interstate commerce when the gas passes from the pipe line of the receiver to the lines of the local distributing companies. Counsel for the Commission do not premise their contention upon the fact that 6 per cent of the gas distributed in Kansas originates in the same state. They take the broad position that if all of the gas distributed by the Kansas Natural Gas Company and its agents was obtained in other states than Kansas, still the service is of a local character and subject to local regulation. In their former brief in the court below they say (Rec., p. 591) :

"There is no original package where the transportation is conducted by means of a pipe line. Gas so conducted is not susceptible of delivery in original package." \* \* \*

"We say simply that the character of this service cannot be destroyed or explained away by the fact that any amount, or, indeed, all the amount, of the gas distributed locally by The Kansas Natural Gas Company and its agents was obtained in other states than Kansas. Such service is still a local service not interstate in its character and is subject to local regulations."

The contentions of the Kansas defendants, summarized, are:

1. All defendants admit that the transportation of natural gas from Oklahoma into Kansas and from Kansas into Missouri is interstate commerce.

But such transportation loses its interstate character—

(a) When the original package of gas is broken by drawing off of the first gas for local distribution in Kansas;

(b) By the delivery of the gas to the distributing companies for local distribution;

(c) By the storage of gas in the main trunk lines until it is drawn off for local distribution.

2. Although the business conducted by the plaintiff receiver is interstate commerce, yet it is subject to local regulation because—

(a) The agents of the plaintiff receiver employ local franchises and franchise rights in the distribution of the gas in the cities;

(b) The transportation of natural gas is interstate commerce of a local character, and, until Congress has acted in the premises, is subject to control by the state authorities.

We shall discuss these contentions in inverse order, but at the outset let us direct the Court's attention to a basic fallacy which underlies all of defendants' contentions.

**The protection of the interstate commerce clause extends not only to the transportation of the article, but also to the sale of the article when it arrives at its destination.**

We believe all the contentions by defendants are fundamentally wrong. Their misconceptions are premised on their failure to recognize the fact that the interstate commerce clause of the Federal Constitution protects not only the transportation of the articles in interstate commerce, but its sale after the completion of its journey. The Supreme Court of Kansas has attempted to say in its dicta that when the gas is sold it loses the protection of the interstate commerce clause. Attorneys for the Public Utilities Commission of Kansas assert that by reason of the rendition of a local service by the distributing companies prior to the final sale of the gas interstate commerce ceases. Both of these arguments ignore the extent of the interstate commerce transaction. It is not the transportation alone which is protected, but the sale and delivery of the article as well. If this was not the case, then the right to engage in interstate commerce would be but a mockery and each state could throttle the commerce from any other state by regulating the price at which the article should be sold within its borders. *Heyman v. Hays*, 236 U. S. 178, 35 S. Ct. 403. These contentions of defendants likewise overlook the elements which make up the price charged to the consumers of natural gas.

The price charged for natural gas to consumers



at any point includes the cost to produce or purchase the natural gas, plus the cost of transportation from the place of production to the place of consumption, and profits, if any. The Public Utilities Commission of Kansas recognizes this in its opinion, for it approves a different rate for natural gas dependent upon distance of transportation.

That the receiver owns the gas transported makes it none the less interstate commerce, was decided in the *Oil Pipe Line Cases*, 234 U. S. 548, 58 L. Ed. 1459, 34 S. Ct. 956.

That the price at which natural gas is sold includes the original cost, cost of transportation and profit, if any, makes it no less commerce, either interstate or intrastate, dependent upon where the transportation begins and where it ends.

The protection of interstate commerce extends not only to the transportation of the article, but to the sale of the article when it arrives at its destination and completes its interstate journey. The earliest enunciation of this doctrine is in the case of *Brown v. Maryland*, 12 Wheaton 419, in which Chief Justice Marshall said:

"To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported. Sale is the object of importation, as indispensable to the existence of the entire thing, as importation itself. It must be considered as a competent part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to authorize the importer to sell. \* \* \*

If the principles we have stated be correct,

the result to which they conduct us cannot be mistaken. Any penalty inflicted on the importer, for selling the article, in his character of importer, must be in opposition to the act of congress which authorizes importation. Any charge on the introduction and incorporation of the article into and with the mass of property in the country must be hostile to the power given to congress to regulate commerce, since an essential part of that regulation and principal object of it, is, to prescribe the regular means for accomplishing that introduction and incorporation."

See also to the same effect, *American Express Company v. Iowa*, 196 U. S. 133.

*Minnesota v. Barber*, 136 U. S. 313.

In the case of *Shollenberger v. Pennsylvania*, 171 U. S. 1, 24, the court states that this right to sell in the original package exists *even though the original package is suitable for sale to the retail trade*, that is the ultimate consumer.

Congress in the Wilson Act removed this right of first sale or of sale in the original package as to intoxicating liquors. Otherwise, it remains unaffected.

Because the courts for convenience have stated the rule in terms of "the original package" it will not escape the court's attention that the original package feature of it is not the rule, but is simply a convenient means of applying the rule. An examination of the cases discloses that the courts have recognized that the power of sale is an inseparable attribute of the enjoyment of the rights

of ownership; that it would be a mere trifling with words to give freedom to interstate commerce without also giving the power of disposal. The rule actually is that freedom of interstate commerce extends during its transportation and until the article is sold. In other words, it extends to the first sale after the transportation is ended. Natural gas does not come in packages. Hence, there is no place for the short name for the rule found by the courts in other cases to be convenient. The rule, of course, extends as much to a commodity not capable of confinement in a package as to an article that is, and the importer of natural gas has a right to enjoy the freedom given to him by the Constitution just as much as the importer of intoxicating liquor; that is, he has the right to sell it without regulation and without interference by state authorities. The receiver sells this gas but once, and whether it be to the distributing companies or through the distributing companies is immaterial. The right to sell an imported product is guaranteed by the Constitution just as well as the right to import it.

From these decisions it follows the position of the defendants is erroneous and the interstate character of the business conducted by plaintiff is not destroyed by the numerous sales to consumers.

**The transportation and sale of natural gas in interstate commerce is national in character.**

That the regulation of the interstate transportation of natural gas is not local in its character is disclosed by the history of The Kansas Natural Gas Company. In 1907 Oklahoma passed a law prohibiting the construction of pipe lines for the transportation of natural gas except by a domestic corporation whose charter should provide that the gas should not be transported outside the state. The constitutionality of that Act was passed upon by the Circuit Court of Appeals, 8th Circuit, in *Haskell v. Cowham*, 187 Fed. 403. Cowham owned gas wells in Oklahoma and desired to transport the natural gas from such wells into the state of Kansas for sale in that state. Circuit Judge Sanborn, in delivering the opinion of the court, announced the doctrine:

"Interstate commerce in natural gas, including therein its transportation among the states by pipe line, is a subject national in its character and susceptible of regulation by uniform rules. The silence or inaction of Congress relative to such a subject is a conclusive indication that it intends that interstate commerce therein shall be free, and any law or Act of a state or of its officers which prohibits it or substantially restrains its freedom is violative of the Constitution and void."

Circuit Judge Sanborn, in conjunction with District Judges Booth and Campbell, reiterated the

same view in regard to the interference by the state of Kansas with the business conducted by the plaintiff receiver, upon the application for preliminary injunction in this cause. 234 Fed., l. c. 164. The case of *Haskell v. Corzham*, *supra*, was approved and followed by this Court in *West v. Kansas Natural Gas Company*, 221 U. S. 229, 31 S. Ct. 564, which involved the same system of pipe lines as here concerned.

The statute of Oklahoma of 1907 forbidding the transportation of natural gas in interstate commerce was held by this Court to be unconstitutional. In the *West* case this Court dealt with the same gathering lines and the same trunk lines that are here concerned. The same question of the right of local regulation of interstate commerce was presented there as is urged here, and this Court said:

"But this overlooks the affirmative force of the interstate commerce clause of the Constitution. The inaction of Congress is a declaration of freedom from state interference with the transportation of articles of legitimate interstate commerce, and this has been the answer of the courts to contentions like those made in the case at bar. *State ex rel. Corwin v. Indiana & O. Oil Gas & Min. Co.*, 120 Ind. 575, 6 L. R. A. 579, 2 Inters. Com. Rep. 758, 22 N. E. 778; *Benedict v. Columbus Constr. Co.*, 49 N. J. Eq. 23, 23 Atl. 485, and also in *Haskell v. Corzham* (April 7, 1911), United States Circuit Court of Appeals, Eighth Circuit."

Continuing, this Court referred to the case of *Haskell v. Cochran*, 187 Fed. 403, in these words:

"As said by the Circuit Court of Appeals in the Eighth Circuit, no state can by action or inaction prevent, unreasonably burden, discriminate against, or directly regulate, interstate commerce or the right to carry it on. And in all of these inhibited particulars the statute of Oklahoma offends."

Thus has this Court already determined that natural gas is as much a commodity as iron, ore, coal or petroleum and can be transported in interstate commerce as can those products. This court has in unmistakable terms announced that the inaction of Congress is a declaration of freedom from state interference with the transportation of natural gas in interstate commerce. (See also *Haskell v. Kansas Natural Gas Company*, 224 U. S. 217, 32 S. Ct. 442.)

Further evidence of the national character of the transportation of natural gas in interstate commerce is furnished by the litigation in this case. Judge Booth in his opinion in this case, after quoting from the decisions of this Court in *South Covington Ry. Co. v. Covington*, 235 U. S. 537, 35 S. Ct. 158, and the decision in *Haskell v. Cochran*, *supra*, summarizes the situation in these words (242 Fed. 687-9):

"If anything further than the foregoing statement as to the character of the business actually carried on, and the application thereto of above cited authorities, were necessary in order to establish that the business carried on

by the receiver is interstate in its character, and of such a nature as not to be properly susceptible of or subject to local state regulations such as the 28 cent rate order, we have the statement of the Public Utilities Commission itself in its opinion of July, 1915, which opinion concluded with the following language:

'It developed upon the hearing that more than half the natural gas supplied and marketed by complainants is sold in the State of Missouri. It is conveyed by means of pipe lines passing through Kansas City, St. Joseph and other cities in our sister state. It would be manifestly unfair to permit complainants to advance the price of gas to their Kansas patrons unless a corresponding increase were made to consumers in Missouri. It is conceded that an advance in Kansas without a similar one in Missouri would be unavailing for the purposes contemplated by complainants, and they do not desire any advance in Kansas except as it may be simultaneous with a corresponding one in Missouri.'

'This Commission, therefore, awaits the pleasure and action of the rate-regulating body or bodies of Missouri having jurisdiction of the subject matter; and if in that State proper and necessary orders be issued establishing a schedule of rates as herein outlined, an order, effective, if possible, simultaneously, will be issued by this Commission in accordance with the views herein expressed.'

The same conclusion was apparently reached by the Supreme Court of the State of Kansas, in *ex rel Flannelly* 96 Kansas, 372, when in its opinion the court said:

'The last question for our consideration concerns the legality of the rates, both those that



are in existence at the present time and those named in the opinion of the Commission. The Commission finds that where the net price of gas to consumers is now 25 cents per thousand cubic feet, the rate should be increased to 28 cents. This, in effect, is a finding that the rates now in existence are not compensatory. It then became the duty of the Commission to fix compensatory rates, taking into consideration the gas sold in Missouri, assuming that compensatory rates will be fixed in Missouri. However, we may say that obedience to law in making rates in Kansas cannot legally be made dependent on obedience to the same law in Missouri.'

The State of Kansas itself has thus realized that the business carried on by the receiver is of such character that the fixing of rates thereon is not a merely local matter:

Furthermore, control over the supply of gas is not within the power of the Commission. The supply is an important element, however, in the fixing of rates. This state of affairs militates strongly against a conclusion that the business is of such character as to be properly subject to state control in the matter of rates.

The case of *Manufacturers Heat & Light Company v. Ott*, 215 Fed. 940, relied upon by the defendant Commission, must be disregarded if it conflicts with the decisions above cited, for these decisions are binding upon this Court. It may, however, in my opinion, be distinguished by the fact that the great bulk of the business transactions considered in that case were concededly intrastate, and the portion claimed to be interstate of very minor importance; whereas in the instant case exactly the reverse of those facts is true.

It is true that about six per cent of the gas delivered by the receiver in Kansas is produced in Kansas, but this cannot alter the general situation.

Where a substantial part of a business is interstate commerce, the imposition of burdens and regulations thereon by state action cannot be justified by the fact that a portion of the business thus sought to be controlled and regulated is intrastate.

See *LeLoup v. Port of Mobile*, 127 U. S. 640, 647.

*Norfolk Ry. v. Penn.*, 136 U. S. 114-119.

*Crutcher v. Ky.*, 141 U. S. 47, 59.

*Galveston Ry. v. Texas*, 210 U. S. 217, 228.

*W. U. Co. v. Kansas*, 216 U. S. 1.

*Williams v. Talladega*, 226 U. S. 404, 419."

In the case of *South Covington Ry. Co. v. Covington*, 235 U. S. 537, 35 S. Ct. 158, this Court in passing upon a municipal ordinance governing and regulating street cars running between that city and Cincinnati, Ohio, said with reference to one of the sections making it unlawful for the company to permit to ride in its cars more than one-third of the number of passengers over and above the number for which seats were provided therein, stated as follows:

"If Covington can regulate these matters, certainly Cincinnati can, and interstate business might be impeded by conflicting and varying regulations in this respect, with which it might be impossible to comply. On one side of the river one set of regulations might be enforced and on the other side quite a different set, and both seeking to control a prac-

tically continuous movement of cars. As was said in *Hall v. DeCuir*, 95 U. S. 485, 489, 'commerce cannot flourish in the midst of such embarrassments.' "

"We need not stop to consider whether Congress has undertaken to regulate such interstate transportation as this, for it is clearly within its power to do so, and absence of federal regulation does not give the power to the state to make rules which so necessarily control the conduct of interstate commerce as do those just considered."

So here, as Judge Booth has pointed out, if Kansas can regulate the business conducted by plaintiff receiver, then Missouri can do the same thing, and by conflicting rates and regulations the interstate business of the receiver will be destroyed. In fact, except for the protection granted by the court below, the interstate business conducted by the receiver would now be at an end owing to the burdens imposed by the state commissions.

It has been acknowledged that the transportation of natural gas by pipe lines is the only practical method of handling that article. *Haskell v. Cowham*, 187 Fed. 403. This Court has recognized the same condition prevails as to the transportation of oil by pipe line. *Pipe Line Cases*, 234 U. S. 548, 58 L. Ed. 1459.

The system of pipe lines operated by plaintiff receiver supplies 45 cities and towns, extends a distance of approximately 400 miles from the wells in Oklahoma to St. Joseph, Missouri, and in addition has many miles of lateral lines. But this

system, as the bulletins and reports of the Bureau of Mines, Department of the Interior, show, is but one of many systems in the United States transporting natural gas in interstate commerce. The fields of West Virginia supply many of the principal cities of Ohio and Western Pennsylvania; likewise the cities of Louisville, Kentucky, and Baltimore, Maryland. The fields of Oklahoma supply many cities not only in Oklahoma, but in south central Kansas. Texas and Louisiana also have their pipe line systems. From the fields of Illinois and Indiana for many years natural gas has been transported in interstate commerce. The present mileage of pipe lines transporting natural gas in interstate commerce compares quite favorably in extent with the mileage of railroads in the United States at the time of the decision of this Court in *Wabash, St. L. & P. R. Co. v. Illinois*, 118 U. S. 557, 30 L. Ed. 244, when it was held that the inaction of Congress was a declaration that states should not and could not determine rates for the transportation of goods by railroads in interstate commerce. The magnitude of the systems transporting natural gas indubitably negatives the contention that the interstate commerce conducted is of a local character and subject to local regulation. As this Court decided in *West v. Kansas Natural Gas Company*, *supra*, the inaction of Congress is a declaration of its intention that the field should be free from interference by the state.

**The use of franchise rights and local agencies in the distribution and sale of natural gas does not subject the interstate commerce conducted by the plaintiff receiver to state control.**

It is contended by defendants that the interstate character of the business transacted by the plaintiff receiver is lost by employing local franchises in the local sale and distribution of gas. This contention is not new; it was urged upon this court in *West v. Kansas Natural Gas Company, supra*. The State of Oklahoma insisted that, since it had the right to refuse to grant the power of eminent domain to a gas corporation, it could in that manner interfere with interstate commerce. This Court denied the right of the State of Oklahoma to regulate the transportation of natural gas in interstate commerce through the refusal to grant franchises. The same contention was presented to this Court in *Western Union Telegraph Company v. Foster*, — U. S. —, 38 S. Ct. 438, known as the Ticker Cases. It was there urged that, since the state granted to the telegraph companies the use of the streets under franchises, the state had the power to control the business of the telegraph company. In answering that contention, this Court said: (P. 439.)

"It is suggested that the State gets the power from its power over the streets which it is necessary for the telegraph to cross. But if we assume that the plaintiffs in error under their present charters could be excluded from the streets, the consequence would not follow.

Acts generally lawful may become unlawful when done to accomplish an unlawful end, *United States v. Reading Co.*, 226 U. S. 324, 357, 33 Sup. Ct. 90, 57 L. Ed. 243, and a constitutional power cannot be used by way of condition to attain an unconstitutional result. *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 30 Sup. Ct. 190, 54 L. Ed. 355; *Pullman Co. v. Kansas*, 216 U. S. 56, 30 Sup. Ct. 232, 54 L. Ed. 378; *Sioux Remedy Co. v. Cope*, 235 U. S. 197, 203, 35 Sup. Ct. 57, 59 L. Ed. 193."

It follows that the position of defendants in this respect is untenable. The granting or withholding of franchises cannot be used by the states as a means of unduly burdening interstate commerce.

The employment of local agencies in the nature of distributing companies does not change the character of the commerce conducted by the plaintiff receiver. With one or two exceptions, the distributing companies do no business except to transport and distribute the natural gas transported in interstate commerce by the plaintiff receiver. Employment of local agencies in itself would not authorize the state to regulate the interstate commerce conducted by the plaintiff receiver.

Local incidental service at the initial point of the journey does not prevent the interstate character from attaching to the shipment; nor does a similar incidental local service at the end of the journey destroy that character.

*So, Pac. Term. Co. v. I. C. C.*, 219 U. S. 498.

*United States v. Ill. Cent.*, 230 F. 940.

*Penn. R. Co. v. Clark Co.*, 238 U. S. 456, 465-8.

*So. Ry. v. Prescott*, 240 U. S. 632.

*Penn. Ry. Co. v. Sonman*, 242 U. S. 120.

*Grand Union Tea Co. v. Evans*, 216 F. 791.

*City Lee Summit v. Jewel Co.*, 217 Fed. 965.

Even did the distributing companies also do an intrastate business, it would not give to the state authority to regulate the interstate business. The Supreme Court of Kansas, in *State ex rel. v. Flannelly*, 96 Kan. 372, and *State ex rel. v. Litchfield et al.*, 97 Kan. 592, took the position that the distributing companies were but the agents of the receiver of The Kansas Natural Gas Company.

If the distributing companies are to be considered agents of the receiver of The Kansas Natural Gas Company, then this case comes within *Crenshaw v. Arkansas*, 227 U. S. 389; *Singer Sewing Machine Company v. Brickell*, 233 U. S. 304, 58 L. Ed. 974, 34 S. Ct. 493; *Davis v. Virginia*, 236 U. S. 697, 35 Sup. Ct. Rep. 479; and *Stewart v. Michigan*, 232 U. S. 665, 58 L. Ed. 786, 34 S. Ct. 476, for the order for the natural gas is given by the consumer to the distributing company long before the gas is started in the course of transportation. When the consumer connects with the distributing company's system, he thereby asks for a supply of natural gas to be furnished him at all times in the future. It is with the knowledge of the demands of these consumers and for the purpose of supplying them, that the receiver starts his natural gas in the course of transportation from Oklahoma to Kansas.



The State of Michigan, in the case of *Stewart v. Michigan, supra*, 232 U. S. 665, 58 L. Ed. 786, 34 S. Ct. 476, attempted to impose a tax upon a salesman, under the following circumstances: Stewart solicited orders in Michigan for groceries and other merchandise, to be shipped from his Chicago store. Duplicates of the orders were sent to his manager at Chicago and goods corresponding to the orders were shipped in carload lots from Chicago, consigned to Stewart at points in Michigan. Upon arrival of the cars in Michigan the goods were delivered to customers by draymen employed by Stewart, who filled the orders from the cars by checking from the original orders, there being no identifying marks on the packages except as to their contents. There was some evidence to show that some orders were sold by Stewart from the car without previous solicitation. The trial court instructed the jury that because of the fact that the goods had no identifying marks on them, and because the goods were consigned to Stewart, the sales were not consummated until delivery was made to the merchants. This court decided that the rule announced in *Crenshaw v. Arkansas, supra*, applied and that Stewart was not subject to any license tax, because he was engaged in interstate commerce. The sales of natural gas by the plaintiff receiver are no more indiscriminate than the sales by Stewart. The same rule should apply to both.

If, however, the distributing companies are considered independent but in the nature of connecting carriers, the same result is reached. The

relationship of the distributing companies, we do not deem important. It is the *purpose* and *intent* with which the transportation is commenced and the *manner* in which the transportation is conducted, which controls.

**The use of the distributing companies' systems in the distribution and sale of natural gas does not change the interstate character of the commerce conducted by plaintiff receiver to intrastate.**

What is the manner in which the plaintiff receiver conducts interstate commerce in natural gas? The following statement of the interstate transactions of the plaintiff receiver is taken from the opinion by Judge Booth, 242 Fed., l. c. 681, in the court below, who in turn quotes from the Supreme Court of the State of Kansas:

"In determining the question whether the transactions carried on by the receiver constitute interstate commerce, it will be helpful to have clearly in mind just what those transactions are. The Supreme Court of the State of Kansas in *State ex rel. Flannelly, supra*, has stated the matter as follows:

'The gas sold by the receivers is produced in both Kansas and Oklahoma. It is transported from the wells through pipe lines beginning in Oklahoma, entering the State of Kansas near Coffeyville, at which place gas is first distributed and sold to consumers. The remainder is transported north through pipe lines into which gas from wells in Kansas is conveyed, and the gas from Oklahoma and Kansas is then transported through the same pipe lines and through compressing stations to Independence and north and east throughout this state, and after supplying the consumers in this state, it is transported into the state of Missouri, where it is sold to other consumers. After the gas from this state is

discharged into the pipe lines with the gas from Oklahoma, it is impossible to distinguish one from the other or to separate one from the other. About 85 per cent of the gas sold is produced in Oklahoma, and 15 per cent is produced in Kansas. About 60 per cent of the gas sold is sold in Missouri and 40 per cent is sold in Kansas. The gas sold in Kansas is delivered to the consumers thereof, in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities, fixing the rates charged customers for gas. These distributing companies act as agents for The Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of The Kansas Natural Gas Company, under the control of the receiver, into the pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of The Kansas Natural Gas Company to the consumers. The gas is consumed as fast as it is sold, and is consumed immediately after passing through the meter measuring the gas to consumers."

And again in the course of his opinion, 242 Fed. 684, Judge Booth summarizes the business transacted by the receiver in this manner:

"Reverting to the character of the business transacted by the receiver, it is to be noted.

(a) That the shipment is started on its journey from one state to another, (b) with the purpose that it shall be delivered to a con-

sumer, (c) that it moves continuously from a point of shipment in one state to the consumer in another state, (d) that it is moved part of the way in the pipe lines of the receiver and part of the way in the pipe lines of the distributing company; whether as agent of the receiver or as connecting carrier is immaterial. (e) The destination of the shipment is intended at the time of the shipment to be beyond the state, although the name of the particular consumer for any specific portion of the gas shipped is not known. (f) There is no stoppage in transportation. (g) The title to the gas remains in the receiver until delivery to the ultimate consumer.

In substance and effect there are continuing orders by the consumers to the receiver through the distributing company to supply them with gas from the Oklahoma fields. Such transactions have the character of interstate commerce at their inception, and this character continues until final delivery.

*Crenshaw v. Arkansas*, 227 U. S. 389 and cases cited.

Even though the shipment is started before a definite order for a specific amount is given, still, the continuous and usual course of business determines the character of the shipment.

*Swift & Co. v. United States*, 196 U. S. 375.

*Grand Union Tea Company v. Evans*, 216 Fed. 791.

Applying the foregoing principles to the facts in the case at bar, the conclusion follows that the transportation of gas carried on by the receiver is interstate commerce, and that the character of the business inheres from the

beginning of the journey in Oklahoma to the termination thereof at the burner tips in Kansas or Missouri."

As the court below found, the transportation of the gas does not cease until the gas is consumed. The contention that the gas is at rest, that the whole pipe line system constitutes one huge reservoir from which the gas is taken off as needed by the consumers, is not supported by the evidence and is contrary to the finding of the court below.

As is shown by the affidavits of John M. Landon, V. A. Hays, and Samuel S. Wyer, (Rec. pp. 1700, 1701, 1145, 1155), the natural gas is in the course of continuous transportation from the moment it leaves the wells in Oklahoma or Kansas until it is consumed in Kansas or Missouri.

There is no such thing as a reservoir or storage tank in which the natural gas comes to rest and is drawn off as required. The truth of the matter is that the greater part of the year the receiver is not able to furnish the natural gas rapidly enough to meet the demand. It would require a reservoir capable of holding millions and millions of cubic feet to store natural gas sufficient to meet the needs of consumers for even a few hours. The compressors are merely rapidly moving pistons, which, instead of stopping the flow of the natural gas for a moment, increase the speed with which the natural gas travels through the pipe lines to a rate greater than that of an express train. (See Exhibits R and S, pp. Rec. 1142, affidavit of Samuel S. Wyer, and pp. 1125 and 1137, same affidavit.)

In order to bring the transportation within the protection of the interstate commerce clause, it need not be conducted by one carrier alone. Plurality of carriers does not affect the question.

The authority for the above is found in the case of *South Covington & C. Street R. Co. v. Covington*, 235 U. S. 537, 35 Sup. Ct. 158:

"This court has repeatedly held that whether given commerce is of an interstate character or not is to be determined by what is actually done, and if the transportation is really and in fact between states; the mere arrangements of billing or plurality of carriers do not enter into the conclusion."

It is the purpose and intent with which a shipment is commenced that determines whether the commerce is interstate throughout or interstate to a given point and then intrastate from that point forward. There may be a change of ownership in transit without affecting the character of the shipment. (*Gulf, Colorado & Santa Fe R. Co. v. Texas*, 204 U. S. 403, 51 L. Ed. 540, 27 Sup. Ct. Rep. 360.)

The case of *Kelley v. Rhoads*, 188 U. S. 1, 23 Sup. Ct. Rep. 259, 47 L. Ed. 361, shows that the purpose which is formed at the commencement of this shipment and carried out in the transportation determines the question of whether or not it is interstate commerce. In that case sheep were being driven from Utah through Wyoming to Nebraska. While so traveling they were allowed to graze over the land. They were assessed in the County of Laramie, Wyoming, for taxation. In regard to this matter the court said:



"The question turns upon the purpose for which the sheep were driven into the state. If for the purpose of being grazed, they are expressly within the first section of the act. But if for the purpose of being driven through the state to a market, they would be exempt as a subject of interstate commerce, though they might incidentally have supported themselves by grazing while actually in transit."

A leading case on the subject is that of *Swift & Company v. United States*, 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. Rep. 276. The defendants were charged with violation of the federal anti-monopoly law. It was urged that defendants were engaged in the business of buying live stock at Chicago, Omaha and other points, slaughtering such live stock at their places of business in the different states and converting such live stock into meat for human consumption. Defendants were also engaged in the business of selling such fresh meats at the several places where they were so prepared to dealers and consumers in various states of the United States other than those wherein the meats were prepared. The meats when so sold were transported over a railroad to the dealers and consumers. Defendants were also engaged in the business of shipping such fresh meats to their respective agents at markets in other states for sale by these agents to dealers and consumers. The defendants' slaughtering establishments were largely in different states from those of the stock-yards, and the sellers of cattle largely in different states from either. It was objected that the part of the bill charging a combination of independent

dealers to restrict competition of their agents when purchasing stock for them in the stockyards did not constitute a case of commerce among the states. Of this the court said:

"Taking up the latter objection first, commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of cattle is a part and incident of such commerce. What we may say is at least true of such a purchase by residents in another state from that of the seller and of the cattle. And we need not trouble ourselves at this time as to whether the statute could be escaped by any arrangement as to the place where the sale is in point of law consummated. See *Norfolk & W. R. Co. v. Sims*, 191 U. S. 441, 48 L. Ed. 254, 24 Sup. Ct. Rep. 151. But the 6th section of the bill charges an interference with such sales, a restraint of the parties by mutual contract, and a combination not to compete in order to monopolize. It is immaterial if the section also embraces domestic transactions.

It should be added that the cattle in the stockyards are not at rest to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co. v. Speed*, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365."

This Court also held that the selling of meats by persons in other states after shipping to their agents, and through them selling to buyers in other states, was interstate commerce. In this connection we wish to call attention to the opinion of the court below in the same case (122 Fed. 529, 533) followed by this Court, in which Judge Grosscup said:

"Coming now to the other branch of the transaction—the sales by the defendants—a like result follows. Unquestionably it is interstate commerce when purchasers from other states buy directly from the defendants, and have the meats shipped to them by the vendors. The situs of such a transaction, both as to initiatory intercourse, and as to transportation in furtherance of the exchange, includes a state other than the one from which defendants deal.

I think the same is true of meat sent to agents, and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agents' principal. The agents represent the principal at the place where the exchange takes place; but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business. Indeed, such privity exists between the principal and the transaction that he could, at the instant, as a citizen of another state, sue upon the transaction in the Federal Courts; nor have I any question that if the conditions of this case were reversed, so that the defendants were invoking the shelter, instead of seeking to escape, the obligations of the commerce clause, federal law would be found equal to the protection asked."

This Court distinguished the case of *Hopkins v. United States*, 171 U. S. 578, 43 L. Ed. 290, 19 Sup. Ct. Rep. 40, where suit was brought against local commission merchants at the stockyards to restrain them from entering into agreements as to the commission to be charged on sales of cattle. The court said the brokers were not buyers and sellers, as they only furnished facilities for the sale and were not a part of interstate commerce.

It thus appears from the foregoing cases that where cattle are shipped from one state to stockyards in another and there the ownership is changed, the live stock converted into meat and forwarded to points in other states, the whole is interstate commerce, as the cattle are, when started on their journey to the stockyards, sent with the expectation that they will end their transit after purchase in another state, with only the interruption necessary to find a purchaser. Stress is laid on the fact that such is a recurring practice. The present case is much stronger than that of *Swift & Company v. U. S.*, for here the gas moves without interruption or change in ownership from the gas fields in Oklahoma to consumers in Kansas and Missouri. It is more than a recurring course of dealing. It is constant and continuous. When the gas is started in its course of transportation it is with the intent and purpose that it shall be delivered to consumers without interruption in transportation. The *Swift & Company* case is decisive and stamps the transportation from the Oklahoma gas fields to consumers in Kansas and from Kansas to consumers in Missouri as interstate commerce.

In the Swift & Company case there was a use of local agents at the termination of the journey in disposing of the product; there was a stoppage and storage at the stockyards; there was a change of the article from live stock to dressed beef; the ultimate destination was unknown, as well as the ultimate consumer; there was no privity of contract between the ultimate consumers and Swift & Company; yet the transaction from the beginning to the delivery of the dressed meat through the local agents to the consumers was held by this Court to be interstate commerce.

In *Southern P. Terminal Co. v. Interstate Commerce Commission*, 31 Sup. Ct. Rep. 279, 219 U. S. 498, the facts were: The Southern Pacific Terminal Company owned no locomotives or cars, but possessed certain wharfage privileges at the Port of Galveston. It leased one pier to a shipper by the name of Young, which relieved him from all wharfage charges except as included in the yearly rental. The Terminal Company was a party to numerous circulars issued by the Southern Pacific Railroad Company, which circulars showed terminal charges on export cottonseed cake and meal. The Terminal Company contended that the order of the Interstate Commerce Commission directing it to desist from giving privileges and undue advantage to Young transcended its jurisdiction in that it regulated commerce purely intrastate and also purely foreign, neither of which was subject to its authority. The following language is taken from the opinion:

"In support of this contention it is insisted that the evidence shows the following facts: The cake and meal purchased by Young are bought by him in Texas, Oklahoma, Louisiana, and Arkansas, but chiefly in Texas, and shipped to him on bills of lading and way-bills, showing the point of origin in those states and the destination at Galveston. The purchases are made for export, there being no consumption of the products at Galveston. His sales to foreign countries are sometimes for immediate and sometimes for future delivery, irrespective of whether he has the product on hand at Galveston. At times he has it on hand. At times, therefore, orders must be filled from cake to be purchased in the interior or then in transit to him. When the cake reaches Galveston it is ground into meal and sacked by Young, and for the meal thus ground and such meal as has been brought to his customers he takes out ships' bills of lading made to his order.

This evidence establishes, appellants contend, that the transit of the cake and meal is absolutely ended at the leased premises at Galveston, and that it is a final point of concentration and manufacture, the cottonseed cake being there manufactured into meal and sacked for export. But this does not distinguish between the meal and the cake, nor between the meal that is purchased at points outside of Texas and directly exported from that so purchased and manufactured on the wharves of the Terminal Company. Nor does it take account of the fact that the wharves were intended for shipping facilities, a means of transition from land carriage to water carriage. It is manifest, as we have said, that to make the wharves manufacturing or

concentrating points for one shipper, and not for all, is to give that shipper a preference. And, being a preference, the traffic necessarily comes under the jurisdiction of the Interstate Commerce Commission. In other words, the manufacture or concentration on the wharves of the Terminal Company are but incidents, under the circumstances presented by the record, in the trans-shipment of the products in export trade, and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the Commission said, the substance of things and make evasions of the act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by their delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the Terminal Company being a part of the railway for such purpose."

This Court reached the same conclusion in *T. & N. O. R. Co. v. Sabine Tram Company*, 227 U. S. 111, 33 Sup. Ct. Rep. 229. Lumber was being shipped from an interior point in Texas to Sabine, within the state of Texas. There it was switched to the docks in reach of ships' tackle and was there loaded into chartered vessels and carried to foreign ports. The Sabine Tram Company sold the lumber to W. A. Powell Company, delivered f. o. b. cars at Sabine, Texas. After the lumber arrived at Sabine it was



switched to the docks at the instance and under the direction of the agents of Powell Company. If the shipment from the interior point in Texas to Sabine by the Sabine Tram Company was an intrastate shipment, the rate was  $6\frac{1}{2}$  cents per hundred pounds; and if it was a part of an interstate shipment, the rate was 15 cents per hundred. Fifteen cents was charged by the railroad, and the Sabine Tram Company sought to recover the difference. The contention of the Sabine Tram Company was that the continuity of movement was the test to determine the character of the shipment to Sabine; that is, an unbroken movement proceeding under the original arrangement of shipment; that there were no means or arrangements for the movement of the lumber in Sabine, that being left to intervening third parties, and a subsequent act after it was delivered to Powell Company. After reviewing the case of *S. P. T. Co. v. Interstate Com. Com.*, *supra*, 31 S. Ct. 279, 219 U. S. 498, and *Railroad Commission v. Worthington*, *post*, 225 U. S. 101, 32 S. Ct. 653, the court said:

"It is said, however, that the Sabine Tram Company had no connection with the lumber after its arrival at Sabine, and had no concern with its destination after it came into the hands of the Powell Company, and had no particular knowledge thereof. Like circumstances undoubtedly existed in *Southern P. Terminal Co. v. Interstate Commerce Commission*. It did not prevail there and cannot prevail here. The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real

and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various character by the steps in its transportation would be extremely artificial. Once admit the principle, and means will be afforded of evading the national control of foreign commerce from points in the interior of a state. There must be transshipment at the seaboard; and if that may be made the point of ultimate destination by the device of separate bills of lading, the commerce will be given local character, though it be essentially foreign.

That it is the nature of the traffic, and not its accidents, which determines its character, is illustrated by *Railroad Commission v. Worthington, supra*."

This Court then proceeds to distinguish the case of *G. C. & S. F. v. Texas, supra*, 204 U. S. 403, 51 L. Ed. 540, 27 S. Ct. 360, by saying that not until the corn was delivered to the Hardin Company at Texarkana, and after it had been held at that point for five days and the freight paid did the Hardin Company acquire the means of fulfilling its contract with Saylor & Burnett, and then, and not until then, did it start to fulfill its contract with Saylor & Burnett. After making the distinction above noted the court continues:

"The facts in the case at bar are different. The lumber was ordered, manufactured, and shipped for export. And we say 'shipped', for

we regard it of no consequence that the Sabine Company had no concern or connection with it after it reached Sabine. Its relation to the shipment was a perfectly natural one, and did not change the relation of the Powell Company to it, and make the lumber other than lumber purchased at Ruliff, and started from there in transportation for a foreign destination. The findings are explicit and circumstantial as to this. And this shipment was not an isolated one, but typical of many others, which constituted a commerce amounting in the year 1905 to 14,667,670 feet of lumber, and in the year 1906, 39,554,000 feet. Nor was there a break, in the sense of the interstate commerce law and the cited cases, in the continuity of the transportation of the lumber to foreign countries by the delay and its transshipment at Sabine. (*Swift & Company v. United States*, 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. Rep. 276.) Nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments."

A similar decision was reached in the case of *Railroad Commission of Louisiana v. T. & P. Ry. Co.*, 229 U. S. 336, 33 Sup. Ct. Rep. 837. Lumber was shipped under local bills of lading from interior points in Louisiana to New Orleans, there to be delivered to a shipper, but intended by the shipper to be exported to foreign countries and treated accordingly by both shippers and carriers. In applying the foregoing cases to the facts in the latter case this Court said:

"The principle enunciated in the cases were that it is the essential character of the com-

merce, not the accident of local or through bills of lading, which determines federal or state control over it. And it takes character as interstate or foreign commerce when it is actually started in the course of transportation to another state or to a foreign country. The facts of the case at bar bring it within the ruling. The staves and logs were intended by the shippers to be exported to foreign countries, and there was no interruption of their transportation to their destination except what was necessary for transshipment at New Orleans."

In the Sabine Tram Company case, *supra*, and in *Railroad Commission of Louisiana v. T. & P. Ry. Co.* *supra*, not only were the ultimate consignees unknown to the shipper, but the destination itself had not been determined when the shipments commenced their journeys. There was no privity of contract between shipper and the ultimate consignee; there was an intervening service by another carrier at the wharf; there was a change of ownership of the article transported; and yet the entire transaction constituted interstate commerce and was not subject to the rates prescribed by the state.

As in the Sabine Tram Company case, the natural gas when it leaves the field in Oklahoma is intended for the consumers' burners attached to the other end of the lines. While the names of these consumers are unknown to the plaintiff receiver and while there may be no privity of contract between the plaintiff receiver and such consumers, yet the plaintiff receiver is assured that

the natural gas so started by him will be consumed at the burner tips in Kansas and Missouri, for there is no other outlet for it.

It is a matter of public knowledge that the great bulk of the natural gas furnished the 45 cities supplied by plaintiff receiver comes from Oklahoma and is transported by the system of pipe lines operated by plaintiff receiver. So when a consumer attaches his service line to the distributing system and asks for natural gas, in effect he places a continuing order with the plaintiff receiver to transport natural gas from Oklahoma direct to his burner tips.

The course of travel of the gas is much more certain than that of the lumber started on its way to Sabine. There is no opportunity for diverting the shipment in transit. The only thing known to the shipper in the Sabine case was that the lumber was intended for export. Here the receiver knows that the gas started in Oklahoma will be consumed in some one of the 45 cities and towns supplied by him by consumers whose service lines are already connected to the system. The lines of the distributing companies in the various cities are more directly connected and continuous than the railroads and the wharf in the Sabine Tram Company case. The system of pipe lines is continuous from the wells in the field to the consumers' burner tips. From the very nature of the method of transporting natural gas there can be no transfer in transit. The receiver's lines, the distributing companies' lines, and the consumers' service lines are as directly connected as is one

joint of pipe in the main trunk line to the next joint. Unlike the Sabine Tram Company case, there is no change of title. The ownership of the natural gas remains in the plaintiff receiver from the time it is started on its journey in Oklahoma until it is consumed at the burner tips. The present case is one of much more rapid transportation, much more direct connection, and less incidental service by third parties, than any case ever before submitted to this Court involving the transportation and delivery of an article in interstate commerce.

Mr. Justice Hughes in the case of *Pennsylvania R. v. Clark Brothers Coal Mining Company*, 238 U. S. 456, 35 Sup. Ct. Rep. 896, in passing upon the question of the right of redress of a shipper for unjust discrimination in the matter of coal car distribution discussed all the late cases of the Supreme Court of the United States on the question of interstate commerce. The proposition was again laid down that in determining whether commerce is intrastate or interstate regard must be given to its essential character. Mere billing or the place at which title passes is not determinative.

The gas transported by the plaintiff is not sold to the distributing companies but is sold direct to the consumers, the receiver obtaining a certain per cent of the total collections for the gas for its transportation from the wells to the distributing company while the distributing company gets a certain per cent for the distribution of the gas from the gates of the city to the consumers' meters.

*The character of the commerce, however, would*

be unchanged if the sale was made outright to the distributing company. In the Clark case the coal was sold f. o. b. cars at the mines, but the fact that the coal was to be transported to other states made it interstate commerce and the collecting of cars for the purpose of transporting the coal was held to be also a part of interstate commerce.

The case is cited with approval by this Court in *Pennsylvania Railroad Company v. Sonman Shaft Coal Company*, 37 Sup. Ct. Rep. 46, 242 U. S. 120, in which it was held that the sale and delivery of coal f. o. b. at the mine for transportation to purchasers in other states was a movement in interstate commerce and the facilities required are facilities of interstate commerce. The Supreme Court of Pennsylvania had decided that as the coal was sold f. o. b. at the mine the commerce involved was intrastate, even though the coal was going to purchasers outside of the state. This Court held that this was error. It was interstate commerce and not subject to state regulation.

A very late case by this Court is that of *A. T. & S. F. R. Co. v. Harold*, 36 Sup. Ct. Rep. 665, 241 U. S. 371. It is necessary to analyze the facts in this case in order to understand the point decided. The car of corn was shipped from Yanka, Nebraska, over the U. P. Railroad and was consigned to Topeka, Kansas. At Topeka, Kansas, the car was delivered to the A. T. & S. F. R. Co., but that company finding the car defective refused to accept it. The corn was transferred to another car and that was delivered to the A. T. & S. F. R. Co., which transported it to Elk Falls, Kansas.



The question in the case was whether the shipment from Topeka to Elk Falls was intrastate or whether it was part of the original interstate movement from Yanka, Nebraska. The case is important because it involved a change of carriers and a change of ownership of the corn after it left Yanka, Nebraska, and before it reached Elk Falls, Kansas. This Court decided that notwithstanding the change of carriers and the change of ownership and the fact that the original bill of lading had been surrendered and a new one issued, yet the movement from Topeka to Elk Falls was not intrastate but part of the interstate movement that was contemplated at the time the shipment began, although the definite point of delivery of the car was not known at the time the movement was commenced.

The case of *Railroad Commission v. Worthington*, 225 U. S. 101, 32 Sup. Ct. Rep. 653, is directly in point. Worthington was the receiver of the Wheeling & Lake Erie Railroad Co., and brought suit in the United States Circuit Court for the Northern District of Ohio against the Railroad Commission of Ohio to enjoin the enforcement of an order of the commission fixing and establishing a rate of 70 cents per ton on what is called "lake cargo coal," transferred from points in eastern Ohio to the port of Huron, Ohio, on Lake Erie, and thence by lake vessels. An attempt was made to dismiss the appeal to this court from the Circuit Court of Appeals on the ground that as the bill in intervention was ancillary to the receivership suit, the jurisdiction of the Court of Appeals was

determined by the original bill, and its decree was therefore final. This Court held that as the bill in intervention raised a federal question it was therefore appealable to this Court. This Court said of the interstate commerce feature:

"The question thus presented is: Was the Railroad Commission of Ohio authorized to put in force the rate in question as to lake cargo coal? It is not necessary to review the cases in this Court which have settled beyond peradventure that the national government has exclusive authority to regulate interstate commerce under the Constitution of the United States; nor to do more than reaffirm the equally well settled proposition that over interstate commerce transportation rates the state has no jurisdiction, and that an attempt to regulate such rates by the state or under its authority is void. (*Louisville & N. R. Co. v. Eubank*, 184 U. S. 27, 46 L. Ed. 416, 22 Sup. Ct. Rep. 277.) And an order made by a state commission under assumed authority of the state, which directly burdens or regulates interstate commerce, will be enjoined. (*McNeill v. Southern R. Co.*, 202 U. S. 543, 50 L. Ed. 1142, 26 Sup. Ct. Rep. 722.)

The question is, then, one of fact. Does the transportation which the rate prescribed by the Railroad Commission of Ohio covers constitute interstate commerce?

It is true that the shipper transports the coal ordinarily upon bills of lading to himself, or to another for himself, at Huron or Lake Erie. The so-called 'lake-cargo coal' is necessarily shipped beyond Huron. If it stops there, another and higher rate applies. Practically all of it is put on vessels for carriage beyond the state, usually to upper lake ports,

and then, and only then, the 70-cent rate fixed by the commission applies. This 70-cent rate covers the transportation of coal to Huron, the placing of it on board vessels, and, if necessary, trimming it for the continuance of its interstate journey. It is true, as argued by the learned counsel for the commission, that this coal may be accumulated in large quantities at Huron, and only taken out of the accumulated lots from time to time, when it is to be put upon vessels and shipped out of the state, but it must always be remembered that this 70-cent rate applies solely to such coal as is in fact placed upon vessels for carriage to beyond the state points; and, as the Circuit Court said, the substance of things is not changed by the fact that a small part may be unloaded at one of the Ohio islands in Lake Erie. The situation then comes to this: that the rate put in force is applicable only to coal which is to be carried from the mine in Ohio to the lake, there placed upon vessels and thence carried to upper lake points beyond the state. By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such, and the rate fixed by the commission, which is in controversy here, is applicable alone to the coal which is thus, from the beginning to the end of its transportation, in interstate carriage, and such rate is intended to and does cover an integral part of that carriage, the transportation from the mine to the Lake Erie port, the placing upon the vessel, and the trimming or distributing in the hold, if required, so that the vessel may complete such interstate carriage."

After reviewing the cases on the subject, the opinion continued:

"It is contended that this transportation of the coal under the rate fixed by the railroad commission is not within the power and authority of the Interstate Commerce Commission under Sec. 1 of the act to regulate commerce, which makes the provisions of the act inapplicable to the transportation of property wholly within one state, and not shipped to or from a foreign country, from or to a state or territory; and, furthermore, that a transportation of the character here in question is only within the jurisdiction of the Interstate Commerce Commission when it is a transportation partly by railroad and partly by water, when both are used under a common control, management or arrangement for a continuous carriage or shipment; and therefore that the subject matter in question is left within the state jurisdiction. On the other hand, it is contended that this transportation is within the jurisdiction of the commission under the act to regulate commerce. It is enough to now hold, as we do, that the establishing of the rate in question is an attempt to regulate interstate commerce, and is therefore beyond the power of the state or a commission assuming to act under its authority.

We therefore reach the conclusion that, under the facts shown in this case, the Railroad Commission, in fixing the rate of 70 cents for the transportation above described, attempted to directly regulate and control interstate commerce, and, for that reason, the enforcement of its order should be enjoined."

If, therefore, the shipment is started on its journey from one state to another with the purpose that it shall be delivered to the consumer, and if the shipment moves continuously from a point in one state to consumers in another state the entire transportation is interstate commerce. The fact that in the present case the natural gas moves part of the way in the pipe lines of the receiver and part of the way in the pipe lines of the distributing companies makes no difference in the character of the commerce. The movement is continuous and the purpose is not changed. At the inception of the transportation the intent and purpose is to move the natural gas continuously until delivered to the consumer in another state. That purpose and intent is carried out in every instance from the time the transportation is commenced. The destination of the gas is known at the time the transportation begins. The natural gas thus moved is intended for delivery to consumers in another state. There is no stoppage in transportation. There is no change in the title to the gas, though it moves through pipe lines of the distributing companies. The journey is continuous, and the distributing companies are paid on the basis of a percentage of the total charge made for the gas carried. (See 96 Ks., p. 378.) In other words, the distributing companies occupy the same position as connecting carriers, and the gas moves in a like manner as if a carload of coal was shipped from Oklahoma over a railroad, delivered to a terminal company at the outskirts of the city, and by the terminal company

delivered to the consignee. The terminal company is engaged in interstate commerce, and the carriage of the carload of coal is interstate commerce. (*United States v. Terminal Association of St. Louis*, 224 U. S. 383, 32 Sup. Ct. Rep. 507. *So. Pac. Terminal Co. v. I. C. C.*, *supra*, 31 S. Ct. 279, 219 U. S. 498.)

This is not a case like *G. C. & S. F. R. Co. v. Texas*, *supra*, nor is it like the case of *C. M. & S. T. P. Co. v. Iowa*, 34 Sup. Ct. Rep. 592, 233 U. S. 334, where the shipments were made from a point without the state of Iowa to Davenport, Iowa, and there held in the cars four or five days, bills of lading surrendered by the consignee, freight paid, and then shipments afterwards billed out in the same cars to points in Iowa pursuant to sales made after the cars had arrived at Davenport. There is no delivery of the natural gas to the consumer before the transportation is completed, nor is there any holding by the distributing company until a sale can be effected, but the gas is delivered to a destination known before the transportation is begun in Oklahoma. Neither is the gas paid for by the consumer when it is delivered to the distributing company, nor does the consumer control the movement of the natural gas at the time of the delivery to the distributing companies. The natural gas moves continuously to the destination and pursuant to a purpose fixed and known at the inception of its interstate journey. This transportation consequently falls within the doctrine of the *Worthington*, *Sabine Tram Co.*, *S. P. T. Co.*, and *Swift & Company* cases. As said in

the Worthington case, even though the interstate transportation may not be within the jurisdiction of the Interstate Commerce Commission, it is not subject to interference or regulation by state commissions. See also *United States v. Freeman*, 36 Sup. Ct. Rep. 32; *McNeill v. S. R. Co.*, 26 Sup. Ct. Rep. 732, 202 U. S. 543; *N & W. R. Co. v. Sims*, 24 Sup. Ct. Rep. 151, 191 U. S. 441; *Memphis v. Cumberland T. & T. Co.*, 218 U. S. 624, 31 Sup. Ct. Rep. 115; *Barker v. K. C. M. & O. R. Co.*, 94 Ks. 176, 178; *Kirby v. Railroad Co.*, 94 Kan. 491; *Baer Bros. v. D. & R. G. R. R.*, 233 U. S. 479, 65 L. Ed. 1055.



**The original package doctrine has no application to this case.**

Those seeking to sustain the authority of the state over various interstate commerce transactions have of late endeavored to seek comfort in an attempted analogy to an original package—this whether the thing transported be information or gas. In the Ticker Cases, 38 S. Ct. 438,—— U. S. —— (decided by this Court May 20, 1918), the highest court of Massachusetts applied the original package doctrine as to breaking bulk. (113 N. E. 192, l. c. 198.) Information was transmitted in Morse code over telegraph lines to Boston; there translated into English and then forwarded by means of ticker service to customers within the city. The Supreme Judicial Court of Massachusetts said:

“While no analogy between information and chattels can be perfect, the case at bar in principle is indistinguishable from a purchase of a quantity of like books by the telegraph companies in New York for a gross price for the lot, the transportation of these in interstate commerce to their Boston offices, where the original packages are opened and single books sold there to individual customers, to whom they are delivered by messengers of the telegraph companies. The method of dealing with them after the interstate commerce is ended by delivery in bulk at the main offices, is no part of interstate commerce. In this respect the case is like

the cabs of the railroad employed solely in the local transportation of passengers who have come in interstate travel, which are subject to local regulation and are not a part of interstate commerce. *Pennsylvania Railroad v. Knight*, 192 U. S. 21, 24 Sup. Ct. 202, 48 L. Ed. 325. The ticker service under the circumstances here disclosed is subject to the law of the state. *Mutual Film Corp. v. Industrial Commission of Ohio*, 236 U. S. 230, 241, 35 Sup. Ct. 387, 59 L. Ed. 552."

This Court, however, said the analogy to an original package breaking bulk was misleading and held the entire transaction from New York to the customers at the end of the ticker in Boston was interstate commerce and not subject to state regulation.

If the application of breaking bulk is misleading in that case it is equally misleading here. The original package argument is divided into phases, namely, (1) that the entire system is one huge reservoir, and (2) the drawing off of the first gas by consumers in the state of Kansas breaks the bulk.

We shall discuss the reservoir theory first.

It is absurd to say that a pipe line not exceeding 16 inches in diameter, extending from the gas fields in Oklahoma on the south to St. Joseph, Missouri, on the north, a total distance of approximately 400 miles, constitutes one huge reservoir. It has been held by this Court and it is admitted by defendants that the gas moving from Oklahoma through the trunk line into and across the state line into Kansas is being transported in

interstate commerce. If one end of this alleged reservoir is part of a transportation system for interstate commerce, then why is not the other end? The transportation of natural gas by pipe line is the only practical method of transporting natural gas. *Haskell v. Cowham*, 187 Fed. 403; *Pipe Line Cases*, 234 U. S. 548, 58 L. Ed. 1459; 34 S. Ct. 956. The method employed by the plaintiff receiver is the usual and customary manner of transporting natural gas. It is as rapid and continuous as science can make it. No other system or method has been suggested in the evidence, nor is any other system known. If there is any stoppage or storage in transit, it is but momentary, incidental and only such as is necessary in the transportation of gas in such huge quantities. The consumers in every 24 hours are drawing off through each service line gas for domestic use. In fact, this drawing off process is almost continuous.

The Missouri defendants have presented this question of the pipe lines being a reservoir in a little different way. They claim with reference to Kansas City that the natural gas is stored in holders and in the pipe lines for a short period before it is delivered to the consumers. It is true that at Kansas City at some times the distributing company accumulates a surplus which is held in old manufactured gas holders or tanks to meet the increased demands of sudden lowered temperatures. This storage is never for more than a few days or so. It is merely incidental and done for the purpose of rendering better service to the same consumers who were connected with the

distributing system when the same gas started on its way from Oklahoma and for whom that same gas was intended when it began its interstate journey.

To express the contention another way, the natural gas is stored in holders and the pipe lines as reservoirs from which the consumers draw off their supply as needed, the supply in the holders and pipe lines as reservoirs being constantly replenished by the pumping in of more gas transported from Oklahoma.

Defendants claim that during the night the gas is packed into the pipe lines, to be drawn off in the morning at the time of the peak load. Mr. Hurlburt, defendants' expert, admitted that no other method of transportation or storage is feasible, and the storage or packing in the pipe lines was a necessary element in the transportation of the gas and that if this storage did not exist it would be necessary to have much larger pipe lines—in fact, pipe lines and compressor stations so large as to be prohibitive. (Rec. p. 810.) Mr. Wyer in his evidence stated that the storage in the pipe lines and holders was only incidental to the transportation of the natural gas and was the customary method used in the practical transportation of natural gas over long distances. (Rec. p. 811.) Mr. Hurlburt admitted there was a constant and continuous movement of the gas from Oklahoma through the pipe lines in Kansas and Missouri to the burner tips of consumers in Missouri. He also admitted that the gas was always in motion because of the continual drawing

off of the gas by consumers during the night. (Rec. p. 810.) Mr. Wyer in his affidavit, Exhibit No. 2, (Rec. pp. 1125, 1137), and on the witness stand (Rec. p. 811), describes the movement of the gas: that it is never at rest, but is a constantly seething, moving mass between the gas sand in the field and the consumers' fixtures in the cities; that natural gas travels at enormous velocities in the mains, at a speed many times exceeding that of the fastest train, and that it can go only in one direction; that there is no delivery until the gas has not only passed through the consumer's meter, but is burned at the consumer's fixtures.

The continuous movement of the gas is also described in the opinion of the Supreme Court of Kansas in the Flannelly case, 96 Kan. 372, quoted in the decision of the lower court. (Rec. p. 590.)

The question thus presented to this Court is whether the incidental storage of natural gas in the pipe lines and in holders destroys the interstate character of the movement.

That the pipe line has, as we all know, unequal drafts made upon it during the different parts of the day; that the compressor engines are kept going substantially at the same rate during the whole day; that the result is, that at the times in the day when the draft upon the pipe line is least, the gas is packed into the pipe line through which it is transmitted, so that there are more molecules of gas in a given pipe space than at those periods of the day when a great draft is made upon the supply; that all the time the gas is in continuous motion, at varying speeds; that there is no hour in

the day when some drafts are not being made upon the system, so that there is always an outgo, that to some extent diminishes the quantity driven into the line by the compressors; and defendants contend that because there are more molecules in a given pipe line space at these certain times, such fact transforms the pipe line during those times from a transportation line to a storage line. Their whole contention is simply that the *diminished drafts* and the *continued pressure* result in packing into the given pipe space a greater number of gas molecules. Now to show the impossibility of this being a sound contention:

We all know that heat expands, and cold contracts, the size of gas molecules; that is to say, with the pressure constant (continuing the same), and no outlet, a cubic foot of gas-containing space will contain a greater or smaller number of gas molecules, as the temperature reaching that gas is high or low. Now the rule is, with relation to the effect of temperature on gas, that there is a diminution of one per cent (1%) in the space occupied by gas, by the dropping of approximately five degrees (5°) F. of temperature. So that, with a change of 50 degrees F. of temperature, there is about nine-tenths the space occupied by it that it occupies when the temperature is 100 degrees F. Temperatures differ at different places in the line, and at different hours in the day. The result under such a contention is that the same pipe is transformed from a transportation main into a storage line and from a storage line into a transportation main, as the temperature goes up

or down. In other words, the situation is very like the nightcap-sock in Goldsmith's poem, which was "a cap by night, a stocking all the day." The utter absurdity of such a contention in the light of such a situation is manifest by the mere statement of it.

The varying pressures are but incidents, and necessary incidents, to the business of transporting this commodity in interstate commerce. With infinitely more reason, could it be argued that a railroad car, while standing on the track waiting for the change of engines, is, by the fact of its being stationary, transformed into a warehouse, than it could be argued that the varying pressure and the varying number of molecules in the given space, resulting therefrom, change the transportation line, in which the gas is *all the time moving*, from a transportation line into a storage line. In a recent decision, *McFadden v. Alabama Gt. So. R. Co.*, 241 Fed. 562 (3rd C. C. A.), it was contended that the fact that, in transit, certain cotton stopped long enough to be compressed, changed the interstate character of the commodity and movement from interstate to state, the court very properly held that since the compressing of the cotton was a mere incident to the interstate transportation, it could not change the interstate character of the commerce to state commerce. This is in line with wheat that is brought by rail to the lake lines, and is passed through the elevator in order to be conveniently loaded into the vessels; it may rest in the elevator a day or more, and even be milled into flour, but such facts do not change the interstate character of the commerce.



The rule undoubtedly is, that goods started on an interstate journey retain their interstate character, and so remain within the dominion of the commerce clause of the Federal Constitution, from the time they start on such a journey until the delivery, and all things that may be done to or with the commodity, which are mere incidents to the transportation, in no wise change the interstate character of the transaction.

The court below asked the witness, Hurlburt, (Rec. p. 810), if continuing action of the compressor engines was necessary to maintain the pressure so as to enable the gas to be delivered in conformity with commercial necessities; the answer was that it was so necessary; the result from that is to show that the varying pressures are simply incidences of the transaction, and since the pressure has to be maintained, the compressing is not only an incident, but a necessary incident, to the interstate transaction; and so far from the situation presented by defendants establishing the intrastate character of the commerce, it demonstrates that it continues to be interstate commerce, since the changes in pressure are unavoidable incidents to the interstate commerce and can in no wise change its interstate character.

After the gas is stored in the holders it is forced back into the distributing company's lines and system by means of compressors. (Rec. p. 813.) That the transportation is not ended when it reaches the holders is shown by the evidence in this case and the statement of the court below in its decision of April 21, 1917, as follows (Rec., p. 593):

"In substance and effect there are continuing orders by the consumers to the receiver through the distributing company to supply them with gas from the Oklahoma fields. Such transactions have the character of interstate commerce at their inception, and this character continues until final delivery.

*Crenshaw v. Arkansas*, 227 U. S. 389, and cases cited.

"Even though the shipment is started before a definite order for a specific amount is given, still the continuous and usual course of business determines the character of the shipment."

The transportation is not completed until delivery to the consumer at his burner tips.

The analogy of the pipe line system to a huge reservoir lying on its side, tapped by service lines of the consumer, is misleading. If this pipe line system in contemplation of law is a huge reservoir, then the pipe line system in the Pipe Line Cases *supra* also constituted a huge reservoir. But this Court held otherwise. It also held otherwise in *West v. Kansas Natural Gas Co.*, *supra*, involving this same system of pipe lines. A truer comparison would be that the pipe line system, with the distributing companies' lines and the service lines constitutes one arterial system, with natural gas instead of blood flowing through the main arteries of trunk lines and the branch lines and through the branch lines diffused continuously to the capillaries or service lines, to its ultimate destination. In fact, the main trunk line system running from Oklahoma to the northern part of Missouri,

with branches to Topeka and Lawrence on the one hand, and to Kansas City and Joplin on the other, with innumerable smaller branches to other cities, and the distributing system at the end of each of these branches, with the service lines connected to the distributing system, constitutes a huge artery of commerce, and, being an artery of interstate commerce, is entitled to protection from state interference contemplated by the Commerce Clause of the Constitution of the United States.

Now let us turn to the other original package theory as advanced by the Supreme Court of Kansas, in the case of *State, ex rel. v. Flannelly*, 96 Kan. 372. The original package doctrine is applicable only to goods which have come to rest after their interstate journey and are intended to be transported no further in interstate commerce. Its purpose is to protect goods in the original package while in the hands of the importer until sold by him. It is not applicable, nor has it ever been applied, to goods in the actual course of interstate transportation. It has no application here as the natural gas moves continuously until delivered to the consumers. The natural gas is not mixed with the common mass of property within the state until it is sold and delivered to the consumer.

Another trouble with the analogy attempted to be drawn by the Supreme Court of Kansas, is that the natural gas in the service pipe belongs to the receiver and is paid for by the consumer at his meter. There is no storage of the gas in the pipes, as the Supreme Court would indicate. The gas is

moving almost continuously. There is not even the interruption that was true of the coal on the docks in the Worthington case, where it was held for some time, or of the cottonseed cake and meal in the S. P. T. Co. case, or the lumber at Sabine, as in the Sabine Tram Company case. The narrow application of the original package doctrine employed by the Kansas Supreme Court cannot be applied here.

The attempt to liken the case to the wagon and carload of corn ordered by the farmer has no application. No one would doubt that the horse or wagon or carload of corn while in the course of transportation and before it is delivered to the farmer is protected by the interstate commerce clause. The farmer occupies the position of the consumer, and not the distributing company.

We are not contending that after the natural gas reaches the consumer that it is subject to the protection of the interstate commerce clause, but we insist that the wagon and horse while being carried to the farmer and the common carrier who transports the wagon and horse are within the protection of the interstate commerce clause; and so the receiver who transports the natural gas and charges the consumers at the meter for the transportation, from the wells, the natural gas being continuously moved, is within the protection of the commerce clause of the Constitution of the United States, and not subject to state interference, although he is not within the jurisdiction of the Interstate Commerce Commission.

A pipe line cannot possibly be a package, and

not being a package the doctrine of the original package cases cannot be applied. A package is something that binds and holds an article within itself and does not permit it to pass outside of the borders of the package. A pipe line is no more a package than is a highway or railroad. A pipe line is primarily a conveyor and has a movement through it of different particles or different articles. Webster's Dictionary defines a pipe as a "long or hollow body, especially such a one as is used as a conductor of water or other fluids." It is thus seen that a pipe line is diametrically opposed to a package.

This Court in the Pipe Line Cases, 234 U. S. 548, 58 L. Ed. 1459, 34 Sup. Ct. Rep. 957, has recognized pipe lines as carriers. Pipe lines perform the same function as the rails of a railroad. They guide the movement of the article and prevent it from moving sidewise, aiding it in its movement forward. If a box car filled with wheat was broken open, the wheat would scatter all over the ground and would not be susceptible of further movement. A box car in one sense contains or holds the wheat, but no one would attempt to apply to it the original package doctrine and say that while a carload of wheat was in transit from Oklahoma to Missouri passing through Kansas, its interstate character would be lost by reason of the throwing out or leaking out of several bushels of wheat. Of course, the wheat that is thrown out and scattered over the ground ceases to be transported in interstate commerce, but the wheat left in the car and continuing on

its journey to Missouri has not lost its character as an article transported in interstate commerce. So in this case the natural gas which is taken out or drawn off from the pipe lines and consumed ceases to be a part of interstate commerce, but the natural gas which remains within the mains and continues on its course does not thereby lose its character as an article transported in interstate commerce any more than the wheat remaining in the car does.

In *Western Oil Refining Company v. Lipscomb*, 244 U. S. 346, 37 S. Ct. 623, the oil left in the tank car intended for Mount Pleasant, Tennessee, was still entitled to the protection of the interstate commerce clause after the withdrawal of the oil at Columbia, Tennessee. The taking of the oil from the tank car at Columbia did not place the oil so withdrawn or the remainder left in the tank car within the authority of the State of Tennessee.

Again, if the doctrine of the Supreme Court of Kansas is correct, the case of *Kelley v. Rhoads*, *supra*, was wrongly decided. In *Kelley v. Rhoads*, the sheep did not move continuously. In fact, they moved but eight or nine miles per day. They were at rest at night. Applying the doctrine announced by the Supreme Court of Kansas, if one sheep had been sold during the journey of the flock across the State of Wyoming, we would be obliged to say that the interstate character of the transportation of the rest of the sheep was lost. This, however, was not the case. Not only did the interstate character of the transportation extend to the balance of the flock, but as to the one sheep

sold the protection of the commerce clause would be over it until the transaction of the sale was completed. It is just as sensible to say that the shepherd and his dog are the package which held the sheep together in their interstate movement as to say that the pipe line is the package holding the natural gas. If the shepherd had mingled sheep bought within the State of Wyoming with the flock, and had permitted the whole flock to move forward, then according to the theory of the Supreme Court of Kansas, the interstate character of the whole flock would have been destroyed and the sheep would all have been subject to taxation. The mere statement of these matters shows the impossibility of applying the doctrine of the Supreme Court of Kansas to natural gas moving in pipe lines:

The Supreme Court of Kansas states:

"The original package of gas is broken when the first gas is taken out of the pipe lines and sold in this state. \* \* \* If the analogy of original packages or importation of property in bulk applies to gas in the mains, it ceases to apply when thousands of service pipes are filled with gas, to be drawn off at such times and in such quantities as the individual consumer desires. Interstate commerce is at an end when the bulk of the imported gas is broken up for indiscriminate distribution to individual purchasers at retail sale."

The Supreme Court of Kansas errs because it fails to recognize that the protection of the commerce clause extends not only to the transportation



of the article but to its delivery at final destination as well. The delivery is not completed until the natural gas reaches the consumers' burners.

In *Rossi v. Pennsylvania*, 238 U. S. 62, 35 Sup. Ct. Rep. 677, Rossi, who lived across the state line in Ohio, went into Pennsylvania, procured orders for liquor, returned to Ohio, loaded the liquor upon his wagon and crossing the state line delivered it to the residences of the purchasers in Pennsylvania pursuant to the contracts. This case too arose under the Wilson Act. In reversing the Supreme Court of Pennsylvania and holding that the transactions were within the protection of the interstate commerce clause, this Court said:

"As has been recently pointed out in *Kirmeyer v. Kansas*, 236 U. S. 568, 572, 59 L. Ed. —, 35 Sup. Ct. Rep. 419, the transportation of intoxicating liquor, as of other merchandise, from state to state, is interstate commerce, and state legislation which penalizes it or directly interferes with it, otherwise than as permitted by an act of Congress, is in conflict with the commerce clause of the Federal Constitution; and while Congress, in the Wilson Act, declared in substance that liquors transported into any state, or remaining therein for use, consumption, etc., shall, upon arrival in such state, be subject to the operation and effect of its laws enacted in the exercise of the police power, to the same extent and in the same manner as though the liquors had been produced in such state, and shall not be exempt therefrom by reason of being introduced in original packages, this does not subject liquors transported in interstate commerce to state regulation *until after*

*their arrival at destination and delivery to consignee or purchaser."*

Thus it is seen that interstate commerce does not cease until delivery to the purchaser or consignee.

The Supreme Court of Kansas in *State ex rel. v. Flannelly*, 96 Kan. 378, held that the natural gas here involved is not sold by the receiver to the distributing companies, but that the sale is to the consumers to whom the gas is delivered. It follows that interstate commerce does not cease until the delivery is made to the consumer and purchaser, and the transportation of natural gas from Oklahoma to consumers in the state of Kansas is within the protection of the commerce clause of the Constitution of the United States until delivery is made at the burner tips. The same is true of the natural gas produced in Oklahoma and Kansas and transported to consumers in Missouri.

**The incidental storage of natural gas in the course of transportation does not change the interstate character of the business conducted by the plaintiff receiver.**

In discussing the theory of breaking bulk in the original package doctrine we have to a large extent discussed the question of storage or stoppage of the gas. It is at most but incidental. If it be stored in a tank to furnish a surplus quantity to meet the demands of extremely cold weather, such storage does not change the interstate character of the business, because the very purpose of its storage is to aid that commerce, to assist in meeting a demand which cannot be filled by continuous transportation. The storage is no longer than that of the logs in the water at Port Arthur in the Sabine Tram Company case nor as long as that of the coal on the docks in the Worthington case, *supra*. It is not the principal feature of the transportation nor a matter that affects any large percentage of the commerce. (Rec., p. 813.) Judge Booth's finding on this phase of the question is complete and conclusive. In his opinion he sets out the facts as follows (Rec., p. 617):

"The question of storage has been presented and pressed with great earnestness, as being a very important factor to be taken into consideration in determining this question of interstate commerce. But to my mind the evidence shows that such storage as exists is merely incidental to the transportation of the gas, and in fact that it is a necessary incident

to the proper and efficient transportation of the gas. Hence, this storage being merely incidental, it seems to me that it does not change the character of the business from interstate to intrastate commerce."

Thus we see that the incidental storage is but in furtherance of the interstate commerce conducted by the receiver and a necessary part of it. In the transportation of oil by means of pipe lines it is pumped into receiving tanks at a station and later pumped out again on its journey. Yet such storage did not in the Pipe Line cases, *supra*, take away the interstate character of the commerce there involved. Here, as the court has found, storage is a necessary part of the transportation and the rule applied in the Pipe Line cases, in the Worthington case and in the Sabine Tram Company case, should be applied. The sheep in *Kelley v. Rhoads*, 188 U. S. 1, 23 S. Ct. 259, stopped over night on their journey. The cattle in *Swift & Company v. U. S.*, 196 U. S. 375, 25 S. Ct. 276, stayed in the stockyards for some little time. But the stoppage in either of these cases did not affect the interstate character of the commerce conducted. And the incidental storage and stoppage in this case should not make the commerce conducted by the receiver intrastate.

In *Cleveland C. C. & St. L. R. Co. v. Dettlebach*, 36 Sup. Ct. Rep. 177, 239 U. S. 588, this Court held that where goods had been received by the railroad company and placed in its freight house on September 27, 1911, and not called for by the consignee and remained in the railroad's possession

as warehouseman until November 1st, when through its negligence certain of the goods were lost, that the transportation had not ceased and the railroad company was liable under an interstate bill of lading because the movement in interstate commerce had not terminated.

In *Western Transit Company v. Leslie & Company*, 242 U. S. 448, 37 Sup. Ct. 133, the facts were these: The Western Transit Company, operating steamers between Buffalo and other points on the Great Lakes, formed with the New York Central Railroad a "lake and rail" line between Michigan and New York City. Among the privileges offered by this line was the right "in transit of free storage and diversion at Buffalo." That is, a shipper instead of forwarding his goods from Michigan direct to New York City was entitled without the payment of any extra charge to have them stored at Buffalo for a period to await further orders and be forwarded later to New York. The shipper was also given the right to change the ultimate destination of the stored goods upon proper adjustment of the rate.

On September 23, 1908, Leslie & Company delivered to the Transit Company at Houghton, Michigan, for shipment over this line to New York City twenty-five tons of copper ingots with directions to store the same upon arrival at Buffalo to await further shipping directions. The copper reached Buffalo September 30th and was placed in the warehouse. Nearly four months later about one ton of the copper was stolen from the warehouse. The shipper brought an action in the City Court of Buffalo to recover its value and

secured judgment for \$271.38. The Transit Company contended that the damages recoverable were limited to \$94.10, that is, the value not to exceed \$100 a ton as stipulated in the bill of lading. The bill of lading contained this language:

"To be held at Bflo. for orders. Value not to exceed \$100 per net ton. Limited by written agreement."

On the authority of *Cleveland, C. & St. L. R. Co. v. Dettlebach*, 239 U. S. 588, 60 L. Ed. 453, 36 Sup. Ct. 177, and *Southern R. Co. v. Prescott*, 240 U. S. 632, 60 L. Ed. 836, 36 Sup. Ct. 469, this Court decided that the limitation contained in the interstate bill of lading applied and that the recovery was limited to \$100.

In *Southern Railway Company v. Prescott*, 36 Sup. Ct. Rep. 469, 240 U. S. 632, thirteen boxes of goods were shipped from a point in Virginia to a point in South Carolina. The goods arrived at destination on June 23rd. After notice of arrival of the goods the consignee paid the entire freight charges and four boxes were taken away. Nine boxes remained to meet the consignee's convenience in removal. Before removal they were destroyed by fire. Mr. Justice Hughes delivered the opinion of this Court and held that the transportation had not ceased until actual delivery to the consignee and that as the lost goods were still in interstate commerce, the terms of the interstate bill of lading controlled.

If the storage of goods in the warehouse of the carrier for sixty-one days did not destroy the inter-

state character of the shipment, then the storage of gas over night or even for a day or two cannot destroy the interstate character of the commerce conducted by the plaintiff receiver. Whatever storage there may be of natural gas is not for the purpose of selling the same or determining to whom it shall be delivered, but it is for the purpose of furnishing a surplus to be used by consumers known to demand the same and for whom the gas is intended before it leaves the State of Oklahoma. The contention of the defendants in this respect is untenable. This Court has already decided in *West v. Kansas Natural Gas Co.*, *supra*, that the inception of the journey of the natural gas in the fields in Oklahoma is interstate. The same character continues and attaches to the natural gas until it reaches its ultimate destination at the consumers' burner tips.



**Neither plurality of carriers, change of ownership in transit, use of local agencies and franchise privileges, nor incidental storage can change the interstate character of the transportation of natural gas from Oklahoma to consumers in Kansas and Missouri.**

Every argument urged by the defendants has already been decided adversely to them by this Court. We have seen that in *West v. Kansas Natural Gas Company*, *supra*, the character of the interstate commerce was determined to be national rather than local; and two recent cases decided by this Court conclusively answer every other contention urged by the defendants.

In *Western Oil Refining Co. v. Lipscomb*, 244 U. S. 346, 37 Sup. Ct. Rep. 623, the Western Oil Refining Company, an Indiana corporation, paid under protest an occupation and privilege tax in Tennessee. The company operated an oil refinery in Illinois and a steel barrel factory in Indiana and was selling the products of its refinery and factory upon orders taken by traveling salesmen in its employ. The statement of facts as set forth by Mr. Justice Van Devanter indicates the manner in which the business was transacted:

"For the purpose of filling orders so taken in Maury county, Tennessee, it shipped into that county from its refinery a tank car of oil and from its factory a car of steel barrels. Both cars were billed to the plaintiff at Columbia, in that county, and, after the orders from that place were filled, were rebilled to

the plaintiff at Mount Pleasant, in the same county, where the orders from the latter place were filled. At both places the orders were filled directly from the cars by a traveling agent of the plaintiff and the purchase price was collected at the time—this being what was contemplated when the orders were taken. If the order was for both oil and barrels, the oil was drawn out of the tank car into the barrels and the two were jointly delivered; and if oil alone was ordered, it was drawn from the tank car into barrels otherwise provided by the buyer. When the cars were originally shipped they contained just the quantity of oil and the number of barrels required to fill the orders from the two places, and the plaintiff intended that they should remain at Columbia only long enough to fill the orders from that place and then should be sent to Mount Pleasant, so the orders from that place could also be filled. The quantity of oil and the number of barrels required to fill the orders from Mount Pleasant were in the cars continuously from the time of the original shipment until the cars reached that place. The plaintiff had no office or local agent in Tennessee, nor any oil depot, storage tank, or warehouse in that state."

The objection to the tax was that it was a tax upon interstate commerce. In the county court judgment was granted for the refinery company, which was reversed by the Supreme Court of the state, holding that what was done up to and including the filling of the orders from Columbia was interstate commerce but what was done thereafter was intrastate commerce, and afforded

an adequate basis for a tax. This Court reversed the decision of the Supreme Court of Tennessee, stating:

"On the contrary, it is a case where the shipper intended from the beginning that the transportation should be continued beyond the destination originally indicated, and where there is nothing which requires that decisive effect be given to the bill of lading. Ordinarily the question whether particular commerce is interstate or intrastate is determined by what is actually done, and not by any mere billing or plurality of carriers, and where commodities are in fact destined from one state to another, a rebilling or reshipment en route does not of itself break the continuity of the movement or require that any part be classified differently from the remainder. As this Court often has said, it is the essential character of the commerce, not the accident of local or through bills of lading, that is decisive. Here, when the cars were started from Illinois and Indiana, it was intended by the shipper, as is expressly conceded, that they should be taken to Columbia, Tennessee, where a portion—a definite portion—of the contents of each to be taken out and delivered, and that the cars, with the remainder of the contents, should proceed to Mount Pleasant in the same state; and this is what actually was done. Columbia was the destination of only a part of the merchandise, not of all. As to part, it was merely the place of a temporary stop en route. The original billing to Columbia and the rebilling from there to Mount Pleasant operated in the same way as would an original billing to Mount Pleasant, with the privilege of

stopping en route at Columbia to deliver a part of the merchandise. Indeed, it is stipulated that the reason for not billing the cars through to Mount Pleasant in this way was because the carriers receiving the shipments 'would not allow such a stop-over privilege, though the same is allowed on nearly every other kind of shipment.' Certainly the transportation of the merchandise destined to Mount Pleasant was not completed when it reached Columbia; nor was the continuity of its movement broken by its temporary stop at that place. As to that merchandise the journey to Columbia and the journey from there to Mount Pleasant were not independent, each of the other, but in fact and in legal contemplation were connected parts of a continuing interstate movement to the latter place. It results that the tax was imposed for carrying on interstate commerce, and so was repugnant to the Constitution and void."

If the taking of oil out of the tank car at Columbia did not make the rest of the shipment intrastate, then the taking of gas out of the pipe line at the first point across the state line in Kansas did not make the business conducted by the plaintiff receiver intrastate. There is the same intention at the time of the beginning of transportation in Oklahoma, to deliver it to the consumers' burner tips in Kansas and Missouri, attached to the distributing companies' lines, as there was in the above case when the shipment was started on its journey from outside the state of Tennessee to Mount Pleasant, Tennessee.

Every contention of the defendants in this case

is answered in the "Ticker Cases," 38 Sup. Ct. Rep. 438, — U. S. —, *supra*.

The New York Stock Exchange made a contract with the Western Union Telegraph Company and other companies to furnish prices quoted in transactions on the exchange to those companies. These contracts specified a lump sum to the exchange for the service furnished. The telegraph companies, in their turn, furnished quotations to their patrons at intervals of more than fifteen minutes, subject to discontinuance upon the objection of the exchange and were allowed to furnish continuous service by ticker to subscribers, provided the latter signed applications in duplicate, one of which was to be approved by the exchange. The Gold & Stock Telegraph Company's business is carried on by the Western Union in the name of the former. The quotations are furnished to the Western Union at New York, telegraphed by it in Morse code to Boston, there translated into English, thence transmitted by an operator to the tickers in the offices of the brokers who have subscribed and have been approved. The United Telegraph Company, on the other hand, receives quotations for Boston alone, where is its principal office outside of New Jersey. These quotations are furnished by the exchange in New York, telegraphed to Boston, over the wire of the Postal Telegraph & Cable Company, and thence translated and transmitted as in the other case.

The highest court of Massachusetts decided that the ticker business was intrastate commerce subject to regulation by the Public Service Commis-

sion of that state. The Massachusetts court, in reaching this determination, as we have already shown, likened it unto an original package which broke bulk upon the delivery of the information in Morse code at the offices of the different companies in Boston, and held that the service in Boston was local and that the state had power to regulate the business as it was necessary for the telegraph company to use the streets and alleys within the city. It was also argued that there was a stoppage or storage in transit at the time of the translation from Morse into English. Thus were presented to this Court in that one case all of the arguments that are urged by the defendants here, to-wit, the breaking of the original package, the stoppage or storage in transit, delivery to a local agency, the use of local franchise privileges.

This Court held that the business was interstate commerce and not subject to state regulation. The following quotation from the opinion in that case by Mr. Justice Holmes is decisive of the questions here involved:

"It is enough that in our opinion the transmission of the quotations did not lose its character of interstate commerce until it was completed in the brokers' offices and that the interference with it was of a kind not permitted to the states. The supposed analogy that has prevailed is that of a receiver of a package breaking bulk and selling at will in retail trade. But it appears to us misleading. We also think it unimportant that the contracts between the exchange and the telegraph companies emphasize the element of quasi-sale for a lump sum and leave it to the interest

of the telegraph companies to find subscribers. Neither that nor the intervention of an operator, or of another company, are in the least degree conclusive. Unlike the case of breaking bulk for subsequently determined retail sales, in these the ultimate recipients are determined before the message starts and have been accepted as the contemplated recipients by the exchange. It does not matter if they have no contract with the exchange, directly. It does not matter that if the telegraph companies did not deliver to any given one the exchange could not complain. If the normal, contemplated and followed course is a transmission as continuous and rapid as science can make it from exchange to broker's office, it does not matter what are the stages or how little they are secured by covenant or bond.

"Thus lumber purchased in Texas for the purpose of filling foreign orders was held to be carried in interstate commerce, although no contract prevented the purchaser from giving it a different destination. *Texas & New Orleans R. R. Co. v. Sabine Tram Co.*, 227 U. S. 111, 126, 33 Sup. Ct. 229, 57 L. Ed. 442. Practice, intent and the typical course, not title or niceties of form, were recognized as determining the character, and other cases to the same effect were cited. The principle was reaffirmed in *Railroad Commission of Louisiana v. Texas & Pacific Ry. Co.*, 229 U. S. 336, 33 Sup. Ct. 837, 57 L. Ed. 1215; and is too well settled to need to be further sustained. *Western Oil Refining Co. v. Lipscomb*, 244 U. S. 346, 349, 37 Sup. Ct. 623, 61 L. Ed. 1181. See *Swift & Co. v. United States*, 196 U. S. 375, 398, 399, 25 Sup. Ct. 276, 49 L. Ed. 518. It is admitted that the



transmission from New York to Massachusetts by the telegraph company was interstate commerce. If so it continued such until it reached 'the point where the parties originally intended that the movement should finally end.' *Illinois Central R. R. Co. v. Louisiana R. R. Commission*, 236 U. S. 157, 163, 35 Sup. Ct. 275, 59 L. Ed. 517.

"If the transmission of the quotations is interstate commerce the order in question cannot be sustained. It is not like the requirement of some incidental convenience that can be afforded without seriously impeding the interstate work. It is an attempt to affect in its very vitals the character of a business generically withdrawn from state control—to change the criteria by which customers are to be determined and so to change the business. It is suggested that the state gets the power from its power over the streets which it is necessary for the telegraph to cross. But if we assume that the plaintiffs in error under their present charters could be excluded from the streets, the consequence would not follow. Acts generally lawful may become unlawful when done to accomplish an unlawful end, *United States v. Reading Co.*, 226 U. S. 324, 357, 33 Sup. Ct. 90, 57 L. Ed. 243, and a constitutional power cannot be used by way of condition to attain an unconstitutional result. *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 30 Sup. Ct. 190, 54 L. Ed. 355; *Pullman Co. v. Kansas*, 216 U. S. 56, 30 Sup. Ct. 232, 54 L. Ed. 378; *Sioux Remedy Co. v. Cope*, 235 U. S. 197, 203, 35 Sup. Ct. 57, 59 L. Ed. 193."

The instant case is even stronger than the Ticker Cases. In the Ticker Cases there was

a translation in the Boston office from Morse Code to English. Here, however, there is no change in the form of the article transmitted. The natural gas which leaves Oklahoma is the same natural gas as that delivered to the consumers in Kansas and Missouri. In the Ticker Case the information came in on one wire and was transferred by human agency to another. The pipes of the distributing company are connected with the pipes of the plaintiff receiver; no intervening external agency, human or otherwise, transmits the natural gas from one to the other. It moves of its own pressure, just as a stream of water flows in its various channels. There is no stoppage, even for a moment, at the point where the gas passes from the receiver's lines to the distributing company's lines. The same is true of the passage of the gas from the distributing company's lines to the service lines of the consumers. The ultimate recipients of the information in the Ticker Cases were unknown to the New York Exchange. The Exchange's reward was a lump sum. The local company in Boston solicited and secured the customers and collected the money for the service rendered by it. Here the consumers are ascertainable through the connections with the pipe lines of the distributing company. The compensation of the distributing companies is but a percentage of the total charge to the consumer. Whether the distributing companies contract with the consumers in their own names or in the name of the receiver is immaterial. The existence of a contractual relation is not essential.

Privity of contract between the Exchange and the ultimate recipient of the information was not necessary in the Ticker Cases and it cannot be here. At Boston the local company broke up the information received from New York and distributed it to hundreds of customers. Here the body of gas diffuses itself under its own pressure through service lines to hundreds of consumers. The breaking up of the single bit of information received from New York did not end the interstate commerce conducted by the telegraph company. The diffusion of natural gas under its own pressure through service lines to hundreds of consumers cannot in this case terminate the interstate character of the transaction. In the Ticker Cases a monthly charge was made to the customer, part of which was a readiness-to-serve charge. That fact did not make the commerce intrastate. A readiness-to-serve charge in this instance cannot make the commerce other than interstate. Local agencies and franchise rights were employed in the Ticker Cases. In one instance the Boston company bore no subsidiary relation to the Postal Telegraph Company, which acted as the carrier between New York and Boston.

Yet all these circumstances did not in that case subject to state regulation the interstate commerce beginning at New York and ending with delivery of the information to the customer in Boston. Like circumstances in this case cannot subject the interstate commerce commencing with the wells in Oklahoma and ending with the consumers' burner tips in Kansas and Missouri to the unjust burdens

imposed by state authorities. The transmission of intelligence in the Ticker Cases from New York to the customers in Boston was as rapid and continuous as science could make it. The transportation of natural gas as conducted by the plaintiff receiver from the wells to the consumers' burner tips is as rapid and continuous as science can provide. No better, different, or quicker method for the transmission of natural gas has been suggested in these proceedings. There is none. The pipe line system of transportation is the only practical method of moving natural gas. There is no unusual interruption in the forwarding of the gas from the wells to the consumers. No unusual or uncalled-for interruption occurs which can change the interstate transaction as begun in Oklahoma to intrastate commerce before delivery is completed to the burner tips in Kansas and Missouri. As Judge Booth says in his opinion of August 3, 1917 (Rec., p. 617), in 245 Fed., l. c. 953:

"But to my mind the evidence shows that such storage as exists is merely incidental to the transportation of the gas, *and in fact that it is a necessary incident to the proper and efficient transportation of the gas.*" (Italics ours.)

The transportation in this case being the normal and usual method of transporting natural gas from wells to the consumers, it follows that what this Court has decided was interstate commerce when the gas started in Oklahoma continues to be interstate commerce until final delivery is made to

the consumers in Kansas and Missouri, to whom it was the intention to forward the natural gas at the inception of its journey. It follows that the contention of the defendants, whether urged on the ground of breaking the original package, use of local facilities, agencies and franchise privileges, storage in transit, change of ownership, plurality of carriers, are each and all without merit and unfounded. The decrees of the District Court should be affirmed.

**The mixing of intra and interstate natural gas in the same pipe lines does not give the state authority over the mass.**

That a state does not obtain control over the natural gas transported in interstate commerce by reason of the admixture with a small part of natural gas transported in intrastate commerce is admitted in the case of *State v. Stock Yards Company*, 94 Kan. 96, 99, where it is said:

"The defendant pleads that all business done over the tracks referred to is interstate commerce, but this broad averment is limited by these specific statements:

'That a train of live stock arriving at the terminal facilities of this defendant will be composed of say forty cars of live stock that is interstate, and mingled therewith there may be four or five cars that are intrastate; that this defendant will have no knowledge of the origin of said cars until they are pulled up to the unloading dock, in, over and upon the terminal facilities of the defendant herein.'

The contention is made that this results in such a mingling of the two classes of shipments that the intrastate must be regarded as incidental to and merged in the interstate. *The state of course cannot interfere with the interstate business done by the defendant*, but we do not think the allegations quoted exhibit such a confusion of interstate and intrastate shipments as to cause the latter to lose their identity as such or to exempt them from state control. (*The Minnesota Rate Cases*, 230 U. S. 352.)"

An extended discussion of the subject is found in the Minnesota Rate Cases, *supra*:

"The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the nation may deal with the internal concerns of the state, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

As the natural gas moves continuously from the time it leaves Oklahoma until it reaches the consumer, there can be no question of its becoming a subject of state control by reason of its being at rest.

The same is true of the natural gas produced in Kansas and transported and sold to consumers in Missouri.

In addition to the foregoing cases, we call attention to the cases of *Railroad Commission v. Worthington*, *supra*, 225 U. S. 101, 32 S. Ct. 653, and *Swift & Company v. United States*, *supra*, 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518; *Crutcher v. Kentucky*, 141 U. S. 47, 11 S. Ct. 581,



35 L. Ed. 649, as holding that the fact that intrastate shipments are also concerned and intermingled with interstate shipments does not take from the interstate commerce the protection given it by the Constitution of the United States.

**Additional contentions of the Missouri defendants on the interstate character of the business.**

It must be borne in mind that the business conducted in Missouri is entirely interstate. There is no gas produced in Missouri. All gas supplied by the receiver to consumers in Missouri comes from either Kansas or Oklahoma. Eighty-five per cent of it all comes from Oklahoma. The cases cited cover all phases of the contention of the Missouri defendants.

The Missouri defendants stress incidental storage, which they claim sometimes occurs at Kansas City. They also stress the fact that no contract is made by the consumer with the plaintiff receiver, but that all agreements are between the distributing companies and the local consumers. As we have already shown, this Court in the Ticker Cases has decided that there is no necessity of covenant or bond. Privity of contract is a non-essential. It is the usual and customary course of business which determines the matter. The usual and customary course of business in this case is the transportation of natural gas from Oklahoma and Kansas to consumers in Missouri with intention at the time such article of commerce is started on its journey to deliver it to the burner tips in the State of Missouri. Whatever interruption there may be, if any at all, is, as Judge Booth says, "a necessary incident to the proper and efficient transportation of the gas." (Rec., p. 617.) The transportation is as fast and continuous as

science can make it, and, under the decisions of this Court referred to, neither incidental stoppage nor the lack of a contract takes away from the interstate commerce conducted by the plaintiff receiver the protection of the commerce clause of the Constitution of the United States.

Much emphasis is placed by some of the Missouri defendants on the following conclusion incorporated by them into the statement of evidence (Rec., p. 813):

"After the gas enters the mains of The Kansas City Gas Company, that Company has the actual physical possession and complete control over it and over its distribution and sale."

This is not correct. The Kansas City Gas Company received only 37½% of the amounts paid by consumers, the rest went to the receiver. The local company does not control the price charged the consumers. Lists of the names and amounts due from delinquent customers were furnished the receiver. The receiver has certain rights of inspection over the lines of the distributing company. But these matters are immaterial. If we were to concede the conclusion above quoted is correct, nevertheless it would not change the determination of this case.

In the Ticker Cases the local companies in Boston which distributed the news within that city had absolute control over the information after it reached Boston, had actual physical possession of the reports from the New York Stock Exchange, and complete control over their distribution and

sale within the city of Boston. The local companies solicited the customers and contracted directly with them for the ticker service. In that case (unlike the present case) the rates charged customers were fixed by the local companies. Yet all those circumstances did not change the character of the business transacted from interstate to intrastate. Neither can circumstances less significant affect the interstate character of the business in this case.

Of the claim of the Missouri defendants that they have done nothing to warrant an injunction, the following finding of Judge Booth is conclusive against them (Rec., p. 618):

"The Missouri Commission has made no orders fixing general rates for the sale of gas by the receiver within the state of Missouri, as was the case in regard to the Kansas defendants. But the Missouri Commission has done certain specific acts; amongst others it has suspended schedules of rates which were agreed upon by the receiver and the distributing companies and has threatened the distributing companies with further action against them if they should undertake to enforce those rates. It has also taken the position through its counsel in open court that it would recognize no rates as valid unless those rates were first submitted to the Commission for its approval and approved by it. Not only that it has taken jurisdiction over complaints by the distributing companies and in some instances I think by the cities as to rates, but instead of proceeding to hearing upon these complaints it has suspended the hearings from time to time without attempting to

reach any definite conclusion. It has attempted by order made in August, 1916, to establish a new rate for natural gas in Kansas City, Missouri. In these various acts the defendant cities have severally participated. The result of all this is that the receiver is seriously hampered in his business, and the distributing companies are also seriously hampered in their business in attempting to put in a schedule of rates for the various cities in Missouri. In my judgment these acts on the part of the Missouri Commission constitute an attempt to directly interfere with and directly burden interstate commerce. I am likewise of the opinion that they also in effect constitute the taking of the property of the receiver without due process of law."

The decree as rendered against the Missouri defendants is right and should be affirmed.

**The plaintiff receiver has never adopted the contracts with distributing companies and the same are not binding upon him.**

The District Court of Montgomery County, Kansas, determined that the contracts of the distributing companies were not binding upon the receiver. (Rec., p. 548.) The Wyandotte County Gas Company, one of the appellants in this case, appealed from that decision and judgment to the Supreme Court of the State of Kansas. The Supreme Court of the State of Kansas in *State v. Gas Company*, 102 Kan. 712, dismissed the appeal, but in doing so stated: "There is no substantial difference between the views herein expressed and the order made by the District Court on October 16, 1916." The judgment of the District Court of Montgomery County is therefore binding on the Wyandotte County Gas Company and is *res adjudicata*.

The situation in regard to these supply contracts cannot be better stated than as set forth by Judge Booth in his opinion, reported in 245 Fed. l. c. 954. Judge Booth says:

"Now as to the second main question, namely the question of the supply contracts. These supply contracts were entered into by the original parties during the years from 1905 to 1908 or 1909 and perhaps later. As far as I have been able to examine them they all contain one clause which is very similar, and I do not know but it is identical in its wording: 'However, as the production of

gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient supply of merchantable gas for all consumers.'

All the contracts which I have examined contain a provision similar to that quoted. They all contain, also, or at least those which I have examined contain certain provisions restrictive on the parties to the contract; restrictive as to the right of the parties furnishing the gas to furnish it to any other person or corporation doing business in the zone or district specified; and restrictive as against the distributing companies to prevent them from purchasing gas from any other person or corporation than the person named in the contract who is furnishing the gas, except under certain conditions.

In April, 1912, the Supreme Court of Kansas had occasion to review these contracts, and while there is a difference amongst counsel as to just what the judgment of that court



was in its effect, I think it must be conceded by all that the Supreme Court of the State of Kansas took the view that there were certain clauses at least in those contracts that were contrary to the statutes of the State of Kansas, and also contrary to public policy. It may very well be doubted whether those same restrictive clauses were not also a violation of the statutes of the United States against trusts and monopolies.

*State v. Kansas Natural Gas Co.*, No. 17977.

*Montague & Co. v. Lowry*, 193 U. S. 38.

With full knowledge of these facts the United States District Court of the State of Kansas made an order in October, 1912, touching these contracts, and the gist of that order was that those contracts should not be binding upon the receiver except upon further express order of the court. The Circuit Court of Appeals for this Circuit in a decision in a case arising out of this general gas controversy upon a contract, not a supply contract, but a lease contract, also held that that contract was not binding upon the receiver and took occasion in its decision to refer to the above mentioned express order of the United States District Court of Kansas. (*K. C. Pipe Line Co. v. Fidelity Co.*, 217 Fed. 187.) On two separate occasions the District Court of Montgomery County, Kansas, has held that these supply contracts are not merely not binding upon the receiver but invalid in their inception, as being against the statutes of the State of Kansas, and being also against the statutes of the United States as well as against public policy.

There never has been any formal adoption by the receiver of these supply contracts. In such case it is not the law that a contract shall be binding upon the receiver until it is disavowed by him, but the law is that it is not binding upon the receiver until it is accepted by him; and while it is true that ordinarily the law requires the receiver to indicate within a reasonable time whether or not he will accept a contract, in this particular case the court relieved the receiver of any necessity for taking any action by expressly ordering that the contract should not be binding upon the receiver until the court by its order made it binding. It was not necessary for the receiver to take any action on his part. If the other parties to the contract wished to have these contracts made binding upon the receiver the court was open to them to make an application, and upon that application the court would have made such an order as was deemed necessary. No such action was ever taken and the order of the court made in October, 1912, still stands that these contracts are not binding upon the receiver until the further orders of the court may make them so."

We can add nothing to the concise and able exposition of the law as set forth by Judge Booth. We feel his pronouncement is sound and should be affirmed.

**The finding of the lower court that the 28-cent rate fixed by the Public Utilities Commission of Kansas is not reasonable or compensatory is sustained by the evidence.**

The three judges heard evidence on this feature of the case for ten days before granting the preliminary injunction. No appeal has ever been taken from their order. The lower court on the hearing on the application for the permanent injunction against the 28-cent rate, not only considered the evidence taken by the three judges, but also heard additional testimony presented for over twenty days.

It is unnecessary to abstract or specifically refer to this evidence. It is only necessary to refer to the opinion of the three judges (Rec., p. 298) and to the exhaustive discussion of the evidence contained in Judge Booth's opinion (Rec., p. 564) to show that the evidence fully sustains the contention of the receiver that the 28-cent rate was and is unreasonable and non-compensatory. The Supreme Court of Kansas on application by the Public Utilities Commission of Kansas refused to grant a writ of mandamus to put the first 28-cent rate into effect, calling attention to the fact that the Commission had failed to provide sufficient funds to meet the requirements of the receiver. (96 Kan. 372, l. c. 387.)

### **Conclusion.**

Under Section 56 of the Judicial Code, the United States District Court for the District of Kansas had authority to protect the property in its possession by issuing process to the Missouri defendants in the State of Missouri. It is elementary that the court which first draws to itself possession of the *res* has the right to protect that possession from interference by every one else. The public officers of the State of Missouri were and are interfering with that possession and were and are endeavoring to confiscate the property in the hands of the court. The court had adequate grounds for jurisdiction over both the Kansas and Missouri defendants. It had the actual and full possession of all the property of The Kansas Natural Gas Company within the states of Missouri, Kansas and Oklahoma at the time of the entry of decrees from which these appeals are taken. Prior to the entry of these decrees the District Court of Montgomery County, Kansas, had dismissed the suit in that court and had surrendered all the property in its actual possession to the United States District Court for the District of Kansas. The question of interstate commerce alone was sufficient to give the District Court jurisdiction of this suit. Under the Kansas statute it was a competent court to review and determine the reasonableness of the 28-cent rate prescribed by the Public Utilities Commission of Kansas. It has determined such rate to be unreasonable and this fact alone is sufficient to war-

rant the affirmance of the decree of July 5, 1917.

A controlling question in this case is whether or not the business conducted by the receiver is interstate commerce of a national character. That the transportation of natural gas by pipe lines in interstate commerce is of a national character has already been determined by this Court, when the gathering lines and main trunk lines of the present system were under consideration in *West v. Kansas Natural Gas Company, supra*. The transportation of natural gas by pipe lines is the only practical method of transporting natural gas. This Court has determined that the natural gas when started on its way to consumers in Kansas and Missouri from the fields in Oklahoma is an article of trade in interstate commerce and subject to the commerce clause of the Federal Constitution. Being interstate commerce in its inception, it does not cease to be such until there is a delivery to the consumers for whom it was intended at the beginning of its journey. Neither plurality of carriers nor delay in transmission nor incidental storage nor the use of public franchises nor the lack of privity of contract between ultimate consumer and shipper can destroy the interstate character of the transaction which has once attached. Local incidental service, either at the initial point or at the end of the journey, does not end the interstate character of the commerce. The criterion is: Is the transaction such as is usual and customary in interstate transportation of such an article of commerce? If so, the entire journey from point of origin to final destination comes within the provisions of the interstate commerce

clause of the Constitution of the United States. If, on the other hand, there are storages, interruptions, commingling of property, not usual, then where such unusual occurrences happen the character of interstate commerce is lost. The drawing off of oil from the tank car at Columbia, Tennessee, for sale at that point made neither the sale at Columbia nor the sale of the balance when transported to Mount Pleasant, Tennessee, intrastate commerce, in the Western Oil Refining Company case. So the drawing off of gas at Independence, Kansas, or at any point within the State of Kansas, on the journey of the gas from Oklahoma to the ultimate consumers in Kansas and Missouri does not take from the transaction its interstate character.

Whether the local distributing companies be agents of the plaintiff receiver, as determined by the Supreme Court of the State of Kansas, or connecting carriers, the natural gas continues in its interstate journey through their plants to the consumers' burner tips an article of interstate commerce. The natural gas transported by the plaintiff receiver from Oklahoma to the consumers' burner tips in Kansas and Missouri travels as swiftly and continuously as science can provide.

Under the doctrine announced in the Ticker Cases, *supra*, the commerce conducted by the plaintiff receiver is entitled to the full protection of the interstate commerce clause of the Constitution of the United States. No better example of the wisdom of this clause can be found than in the present lamentable controversy. The Public Utilities Commission of the State of Kansas has

sought to compel the plaintiff receiver to observe a 28-cent rate which has been declared confiscatory and unreasonably low by the Supreme Court of the State of Kansas and by the United States District Court for the District of Kansas on two different occasions. The Missouri Public Service Commission, under threats of the imposition of enormous penalties provided by the law of Missouri, has endeavored to compel the plaintiff receiver to observe rates which Judge Booth, after a hearing consuming weeks of time and thousands of pages of testimony, has found confiscatory and unreasonably low. If the people of the forty-five cities and towns served by the present system are to get any natural gas at all and thereby conserve the coal in these war times for essential industries and avoid burdening the railroads with the unnecessary transportation of coal, the plaintiff receiver in the conduct of his business must be relieved from the domination of a utilities commission which insists upon a rate three times declared to be unreasonably low.

He must be freed from the control of commissions, each seeking for the people of its own state rates so unreasonably low as to cast a burden not only upon the receiver but also upon the consumers in the neighboring state. To subject the conduct of the receiver's business in three states to the orders of different commissions which could have in any event jurisdiction over only a part of the consumers and no authority whatever over the source of the supply, means the destruction of this great system of pipe lines for the transportation of natural gas in interstate commerce.



We believe this Court will view the question as it did in the Ticker Cases. We submit that the decrees of the United States District Court for the District of Kansas should be affirmed.

Respectfully submitted,

JOHN H. ATWOOD,  
ROBERT STONE,  
GEORGE T. McDERMOTT,  
AUSTIN M. COWAN,  
CHESTER I. LONG,

*Solicitors for John M. Landon, Managing Receiver of Kansas Natural Gas Company, Appellee.*

CHARLES BLOOD SMITH,  
*Solicitor for Fidelity Title & Trust Company, Appellee.*

R. A. BROWN,  
T. S. SALATHIEL,  
*Solicitors for Kansas Natural Gas Company, Appellee.*

JOHN J. JONES,  
*Solicitor for George F. Sharitt, Receiver of Kansas Natural Gas Company, Appellee.*

**APPENDIX.**

In the Supreme Court of the State of Kansas.  
Tuesday, October 16, 1917.

The State of Kansas, ex rel J. L.

Bristow, etc. et al., Plaintiff,

vs.

No. 21053

John M. Landon, et al. Rec. etc.,

Defendants.

**Journal Entry of Modification.**

In the opinion herein it was ordered that unless within a time fixed the consent of the Public Utilities Commission should be obtained to depart from the contract, the writ prayed for should issue requiring compliance with such contract until it should be duly and lawfully set aside or superseded. It now appearing by supplemental answer and return that such contract has in effect been set aside and superseded by the Federal Court, it is ordered that the writ prayed for be denied.

State of Kansas, Supreme Court, ss:

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the above and foregoing is a full, true and correct copy of the Journal Entry of modification in the above entitled case as the same remains of record at page 239 of Journal "XX" of this Court.

Witness my hand and the seal of the Supreme Court of Kansas hereto affixed at my office in the city of Topeka, this 9th day of September, A. D., 1918.

(SEAL.)

D. A. VALENTINE,

*Clerk Supreme Court.*

OCT 30 1918

JAMES D. MAHER,

CLERK.

# Supreme Court of the United States

October Term, 1918.

No. 277.

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS ET AL.,  
*Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed September 20, 1917.

No. 329.

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, ET AL., *Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed January 10, 1918.

No. 320.

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY, ET AL., *Appellants,*

vs.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND GEORGE F.  
SHARITT, RECEIVERS, AND FIDELITY TITLE AND TRUST COMPANY.

Filed January 14, 1918.

No. 383.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS ET AL.,  
*Appellants,*

vs.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed February 6, 1919.

*Appeals from the District Court of the United States for the  
District of Kansas.*

## MOTION TO DISMISS THE APPEALS

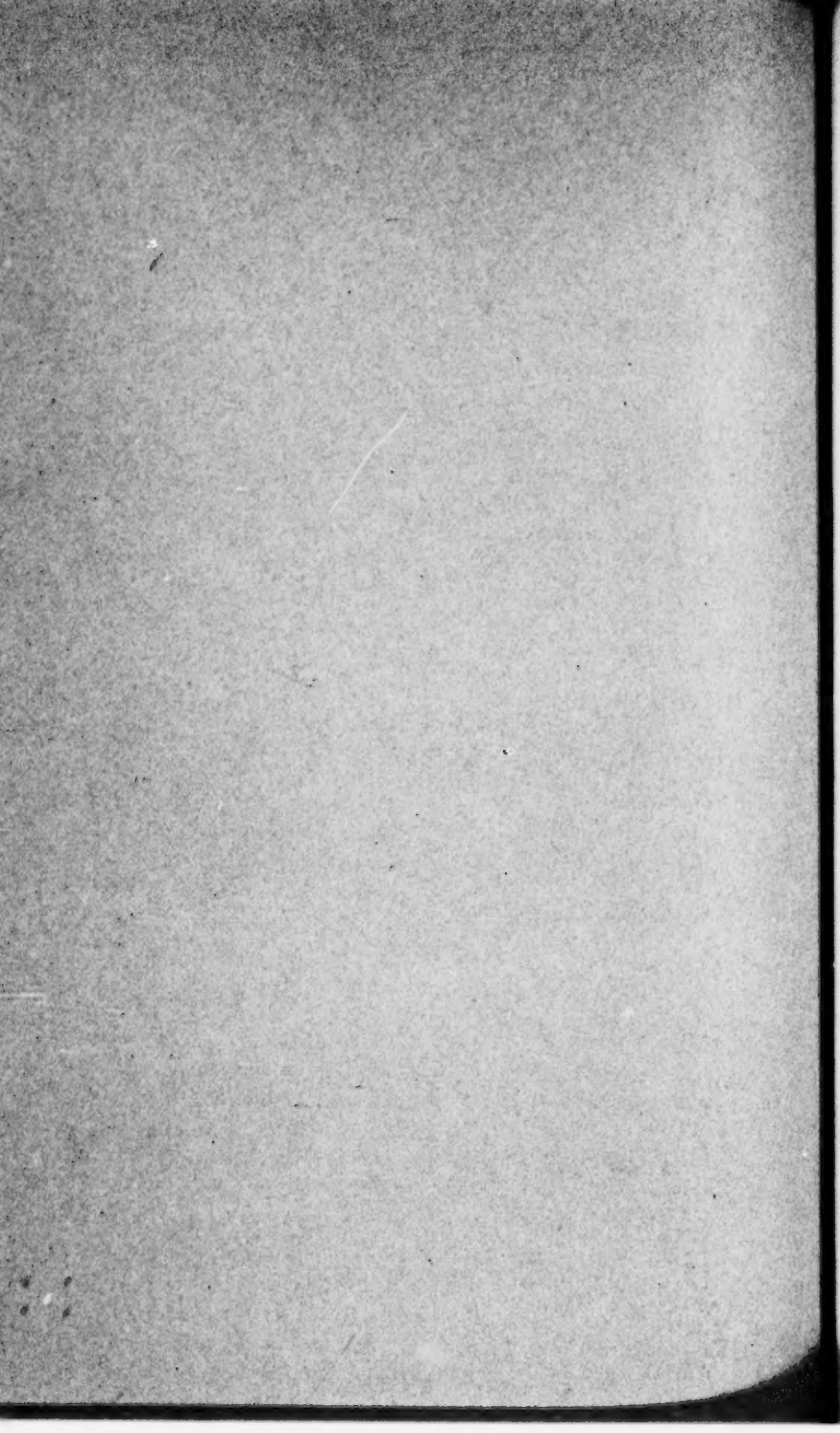
OF THE WYANDOTTE COUNTY GAS COMPANY, KANSAS  
CITY GAS COMPANY, KANSAS CITY PIPE LINE  
COMPANY, AND FIDELITY TRUST COMPANY.

CHARLES BLOOD SMITH,  
*Solicitor for Fidelity Title  
& Trust Company.*

JOHN J. JONES,  
*Solicitor for George F.  
Sharitt as Receiver of Kan-  
sas Natural Gas Company.*

JOHN H. ARWOOD,  
ROBERT STONE,  
GEORGE T. McDERMOTT,  
AUSTIN M. COWAN,  
CHESTER I. LONG,

*Solicitors for John M. Lan-  
don, Managing Receiver of  
Kansas Natural Gas Com-  
pany.*



**AUTHORITIES ON MOTION OF APPELLEES  
TO DISMISS APPEALS OF CERTAIN  
APPELLANTS**

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The general rule regarding estoppel to allege error is stated as follows in a note in 29 L. R. A. (N. S.) p. 2:

"It is the general rule that a litigant who has voluntarily, and with knowledge of all the material facts, accepted the benefits of an order, decree, or judgment of a court, cannot afterwards take or prosecute an appeal or writ of error to reverse it. He will not be heard to say that it was erroneous. His conduct amounts to a release of errors. His acceptance of benefits is a waiver of all errors, and estops him to question the correctness and justice of the order, decree, or judgment which has given him such benefits."

In *Albright v. Oyster*, 60 Fed. 644 (8th. C. C. A.), Circuit Judges Sanborn and Caldwell, the following statement was made in the opinion:

"No rule is better settled than that a litigant who accepts the benefits or any substantial part of the benefits of a judgment or decree is thereby estopped from reviewing and escaping its burdens. He cannot avail himself of its advantages, and then question its disadvantages in a higher court."

The Supreme Court of Kansas said in *Fidelity Co. v. Kepley*, 66 Kan. 343, 71 Pac. 818, where appellant had recognized the validity of a judgment against him by making it the basis of an action in his behalf against other parties:

"This court has many times decided that a party who complains of a judgment must be consistent in his conduct with reference to it. If he recognizes its validity he cannot be heard to say that it is invalid."

The same rule is stated in substantially the same form in 3 Corpus Juris 679, Sec. 552, as well as the exceptions to the rule.

In *Elwert v. Marley*, 99 Pac 887, (Ore.) the following statement is made:

"So any act, on the part of a defendant, by which he impliedly recognizes the validity of a judgment against him operates as a waiver of his right of appeal therefrom or to bring error to reverse it."

In *Terry v. Bank*, 93 U. S. 38, 23 L. Ed. 794, a decree was entered allowing interest on the claims of various parties. The court said:

"The third exception, which relates to the parties represented by *Stone and Ackerman*, questions an allowance of interest on their claims. The sufficient answer to this is, that appellant claimed and received interest on his claims in precisely the same manner, which made these parties equal in the matter, and which estops appellant from alleging the action of the court to be error."

The following is quoted from *Chase v. Driver*, 92

Fed. 780 (8th C. C. A.), where appellant appealed from a decree for which he had prayed:

"He took the benefit of the sale offered him under the decree which he had sought, and it is too late for him now to escape from the terms prescribed or the burdens imposed thereby. One who accepts the benefits of a decree or judgment is thereby estopped from reviewing it, or from escaping from its burdens."



# Supreme Court of the United States

October Term, 1918.

---

**No. 277.**

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF KANSAS ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed September 20, 1917.

---

**No. 329.**

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI, ET AL., *Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed January 10, 1918.

---

**No. 330.**

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY GAS  
COMPANY, ET AL., *Appellants,*

VS.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON AND GEORGE F.  
SHARITT, RECEIVERS, AND FIDELITY TITLE AND TRUST COMPANY.

Filed January 14, 1918.

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**No. 353.**

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF KANSAS ET AL.,  
*Appellants,*

VS.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

Filed February 6, 1918.

*Appeals from the District Court of the United States for the  
District of Kansas.*

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## MOTION TO DISMISS THE APPEALS

OF THE WYANDOTTE COUNTY GAS COMPANY, KANSAS  
CITY GAS COMPANY, KANSAS CITY PIPE LINE  
COMPANY, AND FIDELITY TRUST COMPANY.

Come now the appellees, John M. Landon, as  
Receiver of the Kansas Natural Gas Company,  
Fidelity Title & Trust Company, and George F.  
Sharitt, as Receiver of the Kansas Natural Gas

Company, and each of them moves the court to dismiss the appeals of The Wyandotte County Gas Company, Kansas City Gas Company, Kansas City Pipe Line Company and Fidelity Trust Company, and each of them, for the following reasons, to-wit:

1. Because the decree of July 5, 1917 (Rec., p. 602), appealed from by the Wyandotte County Gas Company, is in favor of said Wyandotte County Gas Company and not against it, and was entered in its favor at the request of its counsel made in open court at Kansas City, Kansas, on July 5, 1917.

2. Because the said Wyandotte County Gas Company has recognized the validity of said decree of July 5, 1917 (Rec., p. 602), and the decree of August 13, 1917 (Rec., p. 621), from which it has now appealed by filing in the court below since the entry of said decrees and the allowance of its appeals an application in Case No. 1-N In Equity, being the principal suit to which this suit is ancillary, in which application it seeks additional and affirmative relief on the basis of said decrees, alleging that the 60-cent rate prescribed by the court (Rec., p. 1069) is non-compensatory and that it is entitled to 60 per centum of a rate of \$1.00 per thousand cubic feet, which rate of \$1.00 it asks the court to establish for the city of Kansas City, Kansas, and the city of Rosedale, Kansas. A true and correct copy of said application is hereto attached and marked Exhibit "A." That said Wyandotte County Gas Company, having recognized the jurisdiction of the court below to prescribe rates to be charged consumers in said

two cities for natural gas transported and delivered to such consumers, and having sought to avail itself of the benefits of said decrees enjoining the authorities of the state of Kansas from interfering with the interstate commerce conducted by the Receiver, should not now be permitted to urge its appeals from said two decrees.

3. Because the Kansas City Gas Company, appellant, has recognized the validity of said decree of August 13, 1917, (Rec. 621) from which it has now appealed by filing in the court below since the entry of said decree and the allowance of its appeals an application in Case No. 1-N in Equity, being the principal suit to which this suit is ancillary, in which application it seeks additional and affirmative relief on the basis of said decree, alleging that the 60-cent rate prescribed by the court (Rec., p. 1069) is non-compensatory and that it is entitled to 60 per centum of a rate of \$1.00 per thousand cubic feet of natural gas sold and delivered to consumers, which rate of \$1.00 it asks the court to establish for the city of Kansas City, Missouri, for gas sold and delivered to consumers by the Receiver in said city. A true and correct copy of said application is hereto attached, marked Exhibit "B" and made a part hereof.

That said Kansas City Gas Company, having recognized the jurisdiction of the court below to prescribe rates to be charged consumers in said city for natural gas transported and delivered to such consumers, and having sought to avail itself of the benefits of said decree enjoining the authorities of the state of Missouri from interfering with

the interstate commerce conducted by the Receiver, should not now be permitted to urge its appeals from said decree.

4. Because the sole interest of the Kansas City Pipe Line Company and Fidelity Trust Company in the appeals taken by them is that part of the decree of August 13, 1917 (Rec., p. 623, Subdivisions 1 and 2 under Fifth), which determined that the contracts originally entered into by the Kansas City Pipe Line Company and assumed by the lease to the Kansas Natural Gas Company dated February 2, 1906, were not binding on the Receiver, and that said proposition was already *res adjudicata* as to the said Kansas City Pipe Line Company and Fidelity Trust Company, its trustee, for the reason that it had already been conclusively determined that said lease of February 2, 1906, was not binding on the Receiver or Receivers of the court below, in Causes Nos. 1351 and No. 1-N (consolidated) in Equity in the court below on the appeals of the Kansas City Pipe Line Company and Fidelity Trust Company to the Circuit Court of Appeals, Eighth Circuit, the opinion and judgment of said Circuit Court of Appeals being reported in 217 Federal at page 187. (See order spreading mandate of said court of record in the court below, Rec., p. 1002.)

Wherefore the appellees first above named pray this court to dismiss the appeals of the Wyandotte County Gas Company, Kansas City Gas Company,

Fidelity Trust Company and Kansas City Pipe Line Company, and each of them.

CHARLES BLOOD SMITH,  
*Solicitor for Fidelity Title  
& Trust Company.*

JOHN J. JONES,  
*Solicitor for George F.  
Sharitt as Receiver of Kan-  
sas Natural Gas Company.*

JOHN H. ATWOOD,

ROBERT STONE,

GEORGE T. McDERMOTT,

AUSTIN M. COWAN,

CHESTER I. LONG,

*Solicitors for John M. Lan-  
don, Managing Receiver of  
Kansas Natural Gas Com-  
pany.*

*State of Missouri, County of Jackson—ss.*

Robert Stone, of lawful age, being first duly sworn, on his oath deposes and says:

That on July 5, 1917, he was and still is one of the Solicitors of Record for John M. Landon, Managing Receiver of the Kansas Natural Gas Company, in Causes No. 1351 and 1-N in Equity (consolidated) pending in the District Court of the United States for the District of Kansas, and also in Cause No. 136-N in Equity, in the same court, entitled John M. Landon, Receiver of the Kansas Natural Gas Company, plaintiff, v. Public Utilities Commission of the State of Kansas *et al.*, defendants, and that on said day he was in the court room of said court at Kansas City, Kansas, when said court was about to enter the decree in said Cause No. 136-N in favor of said John M. Landon and others and against the Public Utilities Commission of Kansas and others, a copy of which decree is set out in the record in this court, commencing at page 601, and that the decree as originally prepared did not grant any relief to the defendant The Wyandotte County Gas Company, but that in open court J. W. Dana, as solicitor for

said The Wyandotte County Gas Company, orally requested the court to grant the same relief to said The Wyandotte County Gas Company as granted to said John M. Landon as Receiver of the Kansas Natural Gas Company, and that thereupon the court granted such request, and entered the decree as set forth in the record in this cause with the consent and at the request of said The Wyandotte County Gas Company, giving to it the injunctive relief as shown in said decree.

Further affiant saith not.

.....

### **Exhibit "A."**

In the District Court of the United States for the  
District of Kansas. First Division.

Fidelity Title & Trust Company,

Plaintiff,

No. 1-N

vs.

Consolidated with

Kansas Natural Gas Company

No. 1351.

*et al.*, Defendants,

**APPLICATION OF THE WYANDOTTE COUNTY GAS COM-  
PANY FOR APPROVAL OF INCREASED JOINT-RATE.**

The Wyandotte County Gas Company states and shows to the Court:

1. That it is a corporation duly organized and existing under the laws of the State of Kansas and a citizen and resident of said State and the First Judicial Division thereof, and that John M. Landon, Receiver herein, is a citizen and resident of said State and the First Judicial Division thereof.

2. That it is engaged in the business of distributing and selling natural and manufactured gas in Kansas City, Kansas, and Rosedale, Kansas.

3. That prior to September 1, 1917, the Company received, distributed and sold natural gas pursuant to a certain supply-contract existing between this Company and the Kansas Natural Gas Company; that on August 13, 1917, this Court entered its final decree in the case of *John M. Landon, Receiver, v. The Public Utilities Commission of Kansas et al.*, No. 136-N, enjoining the existing rates and decreeing that:

"The defendant distributing companies are permanently enjoined from enforcing the said supply contracts or rates fixed or referred to therein against plaintiff and from interfering with plaintiff in establishing and maintaining such rates as this Court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri."

Said decree is hereby referred to and made a part hereof.

4. That thereupon this Court entered an order herein fixing and approving a joint-rate for this Company and the Receivers to charge consumers of gas in Kansas City, Kansas, and Rosedale, Kansas, of 60 cents per thousand cubic feet and 50 cents for minimum bills and 10 per centum penalty for non-payment of bills when due, and ordered the division thereof  $57\frac{1}{2}$  per centum to the Receiver and  $42\frac{1}{2}$  per centum to this Company; whereupon this Company, though not a party



hereto, objected to said joint-rate and the division thereof, but thereafter put the same into effect for a trial period.

5. After the trial of said joint-rate for ten months, this Company states that said joint-rate and the percentage thereof appropriated to this Company is unreasonably low, non-compensatory and confiscatory of the property of this Company, and said order fixing said joint-rate and the division thereof for this Company and continuing the same in effect without a hearing deprives this Company of its property without due process of law and takes its property for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

6. The Company states that the reasonable value and present worth of its property used and useful in the service of the public in the distribution and sale of natural gas is at least \$1,800,000, on the basis of the purchasing power of money in normal times; that it is entitled to 8 per centum return upon said value over and above taxes, maintenance and depreciation charges and operating costs; that its gross receipts from the sale of natural gas from September 1, 1917, to July 1, 1918, were \$368,738.53; that its taxes, maintenance and depreciation charges and necessary operating costs including the sums paid for natural gas during said period were \$355,404.18, leaving only \$13,334.35 applicable to interest and profits, being less than one per centum; that by reason thereof this Company has sustained a loss of legitimate earnings of \$106,665.65 in said ten months and is now and

will continue to sustain losses approximating \$125,000 per annum.

7. The Company further states that no rate, joint-rate or schedule of rates or joint-rates which will net this Company less than 50 cents for minimum bills and 60 cents per thousand cubic feet for the handling, distribution and sale of natural gas will afford this Company even six per centum return on the reasonable value of its property used and useful in the service of the public.

8. The Company further states that it has at great expense installed and is now maintaining a gas-manufacturing-works sufficient in size and capacity to furnish in excess of 2,000,000 cubic feet of manufactured gas per day; that on and after the first shortage in the supply of natural gas by the Receiver, this Company will manufacture, distribute and sell manufactured gas to Kansas City, Kansas, and its inhabitants, and will thereafter desire to take, distribute and sell only such natural gas as may be necessary to supplement said manufactured gas supply and furnish a good, continuous and satisfactory service to its patrons, and will thereupon and thereafter take and purchase from the Receiver only such natural gas as may be necessary for such purpose, not exceeding 2 million cubic feet per day, and hereby offers to pay said Receiver 25 cents per thousand cubic feet for such natural gas properly and accurately measured at the Receiver's measuring station at Westport and College avenues in Rosedale, Kansas, said measurements to be corrected to a basis of 8 oz. above atmospheric pressure and at a temperature of 50° Fahrenheit.

*Wherefore*, the premises considered, The Wyandotte County Gas Company moves the Court to order and approve the joint-rate for this Company and the Receiver, effective in Kansas City, Kansas, and Rosedale, Kansas, on and after the regular August, 1918, meter-readings of at least \$1.00 net per thousand cubic feet and 50 cents for minimum bills and 10 per centum penalty for the non-payment of bills when due, for an all-natural-gas service; and to direct the Receiver and this Company to put the same into effect and to divide the gross receipts from the sale of said natural gas, 40 per centum to the Receiver and 60 per centum to the Wyandotte County Gas Company; or to order and approve such other separate rates or joint-rate and division thereof as may be equitable and just.

To authorize and order said Receiver, on and after receiving written notice from this Company, to furnish, deliver and sell to the Company such natural gas as it may need to supplement its supply of manufactured gas at 25 cents per thousand cubic feet properly and accurately measured at Westport and College avenues, Rosedale, Kansas, said measurements to be corrected to a basis of 8 oz. above atmospheric pressure and at a temperature of 50° Fahrenheit.

J. W. DANA,

*Solicitor for The Wyandotte County  
Gas Company.*

(Filed 9-7-18. F. L. Campbell, Clerk.)

**Exhibit "B."**

In the District Court of the United States for the  
District of Kansas. First Division.

Fidelity Title & Trust Company,  
Plaintiff,

No. 1-N

vs.

Consolidated with

Kansas Natural Gas Co. *et al.*, No. 1351.  
Defendants.

**APPLICATION OF KANSAS CITY GAS COMPANY FOR  
APPROVAL OF INCREASED JOINT-RATE.**

The Kansas City Gas Company states and shows to the court:

1. That it is a corporation duly organized and existing under the laws of the State of Missouri and a citizen and resident of said State and of the Western Division of the Western Judicial District thereof, and that John M. Landon, Receiver herein, is a citizen and resident of the State of Kansas and the First Judicial Division thereof.

2. That it is engaged in the business of distributing and selling natural gas in Kansas City, Missouri.

3. That prior to September 1, 1917, the Company received, distributed and sold natural gas pursuant to certain supply-contracts existing between this Company and the Kansas Natural Gas Company; that on August 13, 1917, this court entered its final decree in the case of *John M. Landon, Receiver, v. The Public Utilities Commission of Kansas et al.*, No. 136-N, enjoining the existing rates and decreeing that:

"The defendant distributing companies are permanently enjoined from enforcing the said

supply contracts or rates fixed or referred to therein against plaintiff and from interfering with plaintiff in establishing and maintaining such rates as this Court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri."

Said decree is hereby referred to and made a part hereof.

4. That thereupon this court entered an order herein fixing and approving a joint-rate for this Company and the Receiver to charge consumers of gas in Kansas City, Missouri, of 60 cents per thousand cubic feet and 50 cents for minimum bills and 10 per centum penalty for non-payment of bills when due, and ordered the division thereof of  $57\frac{1}{2}$  per centum to the Receiver and  $42\frac{1}{2}$  per centum to this Company; whereupon this Company, though not a party thereto, objected to said joint-rate and the division thereof, but thereafter put the same into effect for a trial period.

5. After the trial of said joint-rate for ten months, this Company states that said joint-rate and the percentage thereof appropriated to this Company is unreasonably low, non-compensatory and confiscatory of the property of this Company, and said order fixing said joint-rate and the division thereof for this Company and continuing the same in effect without a hearing deprives this Company of its property without due process of law and takes its property for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

6. The Company states that the reasonable value and present worth of its property used and

useful in the service of the public in the distribution and sale of natural gas is at least \$8,500,000 on the basis of the purchasing power of money in normal times; that it is entitled to 8 per centum return upon said value over and above taxes, maintenance and depreciation charges and operating costs; that its gross receipts from September 1, 1917, to July 1, 1918, were \$1,415,230.06; that its taxes, maintenance and depreciation charges and necessary operating costs including the sums paid for natural gas during said period were \$1,340,981.12, leaving only \$74,248.94 applicable to interest and profits, being less than one per centum; that by reason thereof this Company has sustained a loss of legitimate earnings of \$492,-417.73 in said ten months and is now and will continue to sustain losses approximating \$600,000 per annum.

7. The Company further states that no rate, joint-rate or schedule of rates or joint-rates which will net this Company less than 50 cents for minimum bills and 60 cents per thousand cubic feet for the handling, distribution and sale of natural gas will afford this Company even six per centum return on the reasonable value of its property used and useful in the service of the public.

*Wherefore*, the premises considered, the Kansas City Gas Company moves the Court to order and approve the joint-rate for this Company and the Receiver, effective in Kansas City, Missouri, on and after the regular August, 1918, meter-readings of at least \$1.00 net per thousand cubic feet and 50 cents for minimum bills and 10 per centum penalty for the non-payment of bills when due, for

an all-natural-gas service; and to direct the Receiver and this Company to put the same into effect and to divide the gross receipts from the sale of said natural gas, 40 per centum to the Receiver and 60 per centum to the Kansas City Gas Company; or to order and approve such other separate rates or joint-rate and division thereof as may be equitable and just.

J. W. DANA,

*Solicitor for Kansas City Gas Company.*

(Filed Sept. 7, 1918. F. L. Campbell, Clerk.)



SEP 26 1918

JAMES D. MAHER;  
CLERK

IN THE  
**Supreme Court of the United States.**  
OCTOBER TERM, 1918.

No. 330.

(Submitted and Considered in Nos. 227, 329 and 353.)

KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY ET AL., APPELLANTS,

VS.

KANSAS NATURAL GAS COMPANY, JOHN M.  
LANDON AND GEORGE F. SHARITT, RE-  
CEIVERS, AND FIDELITY TITLE  
AND TRUST COMPANY.

Filed January 14, 1918.

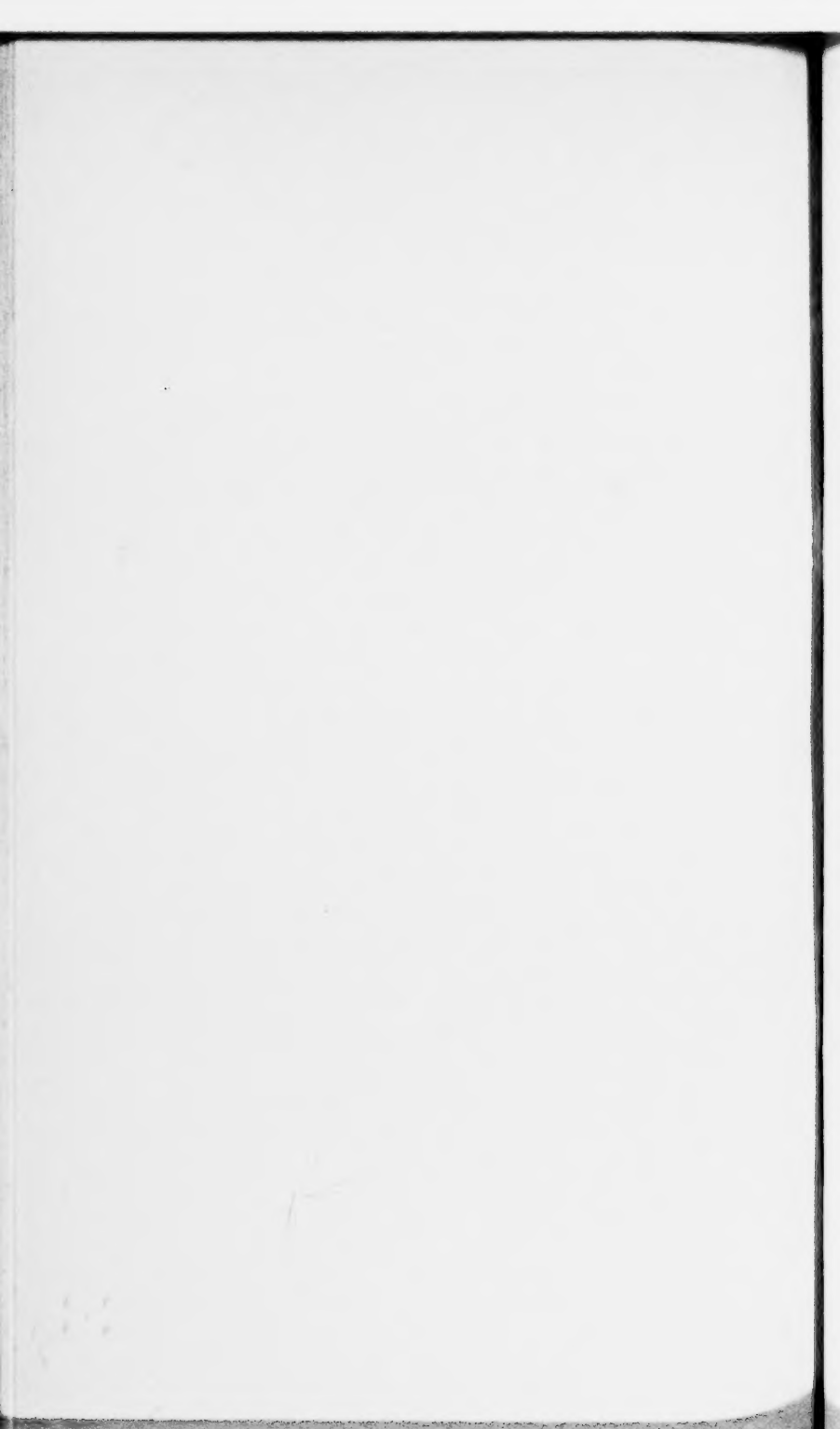
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS.

**Brief for Appellants**

KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY, FIDELITY ~~TITLE~~ AND  
TRUST COMPANY AND THE KANSAS  
CITY PIPE LINE COMPANY.

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*Solicitor for Appellants.*

910 Grand Ave., K. C., Mo.



Service acknowledged September \_\_\_\_\_, 1918.

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*Solicitor for John M. Landon, Receiver,  
Kansas Natural Gas Company.*

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*Solicitor for Kansas Natural Gas Company.*

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*Solicitor for Fidelity Title and Trust  
Company.*

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*Receiver of Kansas Natural Gas Company.*

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IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1918.

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No. 330.

(Submitted and Considered in Nos. 227, 329 and 353.)

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KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY ET AL., APPELLANTS,

VS.

KANSAS NATURAL GAS COMPANY, JOHN M.  
LANDON AND GEORGE F. SHARITT, RE-  
CEIVERS, AND FIDELITY TITLE  
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
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KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY, FIDELITY ~~TITLE AND~~  
TRUST COMPANY AND THE KANSAS  
CITY PIPE LINE COMPANY.

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**STATEMENT.**

This is a separate appeal allowed on motion (Rec. 723-735) and order of severance (Rec. 740-769), from the decree

of the District Court of the United States for the District of Kansas, Hon. Wilbur F. Booth, Special Judge, rendered Aug. 13, 1917 (Rec. 621), in the case entitled John M. Landon, Receiver of the Kansas Natural Gas Company, v. The Public Utilities Commission of Kansas *et al.*, No. 136-X in which were joined as defendants the Kansas Natural Gas Company, the Fidelity Title and Trust Company and Delaware Trust Company, Trustees of its mortgages, George F. Sharitt, "potential" Receiver of said company, The Kansas City Pipe Line Company, owner of certain pipe-lines held under lease and operated by said Receiver, the Fidelity Trust Company, Trustee of said Pipe Line Company's mortgage, the Public Utilities Commission of Kansas, the Public Service Commission of Missouri, the Attorney-Generals and forty-seven cities and towns of said states and thirty-two independent local gas companies doing business in said cities, including appellants the Kansas City Gas Company of Kansas City, Missouri, and The Wyandotte County Gas Company of Kansas City, Kansas. (Rec. 8.)

The Kansas Natural Gas Company, Fidelity Title and Trust Company, Trustee of its first mortgage, and George F. Sharitt, "potential" Receiver of said Company (Rec. 1001-1003) though nominally defendants, adopted the allegations of the Receiver's bill and supplemental bill and joined in the prayer for the same relief, and should be marshalled as plaintiffs in the case. (Rec. 89, 222, 227).

The bill (Rec. 8) and supplemental bill (Rec. 343) in substance allege, that the suit is dependent upon, ancillary to and in aid of the jurisdiction (Rec. 10) of the trial court in a certain foreclosure suit pending in said court entitled, *Fidelity Title and Trust Company v. Kansas Natural Gas Company and Delaware Trust Company*, No. 1-N, since consolidated with an alleged creditors' suit No. 1351; that the Public Utilities Act of Kansas, Laws 1911, Chap. 238, Sec. 30, fixing rates in effect January 1, 1911, as the legal rates

and prohibiting changes therein without the consent of the Public Utilities Commission is confiscatory; that the 28-cent rate ordered by the Kansas Commission Dec. 10, 1915, (Rec. 53) is confiscatory; that the Public Service Act of Missouri, Laws 1913, Secs. 69 and 70 (Rec. 781-782) empowering the Public Service Commission to suspend rates filed by utilities for an aggregate of twelve months is confiscatory; that the franchise-ordinances of Kansas City, Missouri (Rec. 832), and Kansas City, Kansas (Rec. 821), and said forty-five other cities and towns naming rates for natural gas charged by local gas companies doing business therein are confiscatory; that certain natural gas-supply-contracts (Rec. 828 and 844), existing between the Kansas Natural Gas Company and said local gas companies under which gas was furnished to said companies are improvident, wasteful, destructive and a fraud upon the trust estate in the hands of the Receiver (Rec. 43); and that said Public Service Acts, commission orders, franchise-ordinances and gas-supply-contracts and the attempts and threats of the several defendants to enforce the same were each and all an interference with and burden upon interstate commerce in natural gas.

The relief prayed (Rec. 45, 358) was to enjoin the enforcement of said Public Service and Utility Acts, said 28-cent rate order, and said suspension orders of the commissions, and said franchise rates, as confiscatory; and to further enjoin, as a burden upon and an interference with interstate commerce, all of said Acts, orders and franchises together with the enforcement of said gas-supply-contracts as between the Receiver and said local companies.

The answer and counterclaim (Rec. 233), the amended answer (Rec. 496) and supplemental answer (Rec. 612) of the Kansas City Gas Company, after certain admissions, in substance allege, that the bills do not state a cause of action; that the Kansas City Gas Company owns and holds franchises in and upon the public streets of Kansas City,



Missouri, authorizing it to furnish and sell natural gas, and that it owns and operates a gas plant and distribution system therein for such purpose; that the Kansas Natural Gas Company and its Receiver have, own or hold no franchise or right in or upon the public streets of said city or plant, mains or pipes therein for the purpose of furnishing and selling natural gas to said city and its inhabitants; that the Kansas City Gas Company obtains its natural gas from the Kansas Natural Gas Company and its Receiver under and pursuant to certain contracts in writing dated Nov. 17, 1906, and Dec. 3, 1906 (Rec. 844), between The Kansas City Pipe Line Company and McGowan, Small and Morgan, Grantees of said natural gas franchise in Kansas City, Missouri, which said contracts have been duly assigned, sold and transferred by the Pipe Line Company to the Kansas Natural Gas Company and the obligations thereof assumed (Rec. 856) by said company; that said contracts have also been assigned, sold and transferred by McGowan, Small and Morgan to the Kansas City Gas Company (Rec. 240); that said contracts have never been disavowed by the court or Receiver (Rec. 238, par. XXXIII) and were never fraudulent in law or in fact; that said contracts in substance provide for the delivery and sale of natural gas at the city gates of the Kansas City Gas Company's plant by the Kansas Natural Gas Company, and in sufficient amounts at 20 pounds pressure, so as to enable the Kansas City Gas Company to furnish the same to its consumers for lighting and cooking and for domestic heating, industrial and manufacturing purposes; that said contracts stipulated a certain consideration to be paid by the Kansas City Gas Company to the Kansas Natural Gas Company therefor, to-wit, "A sum equal to 62½ per cent of the gross receipts from the sale of said gas *at the rate of 27 cents per thousand cubic feet as measured by the consumers' meters until Nov., 1916, and thereafter at the rate of 30 cents, as measured by consumers' meters*"

(Rec. 503), and that said Kansas Natural Gas Company and its Receivers have continued up to the present time to supply this defendant with natural gas under the terms of said contracts and that this defendant has never agreed to accept, receive or pay for said gas except upon the terms of said supply-contracts and at the prices therein fixed (Rec. 503); that the Kansas City Gas Company has paid said Kansas Natural Gas Company and its Receiver for said gas according to the terms of said contract and that the Public Service Commission of Missouri did on the 10th day of August, 1916 (Rec. 365), enter an order fixing a 30-cent rate to be charged by the Kansas City Gas Company for the purpose of enabling said company to pay said Kansas Natural Gas Company and Receiver the consideration named in said contracts for the gas furnished, to-wit, 62½% of the gross receipts obtained from the sale of said gas at a 30-cent rate. The Kansas City Gas Company concedes the jurisdiction of the Public Service Commission of Missouri to regulate and fix reasonable rates to be charged by said company.

That said Kansas Natural Gas Company and its Receivers have from time to time failed and neglected to furnish said gas in sufficient quantities and at sufficient pressures as provided in said contracts to enable the Kansas City Gas Company to furnish the same to its patrons for lighting and cooking and for heating, manufacturing and industrial purposes as provided in said contracts and said Kansas City Gas Company has sustained great and irreparable loss, injury and damage by reason thereof (Rec. 614).

The prayer of said answers and counterclaim was that the Receiver's bill be dismissed (Rec. 506, 614) and that the Kansas Natural Gas Company and Receiver be required (Rec. 248) to furnish, supply and deliver to the Kansas City Gas Company at or near the corporate limits of Kansas City, Missouri, at a pressure of 20 pounds natural gas in such amount as will at all times fully sup-

ply the demand for all purposes of consumption as provided and in accordance with said contracts (Rec. 248).

The answer (Rec. 100), amended answer (Rec. 525) and supplemental answer (Rec. 615) of The Wyandotte County Gas Company adopt or allege substantially the same facts that the Kansas City Gas Company does, together with the further fact that this defendant is now collecting and receiving from consumers and paying to said plaintiff  $62\frac{1}{2}$  per cent of 28 cents net per thousand cubic feet (1 cent in excess of said contract price) (Rec. 34); and this defendant will, as per contract on and after Nov. 19, 1916, increase its rates to 30c and charge and collect from its consumers and pay to plaintiff  $62\frac{1}{2}$  per cent of the gross receipts from the sale of gas at 30 cents net per thousand cubic feet; that by reason thereof, the price paid to plaintiff and his interest in the rates now in force and collected by this defendant are fixed by contract and not by any order, rule or regulation of the Public Utilities Commission of Kansas, and plaintiff herein is not entitled to a decree of injunction against said Commission, enjoining the rates now in force and collected by this defendant; *but the plaintiff and this defendant will be entitled to an injunction against said commission if it should attempt to interfere with this defendant putting into force and effect said 30 cent net rate on and after Nov. 19, 1916*" (Rec. 534).

The Wyandotte Company's prayer asks (Rec. 535) that the bills be dismissed in so far as they charge or attempt to charge any cause of action or demand any relief against said company; that any action to disavow, cancel or annul said gas-supply-contract be abated in this court and cause pending the exercise of jurisdiction over the Kansas Natural Gas Company and the plaintiff as Receiver of said company by the District Court of Montgomery County, Kansas, in the State Case there pending (Rec. 535); and that (Rec. 535) "the relief demanded in

the plaintiff's original bill of complaint against the Public Utilities Commission of the State of Kansas be granted to the extent of enjoining said commission from interfering with the collection of said 30-cent net rate provided for and agreed to in said contract of Feb. 1, 1906, existing between this defendant and the Kansas Natural Gas Company" (Rec. 535).

The Kansas City Gas Company and The Wyandotte County Gas Company filed answers (Rec. 518, 520, 525, 537, 539) to the joint bills designated "separate answers" of the Kansas Natural Gas Company and George F. Sharitt, potential Receiver of said company, in which they adopted the allegations of their answers and counterclaims against the Receiver's bills.

The record shows (Rec. 564 and 870) that between 1904 and 1908 the Kaw Gas Company, the Kansas Natural Gas Company and The Kansas City Pipe Line Company were organized for the purpose and engaged in the business of acquiring and developing gas lands, leases and productions in southern Kansas, constructing pipe-lines to carry gas to the cities and towns of eastern Kansas and western Missouri and making contracts for the sale of said gas to local gas companies having gas plants and holding franchises to use the streets and to furnish and sell natural gas in said cities and towns. Later the Mar-net Mining Company was organized to acquire gas lands, leases and productions in Oklahoma and to build and extend the pipe-line system of the Kansas Natural Gas Company into said state. By assignments and lease-contracts the properties of all these companies were merged into one system and came under the active control and management of the Kansas Natural Gas Company and the other companies became inactive or holding companies.

Originally the gas was drilled and produced by the Kansas Natural Gas Company on its own leases but as the demand increased and the known fields receded to

the south and the supply commenced to wane, said company and its Receiver purchased more and more of their supply until at the time of the hearing the Receiver was purchasing 92½ per cent and producing only 7½ per cent of the gas he sold (Rec. 298).

The gas flows from the wells into the field gathering lines and thence into the pipe-lines by the natural force of the "rock pressures" (Rec. 808). The application of the law of expanding gases (Rec. 808 and 809) by the compression of the gas at intervals along the pipe-lines causes it to flow forward and into the distribution plants of the local companies in the cities and towns supplied.

The Kansas Natural Gas Company had no plants or distribution mains or franchises to use the streets or to furnish or sell natural gas in the cities supplied (Rec. 806). Between 1904 and 1908 said company or its subsidiaries entered into certain written contracts with the various distributing companies owning plants and distribution mains and holding franchises in said cities, among which were the contracts between The Kansas City Pipe Line Company as party of the first part, predecessor of the Kansas Natural Gas Company, and McGowan, Small and Morgan, grantees, as parties of the second part, predecessors of the Kansas City Gas Company, dated Nov. 17 and Dec. 3, 1906 (Rec. 844), and a similar contract between the same Pipe Line Company, and the Wyandotte Gas Company, predecessor of The Wyandotte County Gas Company, dated Feb. 1, 1906 (Rec. 828). Said supply-contracts recited that first party was the owner of gas lands and leases in southern Kansas and that second party was the owner of an ordinance to furnish and sell gas in Kansas City, Missouri, and that:

"1. The party of the first part *hereby agrees* that it will during the *period of such ordinance*, or any extension or renewal thereof, or of any ordinance which may be obtained, either in the interest of the parties

of the second part, or of their property, *supply and deliver* through its said pipe line or lines *to said parties of the second part*, or any successor in the ownership of the property for the distribution of gas for Kansas City, Missouri, at a pressure of twenty (20) pounds at the point of delivery above mentioned, *natural gas* in such amount as will at all times fully supply the demand for all purposes of consumption, as provided in this contract, *for the consideration hereinafter mentioned*. However, as the production of gas from the wells and the conveying of it from long distances is subject to accidents and interruptions and failures, the party of the first part does not under this contract undertake to furnish the parties of the second part with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such a period of time as the wells and pipe lines of the party of the first part and such other resources as the party of the first part shall be able to command are capable of supplying. And it is expressly understood and agreed by the parties of the second part that the party of the first part shall not be liable for any loss, damage or injury that may result either directly or indirectly from such shortages or interruptions, but said party of the first part agrees to use diligence to supply the parties of the second part with a constant and sufficient quantity of merchantable gas for all consumers.

2. It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufacturing purposes in said city at lower rates than those specified in said ordinance, and that they shall and will make such special contracts in accordance with their agreement to that effect contained in Section 13 of said ordinance, copy of which is hereto attached.

In order to protect the domestic trade, however, the parties of the second part may, without notice, if the supply of natural gas shall make it necessary to do so, reduce the amount of such gas to be furnished under any such special contracts or entirely stop the supply of the same, and the agreement of the

party of the first part herein to furnish a full supply of natural gas shall not apply to such gas to be sold for manufacturing purposes if the same shall impair its ability to furnish a full supply under this contract as to pressure, etc., for the domestic trade, excepting, however, that the parties of the second part shall always have a right to sell natural gas to manufacturers at the same rates and under the same terms and conditions as to domestic consumers, and the parties of the second part agree that any contract they make to furnish gas to manufacturers shall contain provisions by which the parties of the second part may without notice diminish the amount of gas supplied under such contract or entirely stop the same.

So long as the party of the first part is able to supply the same, the parties of the second part agree to buy from the party of the first part *all the gas they may need* to fully supply the demand for domestic consumption in the said city and to pay to the party of the first part for the natural gas which they shall receive from said party of the first part for all purposes during the first two years a sum equal to sixty per cent of their gross receipts from the sale of such natural gas in said city of Kansas City, Missouri, and thereafter a sum equal to sixty-two and one-half per cent. of such gross receipts. *The parties of the second part make no agreement with the party of the first part respecting the RATES at which they shall sell natural gas to any consumers in Kansas City, Missouri, but expressly reserve to themselves the right to charge their consumers for natural gas any rates not exceeding those mentioned in said ordinance which they may agree upon with such consumers; but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their agreement to that effect contained in said Section 13 of said ordinance, to sell gas to manufacturers at a less rate than fifteen cents per thousand cubic feet, and the party of the first part shall be unwilling to accept as its compensation there-*



for sixty or sixty-two and one-half per cent., as the case may be, of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part *shall be under no obligation to furnish gas so sold at such lower prices*, and the parties of the second part shall be at liberty to obtain the same from such other source as they may find available" (Italics ours) (Rec. 845).

These contracts further provided (Rec. 846) for monthly statements showing the amount of receipts and the uncollected bills, and for payments on the 15th day of each month; provision was made for the first party to have access to the second parties' books to verify the gas sales and the amounts collected; second parties further agreed to extend and attach business promptly, to properly measure the gas sold to its consumers, permit the first party to inspect the mains, pipes, regulators, meters and appliances of the second parties to determine their condition, and keep the first party advised of the number of meters set, connected and disconnected from month to month; the amount of gas to be used for street lamps and the price therefor was agreed upon. Said contract and all their rights acquired thereunder were assignable to a corporation thereafter to be organized under the laws of Missouri (Rec. 849).

These contracts were thereafter duly assigned by McGowan, Small and Morgan, grantees of said franchise-ordinance, to the Kansas City Gas Company, a Missouri corporation, and by The Kansas City Pipe Line Company to the Kansas Natural Gas Company (Rec. 854).

The ordinance of Kansas City, Missouri, referred to (Rec. 844) attached and marked Exhibit No. 1, to said contract is ordinance 33887 (Rec. 832) of Kansas City, Missouri, granting to McGowan, Small and Morgan, their successors and assigns, the right to use the public streets of said city for the purpose of supplying natural gas to said city and

its inhabitants (Rec. 832). Said ordinance names the rates to be charged, as follows:

"Section 13. The said grantees shall be entitled to charge and collect from consumers of such gas, during the period of five years from and after natural gas is first furnished hereunder at the rate of not to exceed twenty-five cents per thousand cubic feet, and during the period of five years next thereafter at the rate of not to exceed twenty-seven cents per thousand cubic feet, and thereafter during the period of the aforesaid grant at the rate of not exceeding *thirty cents per thousand cubic feet*, and may also make special contracts with consumers at less than the general rate then in force, based upon the amount of gas used and the conditions of the contract, which special rates shall be the same to all consumers using the same amount of gas under the same contract conditions, and schedules of such special rates and the contract conditions shall be filed with the city clerk, and each and every change therein shall also be filed with the city clerk, and be open to public inspection. The grantees agree that they will at all times make special contracts at as low rates as those at which natural gas is sold at the time to any consumers of the same class using the same amount of gas under the same contract conditions who are located approximately as distant from the fields from which they are at the time supplied as Kansas City, Missouri, is from the fields from which it is at the time supplied and who are supplied by the grantees, or anyone from whom the grantees obtain their supply, or anyone whose supply is obtained from those from whom the grantees obtain their supply; provided that this agreement to make such special contracts at such rates shall not be construed to compel the grantees to make such special contracts at as low rates as those in effect at the time in any locality where the grantees, or those from whom the grantees obtain their supply, or any one supplied by those from whom the grantees obtain their supply, may be in bona fide competition with any other supplier of natural gas in such locality; but if the demand from special rate consumers threatens the general supply, the grantees may shut off the supply from any special rate consumer, which shall include all other than domestic consumers, in whole or in part, and if the grantees fail or refuse to do so, the city council may by ordinance require the grantees so to do; provided always that the said grantees shall have the right to charge ten

(10) per cent. additional to all consumers who are in arrears for a longer period than ten (10) days; and provided, further, that the grantees may charge and collect from each person who has a meter installed a minimum monthly bill of fifty cents; provided, however, that if the bill for natural gas consumed in any month shall at the rate then in force exceed the sum of fifty cents, such consumer shall not be charged any minimum bill for that month.

Under the permission and authority hereby granted, the grantees shall furnish natural gas for illuminating, heating and mechanical purposes, which shall at all times be of the same character and quality as when it comes from the earth; and it shall not be mixed with air or otherwise adulterated" (Rec. 833). (The 30-cent rate was in effect on the date of the decree herein) (Rec. 621.)

Said ordinance runs for a period of 30 years from Sept. 27, 1906; provides for the furnishing of natural gas for all domestic purposes including lighting, cooking and heating and for manufacturing purposes, and recites that the grantees covenant that their *contract* for gas supply is with the Kaw Gas Company and The Kansas City Pipe Line Company (Rec. 840); that said contract fixes the price or consideration to be paid by grantees for the gas, will not be changed without the city's consent and that, if the city shall thereafter acquire the plant and property of the grantees, said gas-supply-contract will be assigned, sold and transferred by the grantees to the city to enable it to continue acquiring a supply of natural gas thereunder (Rec. 841).

The supply-contract between the Wyandotte County Gas Company and the Kansas Natural Gas Company is in substantially the same form and attaches and refers to franchise-ordinance 6051 of Kansas City, Kansas (Rec. 829), and the schedule of rates is named therein in the same manner (Rec. Ordinance 821; Contract 828).

In a certain lease dated Jan. 1, 1908 (Rec. 853), in which The Kansas City Pipe Line Company leased all its

gas lands, leases, productions and pipe-lines to the Kansas Natural Gas Company, it is provided:

“Fifth. The Lessee hereby *assumes and covenants to perform all the obligations assumed by the Lessor under the terms of an agreement, dated February 1, 1906, between the Lessor and the Wyandotte Gas Company, for the supply of natural gas to Kansas City, Kansas, and Wyandotte County, in said State, a copy of which is attached hereto, and marked Exhibit A, and those assumed by the Lessor under the terms of a certain other agreement, dated November 17, 1906, between the Lessor and Hugh J. McGowan, Charles E. Small and Randal Morgan, for the supply of natural gas to Kansas City, Missouri, copy of which said last named agreement is hereto attached and marked Exhibit B, and those assumed by the Lessor under the terms of a certain other agreement, dated December 3, 1906, between the Lessor and said Hugh J. McGowan, Charles E. Small and Randal Morgan, copy of which is hereto attached [market] Exhibit C, as amended by an agreement dated December 11, 1907, between the same parties, copy of which is hereto attached marked Exhibit D.*

The Lessee agrees that if the gas wells hereby demised situated in the territory of the Lessor *do not furnish a sufficient volume of gas, or if the pipe line of the Lessor shall not have a delivery capacity sufficient to supply the demands for gas in the cities of Kansas City, Kansas, and Kansas City, Missouri, it, the Lessee, will supplement said gas supply from its own gas wells up to an amount equal to fifty (50) per cent. of the gas, which by the use of due diligence in connecting existing wells and drilling new ones, it may be able to produce from the territory now or hereafter controlled by it; and will construct at its own cost and expense, or, so far as any of the bonds of the Lessor in this lease referred to may be available for the purpose, at the cost and expense of the Lessor, the additional pipe lines necessary for the delivery of gas to supply such demands, whether from the Lessor's or the Lessee's territory: Provided, however, that if the expectation of continuance of the supply of gas shall not be sufficient to warrant the laying of an additional pipe line at any time, the Lessee shall not be required to do so, whatever the demand for gas in said cities: Provided, further, that it is the intent of the parties that the provisions of this clause shall not be so con-*

strued as to in effect require the Lessee to lay a line for manufacturing purposes mainly or only" (Rec. 856). (Italics ours.)

The business of the Kansas Natural Gas Company and the Kansas City Gas Company and The Wyandotte County Gas Company with respect to the furnishing of gas and the payment therefor was carried on in conformity with said supply-contracts from the date thereof until Oct. 9, 1912, at which time the United States District Court for the District of Kansas, Hon. John C. Pollock, Judge, appointed Receivers for the Kansas Natural Gas Company in the creditors' suit entitled, John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity, and later, Feb. 3, 1913, extended said receivership to the foreclosure suit entitled, Fidelity Title and Trust Company v. Kansas Natural Gas Company and Delaware Trust Company, *et al.*, No. 1-X, Equity.

The bills in said suits (Rec. 870, 892) alleged that the Kansas Natural Gas Company had no distributing plants in the cities to be served; that it would cost enormous sums exceeding 20 million dollars to build the same, resulting in duplication of plants and tearing up of the city streets, and (Rec. 873), "That it was for the public good as well as for the mutual benefit of both the Kansas Natural Gas Company and the several manufactured gas companies, that the plants of the latter in each of the said cities be utilized for the distribution and marketing of the natural gas therein, and to that end the Kansas Natural Gas Company contracted with each of the manufactured gas companies in the said several cities by which the Kansas Natural Gas Company should pipe its natural gas to the limits of the said cities and there *deliver the same into the local manufactured gas system or plant*, and that the local manufactured gas company should *there take and receive* the said gas and through and by means of its manufactured gas plant or system of pipes distribute, market and *sell* the same to consumers thereof in the said city."

In the orders of court appointing said Receivers in both cases, it was provided

"Third. That upon the filing and approval of the said bonds, the said Receivers (or each of them as fast as his respective bond is filed and approved) be and they are hereby authorized, empowered and directed to take immediate possession of all and singular the pipe lines, compressor stations, leases and other property above described or referred to, wherever the same may be situate or be found and, *until the further order of this Court, to continue the operation of the present pipe line system and natural gas business of the defendant company and every part or portion thereof, and to run, manage, conduct and operate such pipe lines and property as the defendant company holds, controls or operates under leases, contracts arrangements or otherwise. All of which is to be done, until the further order of the Court, as heretofore done, run or operated by the defendant Company; but*

*The Court expressly reserves to itself the right to pass upon, approve, disapprove, disavow and cancel any and all leases, arrangements and contracts of every nature, kind and description, under or by virtue of which, the defendant company has been or is now operating any of its leased lines and property; or selling or furnishing any of its gas for distribution and sale; or buying and acquiring any gas for use and transportation through its operated lines; and no such lease, arrangement or contract shall be regarded as binding or taken by the Receivers, until expressly ordered by this Court in these proceedings; and nothing herein contained shall be considered or taken as in any way accepting, approving, satisfying or adopting any such lease, arrangement or contract"* (Rec. 789). (Italics ours.)

Said order further directed said Receivers to acquaint themselves with the condition of the company's affairs and to report to the court their "suggestions as to the value of the company's leases and *contracts both for operating lines and furnishing gas to the local distributing companies in the several cities reached by the operated lines of the defendant company, and the advisability of disapproving and disavowing any or all of them"* (Rec. 791-792).

Under this order the Receivers in said creditors' and foreclosure suits took possession and operated the properties owned and leased and the business and contracts of the Kansas Natural Gas Company including said gas-supply-contracts with the local companies from Oct. 9, 1912, until Sept. 22, 1914, at which time the active management of the entire properties of the Kansas Natural Gas Company owned and leased and its business, including said supply-contracts with the local companies, was, by order of court pursuant to the mandate of the Circuit Court of Appeals (Rec. Order 1001), 217 Fed. 187 turned over to Receivers John M. Landon and R. S. Litchfield appointed by the District Court of Montgomery County, Kansas, in the case of *State of Kansas v. Independence Gas Company, et al.*, No. 13476, an anti-trust suit for the correction of certain alleged corporate abuses. This was done on the doctrine of comity and claim of prior jurisdiction in the State Courts (206 Fed., 772; 209 Fed. 300; 217 Fed. 187), but the "potential" possession and right of reversion of said properties was retained in the Federal Court and its Receiver.

The order of the Federal Court directing the delivery of said property and business to the Receivers of the State Court (Rec. 1001) provides for the delivery of the possession of all the estate of the Kansas Natural Gas Company "including the leasehold estates and contracts of and with *The Kansas City Pipe Line Company*" (Rec. 1003) and that the Federal Court "through its Receiver George F. Sharitt shall retain the potential possession of the estates, properties and assets of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with *The Kansas City Pipe Line Company*; but the said John M. Landon and R. S. Litchfield and their successors shall have the right as Receivers to retain the actual possession, control and management of the estates, properties, moneys, funds, assets and earnings of the Kansas Natural Gas Company, including the leasehold estates and contracts of and with *The Kansas City Pipe Line Company*" (Rec. 1003).



The entire property of the Kansas Natural Gas Company owned and leased and its business including said supply contracts with the local companies was in the actual possession and active management of John M. Landon, in the dual capacity as Receiver appointed by said State Court, and as ancillary Receiver appointed by said Federal Court in said foreclosure suit, but acting under the direction of the State Court, from Sept. 22, 1914, to June 2, 1917; and the business was carried on by said Receiver and gas furnished to the Kansas City Gas Company and The Wyandotte County Gas Company in the same manner that it had theretofore been done, run and performed by the company (Rec. Bill, 18; Stat. of Evid. 787, 806).

"The Receivers, however, continued to distribute gas to the various distributing companies, and to collect therefor upon the ratio of the division of rates fixed by the contracts." (Court's Opinion 242 Fed., 674, Rec., 576).

On Dec. 29, 1915, John M. Landon and R. S. Litchfield as Receivers, acting under direction of the State Court commenced this suit, No. 136-N below.

On June 2, 1917, the State Case was dismissed and J. M. Landon was discharged as State Receiver (Rec. 1023) and John M. Landon as Federal Receiver, acting under direction of that court was substituted as plaintiff in said case (Rec., 1029).

On June 3, 1916, a hearing was had before the enlarged court under Sec. 266 of the Judicial Code before Hon. Walter H. Sanborn, Circuit Judge, Hon. Wilbur F. Booth and Hon. Ralph E. Campbell, District Judges, and a temporary injunction was granted enjoining the enforcement of the 28-cent rate fixed by the Kansas Commission as confiscatory, but the court said: "It has not been and is not necessary for this court as at present constituted to determine the validity of the city ordinances, the contracts between the cities and the distributing companies, *contracts between the distributing*

*companies and the Kansas Natural Gas Company and the duties and obligations of the Receiver under them in order to adjudge the issues it was constituted to decide and for that reason no opinion is expressed or adjudication made concerning them"* (Rec. 311; 234 Fed., 168).

On final hearing the Kansas City Gas Company and The Wyandotte County Gas Company introduced in evidence said natural gas supply-contracts and the franchise-ordinances attached and referred to therein and the lease under which the Kansas Natural Gas Company acquired the use of the pipe-lines and propertis of The Kansas City Pipe Line Company and assumed its obligation to furnish gas under said contracts to the Kansas City Gas Company, The Wyandotte County Gas Company; and also put in evidence the pleadings and records in said creditors' and foreclosure suits including particularly the order above quoted of the United States District Court appointing Receivers and continuing said supply-contracts with the local companies in force and effect until the further order of the court.

The condensed statement of the evidence offered by all the parties appears in the record, pages 776 to 820, inclusive, and may be further condensed as follows:

The Kansas City Gas Company is a Missouri corporation doing business in Kansas City, Missouri (Rec., p. 777); The Wyandotte County Gas Company is a Kansas corporation doing business in Kansas City, Kansas, and Rosedale, Kansas (Rec. 778); The Kansas Natural Gas Company is a Delaware corporation engaged in the business of producing, purchasing, transporting, distributing and selling natural gas (Rec. 778), and is authorized to do business in Kansas; it owns and operates by lease or otherwise a system of pipe-lines from Tulsa, Oklahoma, to Topeka, Lawrence, Atchison and Kansas City, Kansas, in Kansas, and to St. Joseph, Kansas City, Missouri, and Joplin in Missouri (Rec., 778); The Fidelity Title and Trust Company is a Pennsylvania corporation, trustee of its mortgage ( Rec. 778) John M. Landon at the commencement of the suit was in pos-

session and control of the property of the Kansas Natural Gas Company owned and leased in all three states and conducting its business under direction of the State Court in *State v. Independence Gas Company et al.*, and was also ancillary Receiver to the foreclosure suit pending in the Federal Court; at the time of final judgment John M. Landon and George F. Sharitt were the duly appointed, qualified and acting Receivers of the Kansas Natural Gas Company by appointment of the Federal Court (Rec. 778); Kansas City, Missouri, is a municipal corporation of said state having a population exceeding 100,000 (Rec. 779); its powers relating to the use of its streets by gas companies are hereafter set out in the margin.

On Sept. 27, 1906, the public authorities of Kansas City, Missouri, passed Ordinance 33887 authorizing the predecessors of the Kansas City Gas Company to use the streets of said city for the furnishing and sale of natural gas; on Nov. 19, 1906, the grantees commenced furnishing and selling natural gas, and ever since said date the said grantees or the Kansas City Gas Company have distributed and sold natural gas at the prices named in said ordinance (Rec. 785).

On Dec. 14, 1904, the public authorities of Kansas City, Kansas, passed Ordinance 6051 authorizing the predecessors of The Wyandotte County Gas Company to use the streets of said city for the furnishing and sale of natural gas; on Aug. 10, 1905, the grantee commenced furnishing and selling natural gas, and ever since said date the grantee or The Wyandotte County Gas Company have furnished and sold natural gas at the prices named in said ordinance (Rec. 785), except from Dec. 10, 1915, to the date of the decree during which time they furnished gas at 28 cents under the Kansas Commission's order.

The other local companies selling natural gas in the various cities and towns occupy the streets of their respective cities under ordinances duly passed by said cities (Rec. 785).

On Nov. 17 and Dec. 3, 1906, McGowan, Small and Morgan, predecessors of the Kansas City Gas Company, entered into written contracts with The Kansas City Pipe Line Company, predecessor of the Kansas Natural Gas Company, providing for the delivery and sale of natural gas by the Kansas Natural Gas Company to the Kansas City Gas Company and the price to be paid therefor (Rec. 786).

The parties conducted the business according to said contracts until the appointment of Receivers, Oct. 9, 1912, and said Receivers "have ever since continued to furnish gas in conformity with the orders of court appointing them and their predecessors, to the Kansas City Gas Company and other companies, and have continued to collect therefor on the ratio of the division of rates fixed by said contracts; and there has been no agreement between the partes hereto or between the Receivers and the Kansas City Gas Company for the modification or cancellation of said contracts, and prior to the final decree in this case there have been no orders entered either by the State Court of Montgomery County or by this court specifically adopting said contracts nor by this court specifically disavowing the same" (Rec. Stat. of Evid., 786, and Bill 43). "The Receivers have continued to distribute gas to the various distributing companies and to collect upon the ratio of the division of rates fixed by the contracts" (Rec. 1103 and 1104; 242 Fed. 674).

On Nov. 19, 1916, the Kansas City Gas Company by leave and order of the Public Service Commission of Missouri put into effect a 30-cent rate in conformity with its contract with the Kansas Natural Gas Company to enable it to pay said Company and its Receiver  $62\frac{1}{2}$  per centum of its gross receipts from the sale of gas at 30 cents net per thousand cubic feet as compensation for the gas furnished it by the Kansas Natural Gas Company and its Receivers (Rec. 844).

At the same time (Rec. . . . .) The Wyandotte Gas Company put into effect a 30-cent rate without leave or order of the Kansas Commission to conform to its contract with the Kansas Natural Gas Company to pay as consideration for

the gas furnished to it by the Kansas Natural Gas Company 62½ per centum of its gross receipts from the sale of gas at a 30-cent rate on and after Nov. 19, 1916 (Rec. 828).

Similar contracts were made and observed by the parties and Receivers by the other local companies (Rec 786).

On Jan. 1, 1908, the Kansas Natural Gas Company and The Kansas City Pipe Line Company entered into a lease under which the former acquired the use of certain pipelines and properties of the latter, which constitute about 50 per cent. of the main trunk pipe-line system operated by the Receiver (Rec. 936); and the terms of said lease have been observed by the parties until the appointment of Receivers and the Receivers have continued in possession of the properties of The Kansas City Pipe Line Company and operated the system and carried on the business. This is the lease in which the Kansas Natural Gas Company assumes the obligations of said supply-contracts.

On Aug. 10, 1916, the Kansas City Gas Company filed with the Public Service Commission a new schedule of rates for gas and an application for the approval thereof; on Aug. 10, 1916, said commission approved and the Kansas City Gas Company put the same into effect, and has maintained the same until entry of the decree herein; the rate is the same as the rate named in the Ordinance 33887 (Rec. 838), to-wit, 30 cents net per thousand cubic feet (Rec. 787).

On Jan. 5, 1912, the Attorney-General of Kansas commenced an action in *quo warranto* entitled, State of Kansas v. Independence Gas Company, *et al.*, in the District Court of Montgomery County, Kansas (Rec. Stat. of Evid. 787, petition 862).

On Oct. 7, 1912, a second mortgage bondholder commenced a creditor's suit in the court below alleging insolvency entitled, John L. McKinney v. Kansas Natural Gas Company, No. 1351, Equity (Rec. Stat of Evid. 788, petition 870).

On Oct. 9, 1912, Eugene Mackey, president of the company, answered confessing the bill (Rec. 788); on Oct.

9, 1912, Eugene Mackey, Conway F. Holmes and George F. Sharitt were appointed Receivers of the Kansas Natural Gas Company in said creditors' suit; the order of appointment contains the recital as to continuing furnishing gas under said contracts above quoted.

The Receivers were further instructed (Rec. Order 791) to acquaint themselves (Rec. 791) with the company's affairs and report to the court their (Rec. 792) "suggestions as to the value of the company's leases and contracts both for operating lines and furnishing gas to the local distributing companies in the several cities reached by the operated lines of the defendant company and the advisability of disapproving and disavowing any or all of them."

On Oct. 19, 1912, the Fidelity Title and Trust Company, trustee of the first mortgage of the Kansas Natural Gas Company, intervened (Rec. 793) and repeated and adopted all the allegations of the plaintiff's bill and prayed for the same relief; on the same date the court entered an order (Rec. 793) making said trustee party plaintiff (Rec. 793) and extending the receivership on to said trustee.

On Oct. 19, 1912, Eugene Mackey, president, and C. S. James, secretary of the Kansas Natural Gas Company answered (Rec. 794) confessing the trustee's bill.

The Receivers duly qualified, took possession of said properties and business of the Kansas Natural and thereafter operated the same under said order of court (Rec. 794).

On Feb. 3, 1913, the trustee of the first mortgage of the Kansas Natural, commenced a foreclosure suit in the court below entitled, Fidelity Title and Trust Company v. Kansas Natural Gas Company, No. 1-N, Equity, alleging default in interest payments on the mortgage bonds, praying the appointment of Receivers and foreclosure of said mortgage; on the same day the Kansas Natural Gas Company confessed this bill, and the court extended the receivership in the McKinney case to the foreclosure suit (Rec. 794).

On Feb. 15, 1913, the State Court entered judgment in

*State of Kansas v. Independence Gas Company, et al.*, adjudging the Kansas Natural Gas Company, the Independence Gas Company and the Consolidated Gas, Oil and Manufacturing Company a combination in restraint of trade in violation of the anti-trust laws of Kansas and appointed Receivers therefor under the statute of Kansas to correct the abuses complained of (Rec. 794).

On Feb. 18, 1913, the Attorney-General of Kansas filed a petition in *John L. McKinney v. Kansas Natural Gas Company*, No. 1351 alleging the prior jurisdiction of the State Court and praying for the possession of the properties of the Kansas Natural Gas Company.

On March 24, 1913, The Kansas City Pipe Line Company intervened in the foreclosure suit demanding the payment of certain pipe-line rentals, said intervening petition is still pending in said cause undisposed of (Rec. 804).

On June 5, 1913, Hon. J. A. Marshall, Judge assigned to said case, sustained (206 Fed. 772) the petition of the Attorney-General of Kansas and ordered the delivery of the properties within the State of Kansas to the State Receivers; on Nov. 4, 1913, the United States Circuit Court of Appeals affirmed said order (209 Fed., 300).

On Dec. 23, 1913 (Rec. 1006) the Attorney-General of Kansas filed a further motion in the McKinney case for the surrender to the State Receivers of all moneys in the hands of the Federal Receivers accumulated during the Federal receivership and asked the surrender of all properties of the Kansas Natural Gas Company owned and leased in Kansas, Missouri and Oklahoma (Rec. 804).

On Jan. 24, 1914, (Rec. 997) the Federal Court, Hon. Smith McPherson, Judge, sustained said motion and ordered the delivery of all moneys and properties in the hands of the Federal Receivers to the State Court Receivers (Rec. 805).

The Circuit Court of Appeals after modifying said order protecting the rights of The Kansas City Pipe Line Company, affirmed the same (Rec. 805; 217 Fed. 187-196).

On Sept. 22, 1914, the Federal Court entered an order



delivering to the State Receivers all the properties of the Kansas Natural Gas Company owned and leased in Kansas, Missouri and Oklahoma and all the moneys accumulated during the Federal receivership for the purpose of enabling said court to execute its decree thereon, but retained jurisdiction in the foreclosure suit and the "potential" possession of the property through its Receiver George F. Sharitt, the others having resigned, and provided for the return of said property to the Federal Court and its Receivers at the end of the State receivership (Rec. 806; Order 1001).

On Dec. 29, 1914, certain parties filed a stipulation in said State Case known as the "creditors' agreement" providing for the distribution of earnings of said property during the State receivership and the preservation of the *statu quo* of all the parties until said properties were returned to the Federal Court (Rec. 1016, paragraph 12).

On Jan. 9, 1915, John M. Landon and R. S. Litchfield were appointed ancillary Receivers in the McKinney and foreclosure suits (Rec. 805; Order 1018).

In Jan., 1913, (Rec. 1081) the Receivers applied to the Public Utilities Commission of Kansas for an increase in rates. An extended hearing and rehearing were had thereon (Rec. 54) resulting in an order (Rec. 83) fixing what is known as the 28-cent rate; thereupon said Receivers filed with the commission a schedule of rates (Rec. 84) for all gas furnished by them and sold by distributing companies, increasing the rates from 25 to 28 cents net (Rec. 85 and 86). A statement of said proceedings and the evidence thereon is found in the record pages 298 to 307 ( 234 Fed. 157-165) and 1081 to 1086.

During 1914, '15 and '16 the Public Service Commission of Missouri suspended certain schedules of natural gas rates filed by local companies, first for 120 days and then for 6 months and thereupon allowed the same to go into effect automatically without hearings. Said commission claims the right and threatens to fix and regulate rates of local gas companies doing business in Missouri and claims jurisdic-

tion over the distribution and sale of natural gas in Missouri by the Kansas Natural Gas Company and its Receivers and claims the right and threatens to fix and regulate the price to be paid for natural gas by the local companies doing business in Missouri to the Kansas Natural Gas Company or its Receiver (Rec. 805).

Neither the Kansas Natural Gas Company nor its Receivers have, own or hold any franchises, rights or licenses to occupy or use the streets of Kansas City, Missouri, or Kansas City, Kansas, or Rosedale, Kansas, or any of the other principal cities involved (Rec. 806).

Neither said company nor its Receivers have, own or hold any interest in any of the local companies' properties, doing business in the cities of Kansas or Missouri (Rec. 806).

The Receivers have continued to operate the pipeline system and the natural gas business of the Kansas Natural Gas Company under the direction of the State and Federal Courts and to run, manage, conduct and operate said properties and business in substantially the same manner in so far as the transportation, distribution and sale of gas is concerned as the same was done, run and operated by the Kansas Natural Gas Company prior to their appointment (Rec. 806). The Kansas City Gas Company and The Wyandotte County Gas Company refused to put in force and effect the rate named by the Receivers under the direction of the State Court on or about Sept. 1, 1916; thereupon the Receiver billed said local companies at the rate of 18 cents per thousand cubic feet for the gas delivered to said distributing company at their city gates, which bills are now being contested in the foreclosure suit pending below. The order of the State Court approving the aforesaid rates fixed by the State Receiver Sept. 1, 1916, was reviewed by the Supreme Court of Kansas in *State v. Independence Gas Company et al.*, 172 Pac. 713; ..... Kan. ...., where it is held that the courts of the state have no jurisdiction to appoint Receivers for the

purpose of regulating rates of public utilities and that neither the court nor the Receiver has jurisdiction to change rates without the consent of the Public Utilities Commission and that the court did not cancel the supply-contracts existing between the Wyandotte Company and the Kansas Natural and its Receiver and had no jurisdiction to cancel the same, and that "neither the court nor the receiver could compel that company to receive gas at any price other than the one named in the contract between the Wyandotte County Gas Company and the Kansas Natural Gas Company." 172 Pac. 715.

The Receiver continued to deliver the gas to the Kansas City Gas Company and The Wyandotte County Gas Company and said companies continued to pay therefor according to the price fixed by said supply-contracts (Rec. 507-518).

The Receivers are now operating the pipe-line system described in the bill (Rec. 8) and in the intervening petition of The Kansas City Pipe Line Company, case No. 1351 (Rec. 937, map 948), including all the pipe-lines of The Kansas City Pipe Line Company held under said lease in which said Kansas Natural assumed the obligations of said supply-contracts.

None of the natural gas furnished by the Receiver is produced in Missouri, not exceeding 6 per cent. thereof is produced in Kansas, the balance is produced in Oklahoma. Approximately 44 per cent. is sold in Kansas and 56 per cent. in Missouri (Rec. 807).

When the Receivers were appointed Oct. 9, 1912, the outstanding bonded indebtedness of the Kansas Natural and its subsidiary companies The Kansas City Pipe Line Company and Marnett Mining Company was \$7,177,000, of which there has been paid in cash out of earnings during the receiverships \$2,807,200, leaving a balance of \$4,369,800, of which balance \$1,364,750 has been compromised and satisfied by the operation of the "creditor's agreement"

leaving a balance of outstanding bonded indebtedness as of July 10, 1917, of only \$3,005,050 (Rec. 807).

Said company has no general or unsecured creditors and no receivers' certificates have been issued and the Receivers have used the current income for working capital, operating expenses, payment of interest, extension of lines and retirement of said bonds and interest (Rec. 807).

The value of the properties operated by the Receiver is between \$8,000,000 and \$14,000,000 (Rec. 807).

During the proceedings, Henry L. Doherty and Company of 60 Wall Street, New York, have purchased substantially all the stock and bonds of said company and its subsidiaries (Rec. 808).

The production, transportation, distribution and sale of natural gas was and is accomplished in the following manner: The Kansas Natural Gas Company and its Receivers acquire the gas by drilling, purchase and otherwise in southern Kansas and in Oklahoma and collect it in pipe-lines. The gas is caused to flow from the wells into the gathering lines of the company by the force of "rock pressures" which are the pressures at which gas is found in place in the earth, varying from 15 to 500 pounds per square inch. These initial pressures carry the gas along the pipe-lines for some distance and then the pressures become lower and in order to carry the gas further it is necessary to compress it to approximately 300 pounds per square inch. Emerging from the compressors it flows along the pipe-lines towards the next compressor where it is again compressed and sent forward, which process continues until the gas reaches the distributing system or gas holders of the Kansas City Gas Company and other local gas companies. The whole process is merely the application of the law of flowing gases from a given pressure or density to a lower pressure or density (Rec. 809).

There is a permanent physical connection between the pipe-lines operated by the Kansas Natural and Receiver

and the distribution mains of the local companies at or near the corporate limits of the various cities, through which the gas passes from the pipe-line system into the distributing station (Rec. 809-810)

Gas is constantly moving from the wells into the gathering mains and along the pipe-line system, night and day; and the compressors are constantly at work compressing gas into the trunk pipe-line system. During the night and certain hours of the day and during certain warm days more gas passes into and is compressed into the pipe-line system than is being taken out for use. The amount of gas in the pipe-line system at any particular time depends upon pressure and is proportional to absolute or atmospheric pressure, 14.4 degrees plus the mechanical pressures. The process of filling the lines in excess of demand during the night time and on warm days and certain hours of the day is called "packing the lines." The pipe-line system constitutes not only a transportation system, but a great storage reservoir by means of this packing of the lines; the storage capacity of the Kansas Natural lines from Grabham, Kansas, to Kansas City, Missouri, amounts to 12 or 14 million cubic feet (Rec. 810 and 812) in addition to their carrying capacity; both the carrying capacity and storage capacity of the system are necessary for the proper supply of gas by the Kansas Natural and its Receiver to the Kansas City Gas Company and other local companies. If it were not for the storage capacity of the Kansas Natural lines that company and its Receiver would not be able to supply the instantaneous demands of the consumers made upon the Kansas City Gas Company at times when the demands are greatest for the reason that such instantaneous demands at maximum-demand-hours of the day always exceed the carrying capacity of the lines and the storage capacity must be drawn upon. All gas is in constant motion and even if isolated in a holder it cannot be held still; that is, the nature of

gas is constant molecular motion. There is a constant movement of gas in the pipe lines, the general direction of which is from the gas sands of the wells towards the consumers' appliances. Gas, unlike solids, oils and other liquids, can be greatly compressed (Rec. 810). At times when the line is operated at its fullest capacity the gas will move at greater velocity than the fastest express train. (We omit the conclusions of law of the expert witness, S. S. Wyer, such as, there is no legal delivery of the gas until it has passed through the consumers' meters and burst into flame at the burner tips) (Rec. 811). This witness for plaintiff testified (Rec. 812):

"Q. Mr. Wyer, assuming that the natural gas lines are full of gas and that the lines of the distributing system are full of gas and the consumer's house pipings are connected, how long after the consumer decides to buy a thousand feet of gas does he get it?

A. He gets it *instantly*, that is, if the service is operating and the gas is going. He gets it by simply turning a cock.

Q. He gets it *instantly*?

A. Yes, sir" (Rec. 812-13).

The statement of the evidence continues:

66. The gas passes into the mains of the distributing plant of the Kansas City Gas Company at 25th Street in Kansas City, Missouri, about 600 feet east of the Missouri-Kansas state line and at 39th Street in Kansas City, Missouri, about one foot east of the said state line. After the gas enters the mains of the Kansas City Gas Company, that company has the actual physical possession and complete control over it and over its distribution and sale. After reaching the main system of the Kansas City Gas Company, the gas is passed through governor stations which reduce its pressure to a uniform pressure of about 8 inches water column, necessary for convenience and safety in distribution and sale. No gas is ever returned from

the Kansas City Gas Company to the Kansas Natural Gas Company (Rec. 813).

67. When a surplus of gas is available in the lines of the Kansas Natural Gas Company, the Kansas City Gas Company fills its own gas holders, having a capacity of 7,000,000 cubic feet, from the mains, and holds this gas in storage until such time as the Kansas Natural Gas Company cannot deliver enough gas to supply the demand, at which time the gas in the holders is pumped by the Kansas City Gas Company through its mains into its governor stations, and thence into and through its low pressure distributing system to its consumers. The period during which the gas remains in the holders thus stored, varies from a few hours to several days or weeks, according to the demand and supply. During the present hearing of this case, gas has thus been used from the holders in Kansas City, Mo. (Rec. 813).

68. Nearly half the gas distributed by the Kansas City Gas Company in June, 1917, went into the holders and was pumped out again by the Kansas City Gas Company. The holders were used during every month of the year 1917 up to the time of the hearing of this case (July). The storage holders are not a necessary part of the pipeline system for the transportation of gas from the Kansas Natural wells to the consumers. When the gas comes from the holders of the Kansas City Gas Company it has to be compressed by that company in order to put it through the mains (Rec. 813).

69. A consumer in Kansas City, Mo., who wishes to procure natural gas makes written application therefor to the Kansas City Gas Company and complies with certain reasonable rules prescribed by that Company. If accepted within a few hours or within a day or two, according to circumstances, the gas is turned on for the consumer by the Kansas City Gas Company. The consumers' meters are read, bills made and presented to them and,



if not paid, gas is turned off, all by the Kansas City Gas Company without consultation with the Kansas Natural Gas Company or with its Receivers (Rec. 814).

70. The "consumer's meter" belongs to the Kansas City Gas Company and is generally located in the cellar or basement of the consumer's premises. The consumer is charged by the Kansas City Gas Company for all gas that passes through that meter whether it reaches the burner tip or not, and the consumer is required to pay for it except only in the event that he is insolvent and cannot be made to pay. If, after gas passes the consumer's meter, any of it escapes through leaks in the consumer's pipes, the consumer must pay for it (Rec. 814).

71. The consumer receives gas for approximately thirty days before his meter is read. Ten days thereafter he is presented with a bill (Exhibit 1015) and ten days thereafter he makes payment therefor in cash or by check, to the Kansas City Gas Company at 910 Grand Avenue, Kansas City, Missouri (Rec. 814).

72. The Kansas City Gas Company exercises its own judgment and discretion as to extending credit to consumers, without consultation with the Kansas Natural Gas Company or its Receivers (Transcript, p. 81). It requires a cash deposit from some; it accepts guarantees from others and those having credit it supplies without either deposit or guarantee. It discontinues the supply of gas to consumers who default in payment of bills for a certain period of time and for certain other violations of its rules and regulations according to its own discretion (Rec. 814).

73. There are no relations or dealings between the consumer in Kansas City, Missouri, and the Kansas Natural Gas Company or its Receivers or between the City of Kansas City, Mo., and the Kansas Natural Gas Company or its Receivers, except such, if any, as might be construed to arise or to be created by operation of law from

the terms of said supply-contracts and franchise-ordinances and the course of dealing herein stated or any or all of the same (Rec. 814).

74. The Kansas City Gas Company does not forward to the Kansas Natural Gas Company any list of the names of consumers or the amount of gas required by all or any of them at any future time. The Kansas City Gas Company has paid to the Kansas Natural Gas Company, or its Receivers  $6\frac{1}{2}$  per cent of its gross receipts from the sale of gas. When bills were not collectible the amount of such bills was not figured in determining the payment due the Kansas Natural Gas Company or Receivers. It has been the practice for the Kansas City Gas Company to furnish the Kansas Natural Gas Company or Receivers annually a list of the names and amount due from delinquent consumers; and if later they paid their bills the names of such consumers thus paying, were furnished to the Kansas Natural Gas Company, to enable that company to check up the two lists and thus determine whether or not it was receiving the amount due it (Rec. 815).

75. Payments by the Kansas City Gas Company and The Wyandotte County Gas Company to the Kansas Natural Gas Company and Receivers have been made on the 15th day of each month for the gas sold to consumers and collected for prior to about the tenth day of the preceding month. Since September 1, 1916, the Receiver has rendered bills to The Wyandotte County Gas Company and the Kansas City Gas Company for gas claimed to have been delivered by the Receiver at the points of connection at or near the city limits, between the mains of The Wyandotte County Gas Company and the Kansas City Gas Company and pipe-line system operated by the Receiver, and the Kansas City Gas Company, and The Wyandotte County Gas Company have not paid said bills, but has paid on the basis of the supply-contracts and the Receiver

is now prosecuting claims against said companies for gas on the basis of measurements and deliveries at the city limits, as shown by the allegations and exhibits to plaintiff's supplemental bill and the Kansas City Gas Company's and The Wyandotte County Gas Company's answers and amended and supplemental answers on file (Rec. 815).

76. The Kansas City Gas Company and The Wyandotte County Gas Company have carried on their business in substantially the same manner in all material respects and have pursued the same course in their dealings, transactions and communications to and with the Kansas Natural Gas Company, the Receivers and their respective consumers (Rec. 815).

77. The demands of the consumers of the Kansas City Gas Company during the summer months are approximately 10,000,000 cubic feet per day and during the winter months for lighting and cooking approximately 13,000,000 cubic feet per day and for all purposes, if demands were met, approximately 70,000,000 cubic feet per day. During the winter of 1916-17 the greatest available supply on maximum-demand-days for Kansas City, Missouri, was 12,000,000 cubic feet for all purposes (Rec. 815).

78. The rates charged by the Kansas City Gas Company and paid by its consumers prior to November 19, 1916, and at all times thereafter up to the time of the fixing of a rate by Judge Booth were those named in Ordinance No. 33887 of Kansas City, Missouri (Exhibit 1009) (Rec. 815).

The St. Joseph Gas Company maintains and operates a manufactured gas plant and supplements the natural gas supply with artificial gas, the gas being mixed in the holder and sold by the local company at a rate depending upon the proportion of the two gases furnished (Rec. 816).

The Kansas City Gas Company has filed with the Public Service Commission of Missouri a petition for authority to supplement natural gas with manufactured gas and fix the price therefor (Rec. 816, Petition 1030).

The foregoing statement as to the manner of the transportation, distribution and sale of natural gas applies in all substantial respects to the cities (Rec. 816).

This suit No. 136-N is alleged to be ancillary to the suit of *John L. McKinney v. Kansas Natural Gas Company*, No. 1351, and *Fidelity Title & Trust Company v. Kansas Natural Gas Company*, No. 1-N, pending in the court below and was commenced on the 29th day of December, 1915, and chancery subpoenas were issued on the application of plaintiff, not only against the defendants residing in Kansas but also against Kansas City, Missouri, Public Service Commission of Missouri, its members and attorney, Attorney-General of Missouri, Kansas City Gas Company and other cities and local gas companies in Missouri. Said service being made outside of the State of Kansas and within the State of Missouri, as shown by the Marshal's returns (Rec. 816; 94 to 99).

These appellants among other Missouri defendants moved to quash said service outside of the State of Kansas for want of jurisdiction in said court which was overruled (Rec. 570).

On June 3, 1916, a temporary injunction was issued by the enlarged court under Sec. 266 of the Judicial Code, Hon. Walter H. Sanborn, Circuit Judge, Hon. Ralph E. Campbell and Hon. Wilbur F. Booth, District Judge, sitting, temporarily enjoining the enforcement of the Kansas 28-cent rate as confiscatory and declining to pass upon the other matter involved.

On July 5, 1917, the court entered a decree against the "Kansas defendants" permanently enjoining the enforcement of the 28-cent rate as confiscatory and an interference with and burden upon interstate commerce (Rec. 600), and reserving jurisdiction over the Missouri defendants and the other matters involved in the suit for future determination. Case No. 277 in this court is an appeal by the Kansas Commission from that order.

On Aug. 13, 1917, the court entered its final decree (Rec. 621) herein granting all the relief prayed by the Receiver, John M. Landon, and substantially all the relief prayed by the defendant, Kansas Natural Company, whose answer adopted the allegations of the bill and joined the plaintiff's prayer for the same relief, including an injunction against these appellants, Kansas City Gas Company and The Wyandotte County Gas Company, putting into force and effect or collecting any rates or schedule of rates except such as was then or might thereafter be approved by the trial court. The other cases, Nos. 329, 330, 353, in this court are separate appeals from this final decree.

At the same time, Aug. 13, 1917, the court entered an order (Rec. 1068) in the foreclosure suit, *Fidelity Title & Trust Company v. Kansas Natural Gas Company*, No. 1-N consolidated with No. 1351, approving rates recommended by the Receiver to be charged by the distributing companies including appellants, the Kansas City Gas Company and The Wyandotte County Gas Company, at 60 cents net per thousand cubic feet (Rec. 1069) and requiring the payment of 57½% of said companies' receipts to said Receiver as consideration for the gas furnished (Rec. 1070). This was an *ex parte* hearing in which these appellants were not parties and had no day in court or opportunity to be heard but they appeared and protested and objected (Rec. 1071).

### ASSIGNMENT OF ERRORS BY KANSAS CITY GAS COMPANY.

The Kansas City Gas Company assigned the following errors (Rec. 707):

Assignment No. 1. The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas City Gas Company, to-wit, the distribution and sale of natural gas in Kansas City, Missouri, furnished to it by the Kansas Natural Gas Company and its Receivers, John M. Landon and George F. Sharitt is interstate commerce of a national character and not of a local nature, and enjoining said Kansas City Gas Company from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining without the consent and over the objection of the Kansas City Gas Company, natural gas rates approved by the Court for the patrons and consumers of the Kansas City Gas Company in Kansas City, Missouri, as appears from paragraphs "second", "seventh", "ninth" and "tenth" of its Decree entered August 13, 1917, for the following reasons, to-wit:

(a) The Kansas City Gas Company is a Missouri corporation, chartered to do a local public utility service in Kansas City, Missouri, and is doing a business affected with a local public interest under franchises granted by the State of Missouri and its municipalities granting the use of the public streets of said City for such purpose.

(b) The Kansas City Gas Company has purchased its supply of natural gas from the Kansas Natural Gas Company or its Receivers since 1906 under and pursuant to written contracts dated November 17th and December 3rd,

1906, fixing the price that the Kansas City Gas Company should pay said Kansas Natural Gas Company, its successors and assigns, for said gas.

(c) There has been no agreement between the Kansas City Gas Company and the Kansas Natural Gas Company or its Receivers providing for any alteration, modification, change, rescission or cancellation of that contract.

(d) The Kansas Natural Gas Company and its Receivers have no franchise to furnish, sell or distribute gas in Kansas City, Missouri, and no right to lay and maintain pipes in its streets and have, own or control no pipes in said City.

(e) The Kansas Natural Gas Company and its Receivers have no right contractual, legal or equitable, to establish and maintain rates for the Kansas City Gas Company, without its consent, to be charged by said Company for gas sold to its consumers in Kansas City, Missouri.

**Assignment No. 2.** The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas Natural Gas Company and its Receivers, to-wit, the transportation of natural gas from Kansas and Oklahoma to Missouri and the distribution and sale of said gas in said state by said Kansas Natural Gas Company and its Receivers, is interstate commerce of a national character and not of a local nature, and enjoining the Kansas City Gas Company from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining over the objection of the Kansas City Gas Company, natural gas rates approved by the Court for the patrons and consumers of the Kansas City Gas Company in Kansas City, Missouri, as appears from paragraphs "second", "seventh", "ninth", and "tenth" of its Decree entered August 13, 1917; for the following reasons, to-wit:



(a) The Kansas Natural Gas Company and its Receivers are doing a business affected with a public interest; their participation or interest, if any, in the distribution and sale of natural gas in Kansas City, Missouri, is a local public utility service of and for the State of Missouri.

(b) Said Kansas Natural Gas Company and its Receivers have no franchise upon the public streets of Kansas City, Missouri, but deliver, market and sell their natural gas by and through the instrumentality of the Kansas City Gas Company, which is a licensed agency of the State of Missouri and a public utility corporation under its laws and rendering a local public service under franchise duly granted by the State and its municipalities, by reason of which said Kansas Natural Gas Company and its Receivers have devoted their property and natural gas to the public use of the State of Missouri and submitted to state regulation and control thereof.

(c) The Kansas Natural Gas Company and its Receivers have voluntarily made and maintained physical connections between their pipe-lines and the distribution plant of the Kansas City Gas Company and aid and contribute to the local public service rendered by the Kansas City Gas Company and thereby submitted to state regulation and control.

(d) The Kansas Natural Gas Company and its Receivers have since 1906 furnished gas to the Kansas City Gas Company under contracts voluntarily entered into and assumed providing for a supply of gas by the former to the latter at certain specified prices and thereby aid and contribute to the local public service rendered by the Kansas City Gas Company and submitted to state regulation and control.

(e) The Kansas Natural Gas Company and its Receivers cannot change or modify those contracts and establish and maintain natural gas rates to the consumers of the Kansas City Gas Company without the consent of said Company.

(f) The purchase of gas by consumers, the sale of gas to consumers and the delivery of gas to consumers are all local transactions between the consumer and the Kansas City Gas Company, made, done and consummated locally.

(g) The purchase of gas by the Kansas City Gas Company and the sale of gas by the Kansas Natural Gas Company or Receivers to the Kansas City Gas Company and the delivery of gas to said latter Company are local transactions between the Kansas City Gas Company and said Kansas Natural Gas Company and its Receivers, done and performed in the State of Missouri.

(h) When a consumer elects or determines to buy gas, delivery is made to him instantaneously out of the stock on hand stored in the pipes of the Kansas City Gas Company in the State of Missouri.

(i) The maintenance of service pipes on the consumer's premises filled with gas and a meter to record the measurement thereof, constitute an implied standing offer to sell, measure and deliver locally on the consumer's premises at a reasonable, customary or authorized price; the turning of the gas cock by the consumer constitutes an acceptance of that offer and the receipt of the gas on the premises locally and a promise to pay a reasonable, customary or authorized price.

(j) There is no contractual relation existing between the consumer and the Kansas Natural Gas Company or Receivers. The consumer deals exclusively with the Kansas City Gas Company. The consumer gives no advance orders for gas to be delivered in the future, but takes gas instantaneously from the pipe extending into his premises according to his needs from time to time.

(k) The Kansas Natural Gas Company and Receivers are more than carriers; they are local merchants or dealers constantly offering gas for sale locally and for delivery locally in Missouri to the Kansas City Gas Com-

pany. The price as between the Kansas City Gas Company and the Kansas Natural Gas Company or Receivers is fixed by contract or must hereafter be fixed by contract.

(l) The contracts between the Kansas Natural Gas Company and the Kansas City Gas Company under which the business was commenced in 1906, and under which the Receivers have long continued to operate, obligate the Kansas Natural Gas Company and its successors "to supply gas" and "to furnish gas" at Kansas City in the State of Missouri to the Kansas City Gas Company. Transportation was and is merely incident to that undertaking. It was and is a necessity to the business of "furnishing" and "supplying" gas. It is wholly immaterial as between the parties where the gas is found, produced or obtained, whether in Missouri, Kansas, Oklahoma, Texas or Louisiana. The obligation undertaken and the course of business of the Kansas Natural Gas Company and its Receivers always was, is and ever must be to "furnish" and "supply" gas to the Kansas City Gas Company at Kansas City in the State of Missouri.

(m) The Kansas City Gas Company has dedicated its properties to a local public use and engaged in a business affected with a local public interest, and undertaken to perform a service to which the general public may resort at will and receive instantaneous, uniform and equal service without discrimination at a uniform, reasonable and compensatory and authorized rate.

(n) The Kansas Natural Gas Company and Receivers have voluntarily devoted their pipe-lines and their natural gas in aid of the local public service performed by the Kansas City Gas Company and *pro tanto* have consented and submitted to state regulation and control.

**Assignment No. 3. The Court erred in holding, adjudging and decreeing that the following described gas-supply-contracts existing between the Kansas Natural Gas Company**

and the Kansas City Gas Company are not binding upon the Receivers, John M. Landon and George F. Sharitt, and permanently enjoining the Kansas City Gas Company from enforcing the said supply-contracts or rates fixed or referred to therein against said Receivers, to-wit, the contract dated November 17, 1906, between McGowan, Small and Morgan, grantees, predecessors of the Kansas City Gas Company; and The Kansas City Pipe Line Company, which was assumed by the Kaw Gas Company, predecessors of the Kansas Natural Gas Company by lease dated November 19, 1906, between said Kaw Gas Company and the Kansas City Pipe Line Company; and the contract dated December 3, 1906, between said McGowan, Small and Morgan and said The Kansas City Pipe Line Company which was assumed by said Kaw Gas Company by agreement dated December 5, 1906, both of which contracts dated November 17, 1906, and December 3, 1906, respectively, were further assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and The Kansas City Pipe Line Company, as appears in paragraph "fifth" sub-division 1, and paragraph "seventh" of said Decree entered August 13, 1917, for the following reasons, to-wit:

(a) That said supply-contracts, among other things, provide and obligate the Kansas City Pipe Line Company and its sucesors and assigns, the Kansas Natural Gas Company and said Receivers, to supply and deliver to the Kanas City Gas Company at a pressure of 20 pounds at the point of delivery at Kansas City, Missouri, natural gas in such amount as will at all times fully supply the demand for all purposes of consumption for the consideration, at this time, of  $62\frac{1}{2}$  per cent of the gross receipts from the sale of such natural gas at the specified rate of 30 cents net per thousand cubic feet, thereby securing to the Kansas City Gas Company a supply of gas at  $62\frac{1}{2}$  per cent of 30 cents

of  $18\frac{3}{4}$  cents, measured at the consumers' meters; that the rate in force at the time of entering the foregoing Decree was 30 cents per thousand cubic feet and the Kansas City Gas Company was paying and had been paying to said Kansas Natural Gas Company and Receivers said agreed consideration, to-wit,  $18\frac{3}{4}$  cents per thousand cubic feet, for said gas, according to the terms and provisions of said contracts; that the order above complained of deprives the Kansas City Gas Company of the benefits of said contracts without a hearing on the validity of said contracts and without any showing that the disapproval, disavowal or cancellation of said contracts is necessary, equitable or proper in the interest of prior contracting parties, lienholders and creditors of the Kansas Natural Gas Company and was made in a proceeding collateral to the case of *Fidelity Title & Trust Company v. Kansas Natural Gas Company, et al.*, No. 1-N, Equity, pending in said Court, the same being the receivership and foreclosure suit in which such administrative order alone could legally be made.

(b) The Court had no jurisdiction under the pleadings filed and the issues joined in the above entitled cause and the evidence offered to make said order for the reason that said suit was an action *in personam* and not an action *in rem* and John M. Landon and George F. Sharitt were not Receivers or in possession of any property by virtue of the above entitled case but were plaintiffs in an independent action and were not entitled to administrative orders affecting the property in their possession or the rights and liabilities of third parties with reference to said property or the legal or equitable owners thereof.

(c) Plaintiffs' petition and supplemental petition and the evidence offered on the trial do not state or show facts sufficient to constitute a cause of action in favor of plaintiffs John M. Landon and George F. Sharitt and against this defendant the Kansas City Gas Company entitling said plaintiffs to such relief, to-wit, the disapproval, dis-

avowal and cancellation of said supply-contracts by said Receivers or the Court in the interest of creditors or lienholders. The pleadings and record show that the Kansas Natural Gas Company is perfectly solvent, that its assets exceed \$7,000,000 and its total liabilities are approximately \$3,050,000; and that the claim of the plaintiff in the case of *Fidelity Title & Trust Company v. Kansas Natural Gas Company, et al.*, No. 1-N, Equity, upon which the above entitled cause No. 136-N, Equity, is dependent, is approximately \$350,000; and that no creditors, secured or unsecured, had intervened in the above entitled cause No. 136-N praying the Court to disavow and cancel said contracts in the interest of creditors or lienholders.

(d) That no order disavowing or cancelling said supply-contracts had ever been entered in the case of *Fidelity Title & Trust Company v. Kansas Natural Gas Company, et al.*, No. 1-N, Equity, the foreclosure case upon which this cause is dependent; and the Kansas City Gas Company had never been cited or brought before said court in said cause No. 1-N, Equity, on any application to disavow and cancel said contracts; but on the contrary the Receivers John M. Landon and George F. Sharitt and their predecessors in possession of said property, George F. Sharitt, Conway F. Holmes and Eugene Mackay, had continued to carry on the business of the Kansas Natural Gas Company under and pursuant to the terms and provisions of said contracts since their original appointment on October 9, 1912.

(e) That the order originally appointing said receivers or their predecessors in said cause No. 1-N, Equity, continued said contracts, among others, in full force and effect until the further order of the court in said cause No. 1-N, Equity, by providing and ordering as follows:

“Third. That upon the filing and approval of the said bonds, the said Receivers (or each of them as fast as his respective bond is filed and approved) be

and they are hereby authorized, empowered and directed to take immediate possession of all and singular the pipe lines, compressor stations, leases and other property above described or referred to, wherever the same may be situate or be found and, until the further order of this Court, to continue the operation of the present pipe line system and natural gas business of the defendant company and every part or portion thereof, and to run, manage, conduct and operate such pipe lines and property as the defendant company holds, controls or operates under leases, contracts arrangements or otherwise. All of which is to be done, until the further order of the Court, as heretofore done, run or operated by the defendant Company;''.

(f) That no order has ever been entered in said cause No. 1-N, Equity, disapproving, disavowing or cancelling said contracts or either of them; that said Receivers have continued to carry on the business of the Kansas Natural Gas Company and deliver gas to the Kansas City Gas Company under said contracts and arrangements and have done, run and operated the business of said defendant company as done, run and operated by said company prior to their appointment in reference to the supply of gas to the Kansas City Gas Company; and said Kansas City Gas Company has never been cited or summoned to appear in said court and cause upon any application to change, modify, disapprove, disavow or cancel said contracts or either of them.

(g) That said contracts were originally executed by The Kansas City Pipe Line Company and later assumed by the Kaw Gas Company, predecessors of the Kansas Natural Gas Company, and later assumed and their obligations undertaken by the Kansas Natural Gas Company under a certain lease dated January 1, 1908, under which the Kansas Natural Gas Company and its Receivers now hold all the properties and pipe-lines of The Kansas City Pipe Line Company constituting approximately 50 per cent



of the main trunk pipe-line system now operated by said Kansas Natural Gas Company and its Receivers; and said The Kansas City Pipe Line Company is perfectly solvent and has no creditors demanding the disapproval, disavowal and cancellation of said gas-supply-contracts.

(h) Neither the Kansas Natural Gas Company nor its Receivers are entitled in law or in equity to the injunction and decree above complained of enjoining the Kansas City Gas Company from enforcing said gas-supply-contracts against said Kansas Natural Gas Company and Receivers upon any alleged or assumed Federal constitutional right to engage in interstate commerce for the reason that their right to sell and market natural gas to the Kansas City Gas Company direct or by the use of the Kansas City Gas Company's distribution plant to the ultimate consumers is a matter of private contract between the Kansas City Gas Company and said Kansas Natural Gas Company and Receivers and the relation cannot be created nor maintained by injunctions and decrees.

(i) Neither the Kansas City Gas Company nor its Receivers are entitled in law or in equity to the injunction and decree above complained of enjoining the Kansas City Gas Company from enforcing said gas-supply-contracts against said Kansas Natural Gas Company and Receivers and authorizing said Receivers to establish and maintain other and different rates for the consumers of the Kansas City Gas Company without its consent upon any alleged or assumed Federal constitutional right to due process of law or just compensation for the reason that the compensation paid to the Kansas Natural Gas Company and its Receivers for said gas is fixed and determined by said supply-contracts voluntarily entered into and said contracts may not be changed or modified and other rates and compensation for said gas established and enforced by said Receivers without the consent of the Kansas City Gas Company.

**Assignment No. 4.** The Court erred in holding, adjudging and decreeing that the performance by the Kansas Natural Gas Company and its Receivers of certain contracts described in paragraph "fifth", sub-paragraph 2, of its Decree entered on August 13, 1917, and the enforcement of said contracts by the Kansas City Gas Company against said Kansas Natural Gas Company and its Receivers constituted an invasion or denial of the right of the Kansas Natural Gas Company and its Receivers to engage in interstate commerce and resulted in the confiscation of the property of said Kansas Natural Gas Company and Receivers in violation of the Federal Constitution.

**Assignment No. 5.** The Court erred in holding, adjudging and decreeing that the order of the Public Service Commission of Missouri made on the 10th day of August, 1916, in case No. 1050 establishing a net rate for natural gas in Kansas City, Missouri, effective November 19, 1916, for and on the application of the Kansas City Gas Company was an attempt directly and unduly to burden and regulate interstate commerce and was unauthorized and void, as being violative of the Federal Constitution, as appears in paragraph "third" of said final judgment and decree entered August 13, 1917, for the reason that said order was made immediately on the application of the Kansas City Gas Company to enable it to charge and collect from its own consumers the net rate of 30 cents per thousand cubic feet for natural gas in conformity with the aforesaid supply-contracts existing between the Kansas City Gas Company and the Kansas Natural Gas Company, its successors and assigns, under which the Receivers had operated since their appointment on October 9, 1912, and by the terms of which said Kansas Natural Gas Company, its successors and assigns, agreed to furnish and sell natural gas to the Kansas City Gas Company for the consideration of  $62\frac{1}{2}$  per cent of the gross receipts realized from the sale of said gas at said 30-cent rate.

## ASSIGNMENT OF ERRORS BY THE WYANDOTTE COUNTY GAS COMPANY

The Wyandotte County Gas Company assigned the following errors (Rec. 715):

**Assignment No. 1.** The Court erred in holding, adjudging and decreeing that the business transacted by The Wyandotte County Gas Company, to-wit, the distribution and sale of natural gas in Kansas City, Kansas, and Rosedale, Kansas, furnished to it by the Kansas Natural Gas Company and its Receivers, John M. Landon and George F. Sharitt is interstate commerce of a national character and not of a local nature, and enjoining said Wyandotte County Gas Company from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining, without the consent and over the objection of the Wyandotte County Gas Company, natural gas rates approved by the Court for the patrons and consumers of The Wyandotte County Gas Company in Kansas City, Kansas, and Rosedale, Kansas, as appears from the Order entered on July 5, 1917, and the final Judgment and Decree entered on August 13, 1917, in paragraphs "second", "seventh", "ninth", and "tenth" for the following reasons, to-wit:

(a) The Wyandotte County Gas Company is a Kansas corporation, chartered to do a public utility service in Kansas City, Kansas, and Rosedale, Kansas, and is doing a business affected with a local public interest under franchises duly granted by the State of Kansas and its municipalities granting the use of the public streets of said Cities for such purpose.

(b) The Wyandotte County Gas Company has purchased its supply of natural gas from the Kansas Natural Gas Company or its Receivers since 1906 under and pur-

suant to a written contract dated February 1, 1906, fixing the price that the Wyandotte County Gas Company should pay said Kansas Natural Gas Company, its successors and assigns, for said gas

(c) There has been no agreement between the Kansas City Gas Company and the Kansas Natural Gas Company or its Receivers providing for any alteration, modification, change, rescission or cancellation of that contract.

(d) The Kansas Natural Gas Company and its Receivers have no franchise to furnish, sell or distribute gas in Kansas City, Kansas, or Rosedale, Kansas, and no right to lay and maintain pipes in its streets and have, own or control no pipes in said Cities.

(e) The Kansas Natural Gas Company and its Receivers have no right contractual, legal or equitable, to establish and maintain rates for The Wyandotte County Gas Company, without its consent, to be charged by said Company for gas sold to its consumers in Kansas City, Kansas and Rosedale, Kansas.

**Assignment No. 2.** The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas Natural Gas Company and its Receivers, to-wit, the transportation of natural gas from Oklahoma to Kansas and the distribution and sale of said gas in said state of Kansas by said Kansas Natural Gas Company and its Receivers, is interstate commerce of a national character and not of a local nature, and enjoining The Wyandotte County Gas Company from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining, without the consent and over the objection of said Wyandotte County Gas Company, natural gas rates approved by the Court for the patrons and consumers of The Wyandotte County Gas Company in Kansas City, Kansas, and Rosedale, Kansas, as appears from said Order entered on July 5, 1917, and para-

graphs "second", "seventh", "ninth" and "tenth" of its final Judgment and Decree entered on August 13, 1917, for the following reasons, to-wit:

(a) The Kansas Natural Gas Company and its Receivers are doing a business affected with a public interest; their participation or interest, if any, in the distribution of natural gas in Kansas City, Kansas, and Rosedale, Kansas, is a local public utility service of and for the State of Kansas.

(b) Said Kansas Natural Gas Company and its Receivers have no franchise upon the public streets of Kansas City, Kansas or Rosedale, Kansas, but deliver, market and sell their natural gas by and through the instrumentality of The Wyandotte County Gas Company, which is a licensed agency of the State of Kansas and a public utility corporation under its laws and rendering a local public service under franchise duly granted by the State and its municipalities, by reason of which said Kansas Natural Gas Company and its Receivers have devoted their property and natural gas to the public use of the State of Kansas and submitted to state regulation and control.

(c) The Kansas Natural Gas Company and its Receivers have voluntarily made and maintained physical connections between their pipe-lines and the distribution plant of The Wyandotte County Gas Company and aid and contribute to the local public service rendered by The Wyandotte County Gas Company and thereby submitted to state regulation and control.

(d) The Kansas Natural Gas Company and its Receivers have since 1906 furnished gas to The Wyandotte County Gas Company under a contract voluntarily entered into and assumed, providing for a supply of gas by the former to the latter at certain specified prices and thereby aid and contribute to the local public service rendered by The Wyandotte County Gas Company and submitted to state regulation and control.

(e) The Kansas Natural Gas Company and Receivers cannot change or modify that contract and establish and maintain natural gas rates to the consumers of The Wyandotte County Gas Company without the consent of said Company.

(f) The purchase of gas by consumers, the sale of gas to consumers and the delivery of gas to consumers are all local transactions between the consumer and The Wyandotte County Gas Company, made, done and consummated locally.

(g) The purchase of gas by The Wyandotte County Gas Company and the sale of gas by the Kansas Natural Gas Company or Receivers to The Wyandotte County Gas Company and the delivery of gas to said latter Company are local transactions between The Wyandotte County Gas Company and said Kansas Natural Gas Company and its Receivers, done and performed in the State of Kansas.

(h) When a consumer elects or determines to buy gas, delivery is made to him instantan out of the stock on hand stored in the pipes of The Wyandotte County Gas Company in the State of Kansas.

(i) The maintenance of service on the consumer's premises filled with gas and a meter to record the measurement thereof, constitute an implied standing offer to sell, measure and deliver locally on the consumer's premises at a reasonable, customary or authorized price; the turning of the gas cock by the consumer constitutes an acceptance of that offer and the receipt of the gas on the premises locally and a promise to pay a reasonable, customary or authorized price.

(j) There is no contractual relation existing between the consumer and the Kansas Natural Gas Company or Receivers. The consumer deals exclusively with The Wyandotte County Gas Company. The consumer gives no advance orders for gas to be delivered in the future, but takes gas instantan from the pipe extending into his premises according to his needs from time to time.

(k) The Kansas Natural Gas Company and Receivers are more than carriers; they are local merchants or dealers constantly offering gas for sale locally and for delivery locally in Kansas to The Wyandotte County Gas Company. The price as between The Wyandotte County Gas Company and the Kansas Natural Gas Company or Receivers is fixed by contract or must hereafter be fixed by contract.

(l) The contracts between the Kansas Natural Gas Company and The Wyandotte County Gas Company under which the business was commenced in 1906, and under which the Receivers have long continued to operate, obligate the Kansas Natural Gas Company and its successors "to supply gas" and "to furnish gas" at Kansas City and Rosedale in the State of Kansas to The Wyandotte County Gas Company. Transportation was and is merely incident to that undertaking. It was and is a necessity to the business of "furnishing" and "supplying" gas. It is wholly immaterial as between the parties where the gas is found, produced or obtained, whether in Kansas, Missouri, Oklahoma, Texas or Louisiana. The obligation undertaken and the course of business of the Kansas Natural Gas Company and its Receivers always was, is and ever must be to "furnish" and "supply" gas to The Wyandotte County Gas Company at Kansas City and Rosedale in the State of Kansas.

(m) The Wyandotte County Gas Company has dedicated its properties to a local public use and engaged in a business affected with a local public interest, and undertaken to perform a service to which the general public may resort at will and receive instantaneous, uniform and equal service without discrimination at a uniform, reasonable and compensatory, and authorized rate.

(n) The Kansas Natural Gas Company and Receivers have voluntarily devoted their pipelines and their natural gas in aid of the local public service performed by



The Wyandotte County Gas Company and *pro tanto* have consented and submitted to state regulation and control.

**Assignment No. 3.** The Court erred in holding, adjudging and decreeing that the following described gas-supply-contract existing between the Kansas Natural Gas Company and The Wyandotte County Gas Company is not binding upon the Receivers, John M. Landon and George F. Sharitt, and permanently enjoining The Wyandotte County Gas Company from enforcing the said supply-contract or rates fixed or referred to therein against said Receivers, to-wit, the contract dated February 1, 1906, between The Wyandotte Gas Company, predecessors of The Wyandotte County Gas Company and The Kansas City Pipe Line Company, which contract was assumed by the Kaw Gas Company predecessors of the Kansas Natural Gas Company under the lease dated February 2, 1906, between said Kaw Gas Company and The Kansas City Pipe Line Company and again assumed by said Kaw Gas Company under the lease dated November 17, 1906, between the Kaw Gas Company and The Kansas City Pipe Line Company, and which was again assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and The Kansas City Pipe Line Company, as appears from paragraph "fifth" sub-division 2, and paragraphs "seventh" and "eighth" of said final Judgment and Decree entered August 13, 1917, and said Order and Judgment entered in said cause on July 5, 1917, for the following reasons, to-wit:

Wyandotte County Gas Company refers to the reasons set forth in paragraphs lettered A, B, C, D, E, F, G, H, and I of Assignment No. 3 of the Kansas City Gas Company and adopts the same as its reasons and grounds for the foregoing assignment of error as fully and completely as if written at length herein for the reason that

said supply-contract existing between The Wyandotte County Gas Company and the Kansas Natural Gas Company, its successors and assigns, is similar in form and identically in substance and terms to the supply-contracts existing between the Kansas City Gas Company and said Kansas Natural Gas Company, its successors and assigns, referred to in the reasons given by said Kansas City Gas Company for its Assignment of Errors No. 3.

**Assignment No. 4.** The Court erred in holding, adjudging and decreeing that the performance by the Kansas Natural Gas Company and its Receivers of said gas-supply-contract described in paragraph "fifth", sub-paragraph 2 of its Decree entered on August 13, 1917, and the enforcement of said contract by The Wyandotte County Gas Company against said Kansas Natural Gas Company and its Receivers constituted an invasion or denial of the right of the Kansas Natural Gas Company and its Receivers to engage in interstate commerce and resulted in the confiscation of the property of said Kansas Natural Gas Company and Receivers in violation of the Federal Constitution.

**ASSIGNMENT OF ERRORS BY FIDELITY TRUST COMPANY AND THE KANSAS CITY PIPE LINE COMPANY, JOINTLY.**

The Kansas City Pipe Line Company and its Trustee, the Fidelity Trust Co. assigned the following errors (Rec. 719):

**Assignment No. 1.** The Court erred in holding, adjudging and decreeing that the business transacted by the Kansas Natural Gas Company and its Receivers and the business transacted by the Kansas City Gas Company and The Wyandotte County Gas Company, to-wit, the transportation of natural gas from Kansas and Oklahoma to Missouri and Kansas and the distribution and sale of said gas in said states by either the Kansas Natural Gas Company and its Receivers or the Kansas City Gas Company and The Wyandotte County Gas Company is interstate commerce of a national character and not of a local nature, and enjoining the Fidelity Trust Company and The Kansas City Pipe Line Company and their co-defendants from interfering with said Kansas Natural Gas Company and its Receivers establishing and maintaining, without the consent and over the objection of said Trust Company and Kansas City Pipe Line Company, natural gas rates approved by the Court for the patrons and consumers of the Kansas City Gas Company in Kansas City, Missouri, and the patrons and consumers of the Wyandotte County Gas Company in Kansas City, Kansas, and Rosedale, Kansas, as appears from the order and judgment of said Court entered on July 5, 1917, and the final Judgment and Decree of said Court entered on August 13, 1917, and particularly from paragraphs "second", "seventh", "ninth", and "tenth" of said final judgment and decree, for all the reasons set forth in Assignments Nos. 1 and 2 in

the Assignments of Errors by the Kansas City Gas Company and The Wyandotte County Gas Company, hereby referred to and adopted by these defendants.

**Assignment No. 2.** The Court erred in holding, adjudging and decreeing that the following described gas-supply-contracts are not binding upon the Receivers John M. Landon and George F. Sharitt and permanently enjoining the Fidelity Trust Company and The Kansas City Pipe Line Company from enforcing the said supply-contracts or rates fixed or referred to therein against said Receivers, to-wit, (1) the contract dated November 17, 1906, between McGowan, Small and Morgan, grantees, predecessors of the Kansas City Gas Company, and the Kansas City Pipe Line Company which was assumed by the Kaw Gas Company, predecessors of the Kansas Natural Gas Company by lease dated November 19, 1906, between said Kaw Gas Company and Kansas City Pipe Line Company; and the contract dated December 3, 1906, between said McGowan, Small and Morgan and said Kansas City Pipe Line Company which was assumed by said Kaw Gas Company by agreement dated December 5, 1906, both of which contracts dated November 17, 1906, and December 3, 1906, respectively, were further assumed by the Kansas Natural Gas Company under the lease dated January 1, 1908, between the Kansas Natural Gas Company and the Kansas City Pipe Line Company; and (2) the contract dated February 1, 1906, between the Wyandotte Gas Company, predecessor of The Wyandotte County Gas Company, and The Kansas City Pipe Line Company which contract was assumed by the Kaw Gas Company, predecessor of the Kansas Natural Gas Company, under the lease dated February 2, 1906, between said Kaw Gas Company and the Kansas City Pipe Line Company, and again assumed by said Kaw Gas Company under the lease dated November 19, 1906, between said Kaw Gas Company and said Kansas City Pipe Line Company and which was

again assumed by the Kansas Natural Gas Company under the lease dated January, 1908, between the Kansas Natural Gas Company and The Kansas City Pipe Line Company, as appears in paragraph "fifth", sub-paragraphs 1 and 2, and paragraphs "second", "seventh", "eighth", "ninth", and "tenth" of said final Judgment and Decree entered August 13, 1917, and the Order and Judgment entered on July 5, 1917, for the following reasons:

(a) For all the reasons set forth in Assignment No. 3 in the Assignment of Errors by the Kansas City Gas Company and The Wyandotte County Gas Company.

(b) For the further reason that the gas-supply-contracts above referred to were attached to and made a part of a certain lease dated January 1, 1908, between the Kansas Natural Gas Company and this defendant The Kansas City Pipe Line Company under which the Kansas Natural Gas Company leased and obtained the use of all the properties, compressor stations and pipe-lines owned by this defendant The Kansas City Pipe Line Company, constituting approximately 50 per cent of the main trunk pipeline system now operated by said Kansas Natural Gas Company or its Receivers under orders of the United States District Court for the District of Kansas in the case of *Fidelity Title & Trust Company v. Kansas Natural Gas Company, et al.*, No. 1-N, Equity, ordering and directing said Receivers to take over and operate said lease as a part of the Kansas Natural's estate as was done by the Kansas Natural Gas Company until the further order of the Court; and The Kansas City Pipe Line Company has intervened in said court and cause demanding the surrender of said properties or the adoption of said lease and the performance of said supply-contracts attached thereto by said Receivers, their successors and assigns, and said matter is still pending in said court and cause undetermined and said Receivers are still in possession of and using and reaping the benefit of said leased property and contracts.

**Assignment No. 3.** The Court erred in holding, adjudging and decreeing that the performance by the Kansas Natural Gas Company and Receivers of certain contracts described in paragraphs "fifth" sub-paragraphs 1 and 2 of said Decree entered on August 13, 1917, and the enforcement of said contracts by The Kansas City Pipe Line Company, Kansas City Gas Company or The Wyandotte County Gas Company against said Kansas Natural Gas Company and its Receivers constituted an invasion or denial of the right of the Kansas Natural Gas Company and Receivers to engage in interstate commerce and resulted in the confiscation of the property of said Kansas Natural Gas Company and Receivers in violation of the Federal Constitution.

### THE ERRORS RELIED UPON.

The errors relied upon more briefly stated are as follows:

The court erred:

1. In holding the business of the Kansas City Gas Company to be interstate commerce free from state control.
2. In holding the business of The Wyandotte County Gas Company to be interstate commerce free from state control.
3. In holding the business of the Kansas Natural Gas Company and its Receiver in so far as it relates to the furnishing and sale of gas in Kansas City, Missouri, and Kansas City, Kansas, to be interstate commerce free from state control.
4. In holding the 28-cent rate allowed by the Kansas Commission to the Wyandotte and other local companies to be confiscatory of the property of the Kansas Natural Gas Company or Receiver.
5. In holding that the Receiver and the Kansas Natural Gas Company have any actionable interest in the rates charged by the Kansas City Gas Company and Wyandotte County Gas Company.
6. In holding the contract for a supply of gas existing between the Kansas Natural Gas Company and Kansas City Gas Company and Wyandotte County Gas Company, operated under by the Receiver from October 9, 1912, to August 13, 1917, not binding upon the Receiver and enjoining the enforcement thereof.
7. In enjoining the Kansas City Gas Company and The Wyandotte County Gas Company from putting into



effect any rates except such as were then or might thereafter be approved by the court.

8. In fixing a net rate of 60-cents per thousand cubic feet for the Kansas City Gas Company and The Wyandotte County Gas Company to charge their consumers and requiring said companies to pay to the Receiver of the Kansas Natural Gas Company  $57\frac{1}{2}$  per centum of their gross receipts therefrom.

9. In fixing natural gas rates to be charged by the Kansas City Gas Company and The Wyandotte County Gas Company and enjoining said companies from applying to the Public Service Commissions of said states to fix other rates or from putting into force and effect any rates except such as might be approved by the court.

10. In granting the relief prayed to the Receiver and to the Kansas Natural Gas Company.

### ARGUMENT.

The following fatal infirmities in the plaintiff's case are disclosed by the record and will be discussed in this order:

1. The Kansas Natural Gas Company's *price* for gas was contractual, and it had no legal or actionable right, title or interest in the *rates* charged by the Kansas City and Wyandotte County Gas Companies to their patrons.

2. The Receiver's price for gas is contractual, and he has no legal or actionable right, title or interest in the rates charged by said local companies to their patrons.

3. The Wyandotte County Gas Company's rate for natural gas is legislative.

4. The Kansas City Gas Company's rate for natural gas is legislative.

5. The price paid by the Kansas City Gas Company and The Wyandotte County Gas Company to the Receiver and Kansas Natural Gas Company for gas is an item of operating cost of said local companies to be considered and approved by the state commissions in making rates for said local companies.

6. The question of interstate commerce is immaterial, remote, incidental. Reasonable regulation of public utility rates, including the allowance or disallowance of items of operating cost purchased interstate, is not burdensome regulation of interstate commerce.

7. The Receiver and Kansas Natural Gas Company offered no evidence of any agreement with the local companies to modify their supply-contracts or to increase the

price to be paid by the local companies to the supply-company for the gas furnished.

8. The Receiver and Kansas Natural Gas Company offered no evidence of the operating costs or value of the properties of the local companies, used and useful in the natural gas service of the public.

### POINT I.

**The Kansas Natural Gas Company's price for gas was contractual, and it had no legal or actionable right, title or interest in the rates charged by the Kansas City and Wyandotte County Gas Companies to their patrons.**

In *Newark Natural Gas and Fuel Co. v. Newark*, 242 U. S. 405, where a similar relation existed between a local natural gas company and a supply company the court held that the constitutional rights of the vendors of the gas were immaterial to the plaintiff's case for the reason that the contract, "measured the vendor's consideration by a percentage of plaintiff's gross receipts."

The contracts themselves (Rec. 844) provide in terms for a *purchase and sale* of gas and fix the *price* therefor as between the makers. They recite that the first parties are the owners of gas in the gas fields and that the second parties are the owners of an ordinance of Kansas City, Missouri, and the right to lay and maintain pipes in its streets for the purpose of supplying natural gas and attach the ordinance and mark it Exhibit No. 1 (Rec. 845), and that second parties desire to secure a supply of natural gas for said city and its inhabitants. "The party of the first part hereby agrees . . . to supply and deliver . . . to said parties of the second part . . . natural gas . . . (Rec. 845). It is hereby agreed between the parties hereto that the parties of the second part may make special contracts for the sale of natural gas for manufac-

turing purposes in said city at lower rates than those specified in said ordinance, and that they shall and will make such special contracts in accordance with their agreement to that effect contained in Section 13 of said ordinance, *copy of which is hereto attached* \* \* \* So long as the party of the first part is able to supply the same, the parties of the second part agree *to buy* from the party of the first part all gas they may need to fully supply the demand for domestic consumption in the said city *and to pay* to the party of the first part for the natural gas which they shall receive from said party of the first part \* \* \* sixty-two and one-half per cent. of their gross receipts. Parties of the second part *make no agreement with the party of the first part respecting the rates at which they shall sell natural gas* to any consumers in Kansas City, Missouri, but expressly *reserve to themselves the right to charge* their consumers for natural gas any rate not exceeding *those mentioned in said ordinance* which they may agree upon with such consumers, but if they shall at any time agree to sell gas to domestic consumers or any persons other than manufacturers at less than the maximum rates mentioned in said ordinance, or, except in compliance with their agreement to that effect contained in Section 13 of said ordinance, to sell gas to manufacturers at a less rate than 15 cents per thousand cubic feet, and the party of the first part shall be *unwilling to accept as its compensation* therefor \* \* \* sixty-two and one-half per cent. \* \* \* of the gross receipts of the parties of the second part, as aforesaid, for gas so sold, the party of the first part shall be *under no obligation to furnish* the gas so sold at such lower prices, and the parties of the second part shall be at liberty to obtain the same from such other sources as they may find available" (Rec. 846).

The first party further "agrees to furnish natural gas to the parties of the second part free of charge" for use in certain street lamps and fixes the amount to be con-

sumed and the price therefor to be paid by the Kansas City Gas Company for certain other street lamps (Rec. 848). The contract was to continue during the period of said franchise-ordinance (Rec. 845) and was assignable by both parties and the parties agreed to assign the same to the city in the event the city should acquire the local gas plant (Rec. 849).

The bills in the creditors' and foreclosure suits (Rec. 870, 892) upon which this suit is dependent, allege that, "the Kansas Natural Gas Company *contracted* with each of the manufactured gas companies in the said several cities by which the Kansas Natural Gas Company should pipe its natural gas to the *limits* of the said cities and there *deliver* the same *into* the local manufactured gas system or plant and that the local manufactured gas company should there take and *receive* the said gas and through and by means of its manufactured gas plant or system of pipes distribute, market and *sell* the same to consumers thereof in the said city, and that the proceeds from domestic sales should be divided in the percentage of 66  $\frac{2}{3}$  per cent. to the Kansas Natural Gas Company and 33  $\frac{1}{3}$  per cent. to the local distributing company, except in the two Kansas Cities in which the Kansas Natural Gas Company received only 60 per cent. for the first two years and 62 $\frac{1}{2}$  per cent. thereafter, the local distributing companies receiving 40 per cent. for the first two years and 37 $\frac{1}{2}$  per cent. thereafter" (Rec. 873).

The plaintiff's bill alleges (Rec. 43) "that said gas was originally furnished by the Kansas Natural Gas Company to said distributing companies *under and pursuant to certain supply-contracts* of record in this court in said creditors' suit and foreclosure suit upon which this bill is dependent."

"That the natural gas is delivered to the consumers in the several cities by plaintiffs through distributing companies under *written contracts* of which

those set out in the files and records in cases No. 1351, Equity, and No. 1-N, Equity, of this court are typical. That the amount paid by the consumer for natural gas purchased, as measured by his meter, is divided between plaintiffs and the distributing company in payment of the services rendered by each according to the percentages set out in the *contracts* above referred to, and such amount includes the original cost of the product to plaintiffs plus the cost of transportation and profits, if any" (Rec. 19).

The plaintiff prayed that the "distributing companies \* \* \* herein be restrained and enjoined from enforcing the *contracts above referred to*" (Rec. 46).

The evidence shows (Rec. 786) that the Kansas Natural Gas Company and its predecessors furnished and delivered and the Kansas City Gas Company and its predecessors accepted and received natural gas from Nov. 19, 1906, until the appointment of Receivers of the Kansas Natural Gas Company, Oct. 9, 1912, under and pursuant to the terms and provisions of said contracts dated November 17 and December 3, 1906, and there has been no agreement between the parties for the modification or cancellation of said contracts (Rec. 786). The same is true of the contract with The Wyandotte County Gas Company (Rec. 786).

On Aug. 10, 1916, the Kansas City Gas Company filed with the Missouri Public Service Commission a 30-cent net rate for gas and an application for approval thereof; on the same day said commission approved it and the Kansas City Gas Company put and has maintained the same in effect up to the entering of the final decree herein (Rec. 787, Stat. of Evid., par. 22; schedule and application 360). This was done as appears from the schedule, application and order of the commission, in order to enable the Kansas City Gas Company to comply with said supply-contracts by paying said Receiver for the gas furnished on the basis

of said contract, to-wit, 62½ per cent. of its receipts at said 30-cent rate.

The Wyandotte County Gas Company also put into effect and thereafter charged and collected a 30-cent rate and paid the Kansas Natural and Receiver their contract percentage thereof (Rec. 815, par. 76), but without the sanction of the Kansas Commission.

In *State of Kansas v. Flannelly, Judge, and Landon, Receiver*, 96 Kan. 372, 377, the court said in its opinion: "The distributing companies act as the agents of the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the Receivers on a percentage basis. The gas is not sold by the Receivers to the distributing companies." These were statements made in a mandamus suit where the question of principal and agent or the construction of these contracts was not in issue and the Kansas City Gas Company and The Wyandotte County Gas Company were not parties to said suit and their rights under said contracts were not thereby determined (Rec. 809, bottom of page).

In the opinion of the enlarged court it is said:

"It has not been and is not necessary for this court as at present constituted to determine the validity of the city ordinances, the contracts between the cities and the distributing companies, *the contracts between the distributing companies and the Natural Gas Company and the duties and obligations of the Receiver under them in order to adjudicate the issues it was constituted to decide and for that reason no opinion is expressed or adjudication made concerning them.*" (Rec. 311; 234 Fed. 168).



In the decree against the "Kansas defendants" (Rec. 600) it is said:

"Nothing contained in this decree, nor in the opinion upon which it is based, shall be construed as determining the rights of any of the Missouri defendants, touching the question of interstate commerce, or *the status of the distributing companies' contracts in Kansas or Missouri*" (Rec. 604).

In the opinion on final decree (Rec. 615) the trial court said:

"Now, whether these contracts were originally valid or invalid, and whether they became *functus officio* even if they were valid in their inception, are questions that it is not necessary for the court to decide at this time. The Kansas Natural Gas Company has in its pleadings prayed to have these contracts set aside as to it. I do not deem it advisable at this time to make any decision with regard to *the validity of the contracts as between the original parties to them*: Whether they are still valid, whether they have ceased to be valid or whether they were invalid in their inception. While I shall deny the prayer of the Kansas Natural Company at this time it will be without prejudice to any action on the part of that company that it may see fit to take, whether in the cases that are pending in this court No. 1351, Equity, or No. 1 Equity, or otherwise. If it should see fit to take proper action to determine the validity of these contracts this decision will not prejudice it from so doing" (Rec. 620; 245 Fed. 956).

However, the court decreed that said (Rec. 623) "contracts heretofore existing between the Kansas Natural Gas Company or its predecessors and the defendant distributing companies or their predecessors *are not binding upon the plaintiff*," and further (Rec. 625): "Seventh: • • • and the defendant distributing companies are permanently enjoined from enforcing the said supply contracts or rates

fixed or referred to therein *against plaintiff*; and from interfering with plaintiff in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri." And (Rec. 626): "Ninth. That all relief prayed by the Kansas Natural Gas Company herein is denied without prejudice to further action as to all matters alleged in the plaintiff's bill of complaint and supplemental bill of complaint, and in its cross bill except as granted by the former decree herein and *except that its prayer for a permanent injunction against the Public Service Commission of Missouri on the ground of interference with interstate commerce, is granted.*"

The Kansas Natural Gas Company does not have, own or hold any interest in the local plants of the Kansas City Gas Company and The Wyandotte County Gas Company (Rec. 806, par. 51). It has no franchise rights or licenses to pipe and use the streets of said cities or to furnish and sell gas to the inhabitants thereof (Rec. 806, par 50).

From the foregoing it conclusively appears that whatever price or consideration the Kansas Natural Gas Company received for the gas furnished by it to the Kansas City Gas Company and The Wyandotte County Gas Company was contractual and that it had no legal or actionable right, title or interest in any rates charged by said local companies to their patrons and that it had no cause of action against the rate-making powers of said states, irrespective of whether the business was interstate or the Kansas Natural's price or compensation for the gas furnished by it to the local companies was so low as to be burdensome or ruinous, it could not be constitutionally confiscatory. It is fundamental that contract rates are not confiscatory. *Knoxville Water Co. v. Knoxville*, 189 U. S., 434. *Railway Co. v. Massachusetts*, 207 U. S. 79, and that interstate commerce, when free, is subject to and controlled by contract.

Therefore, no injunction should have issued by the trial court against the rate-making powers in favor of said Kansas Natural Gas Company.

## POINT II.

**The Receiver's price for gas is contractual, and he has no legal or actionable right, title or interest in the rates charged by said local companies to their patrons.**

The Receiver's rights are no greater than those of the Kansas Natural Gas Company. The Receiver succeeded to whatever rights and liabilities that company had under said supply-contracts. Those rights and liabilities could not be enlarged or diminished without the consent of the other party to said contracts.

The governing principles in such cases are as follows:

(1) Receivers in possession of trust estates may promptly cancel and repudiate executory contracts of the debtor for the unexpired portion of the term, simultaneously surrendering possession of property and claim of all future benefit under the contract, thereby relieve the receivership of all liability thereon.

(2) Receivers may adopt an unexpired executory contract, thereby becoming assignees of the term, liable on its covenants and beneficiaries thereof.

(3) The adoption of a contract may be express or implied.

(4) The repudiation of a contract must be accompanied with a surrender of all properties held and claims of benefits arising thereunder.

(5) Receivers may negotiate with parties to contracts of the debtor for a new contract in modification or substitution of the old, which, of course, must be consummated by mutual agreement.

(6) Receivers may retain possession and receive benefits under an unexpired contract of the debtor for a reasonable time, a "breathing spell," to determine whether or not the retention thereof is expedient, indispensable, profitable or necessary to the trust estate, during which time they do not become liable on the contract for the unexpired portion of the term; but they are and continue to be liable on the contract during the interim until they make their election to adopt or reject the contract, and until they surrender all claims and benefits thereof and thereunder.

(7) A receiver, being a disinterested party, a mere arm of the court in aid of creditor's claims against the debtor, may not disavow a contract unless it appears that the security of the creditors is, by virtue of the contract, being impaired to the point where they will be unable to realize on their claims against the debtor.

The foregoing propositions of law are sustained by the following authorities:

*United States Trust Co. v. Wabash Railway*, 150 U. S., 287;

*Central Trust Co. v. Continental Trust Co.*, 86 Fed. 517;

*Myer v. Western Car Co.*, 102 U. S., 1;

*Miltenberger v. Logansport Railway Co.*, 106 U. S., 286;

*Railroad Co., v. Humphreys*, 145 U. S., 82;

*Farmers Loan & Trust Co. v. Ry. Co.*, 58 Fed. 257;

*Kneeland v. American Loan Co.*, 136 U. S., 89, 100.

No administrative order could be made in the case below. The Receiver is only plaintiff in that case. He is not Receiver in that case. He is not in custody of property by virtue of that case. He cannot legally ask and obtain

an administrative order either approving or disapproving contracts in that case. He cannot file a receiver's report or cite creditors in that case. He is a mere litigant, with no greater or other rights or standing in case No. 136-N than any other private suitor in a case *in personam*. Therefore, no decree should have been issued by the trial court in this cause disavowing said contracts.

Looking to plaintiff's bill and supplemental bill, we find that they do not allege that said contracts have been *disavowed*, cancelled or set aside. All the bill alleges is that "said contracts have never been *adopted* by plaintiffs." (Rec. 354). These two allegations are entirely different, as will hereafter more fully appear. The bill further alleges: "That this bill of complaint is dependent upon and ancillary to the causes entitled \* \* \* No. 1351 \* \* \* No. 1-N, now pending in this court, and is brought for the purpose of protecting the property now in the potential possession of this court in said causes, and of *enforcing the jurisdiction of this court in said causes*," and "that all the property of said Kansas City Pipe Line Company has heretofore been leased to the Kansas Natural Gas Company and is now in the possession of the Receiver of said Kansas Natural Gas Company"; that the defendant George F. Sharitt has potential possession and control of the property of the Kansas Natural Gas Company and the property under *lease* by it within the states of Kansas, Oklahoma and Missouri as Receiver of this court under order of Sept. 22, 1914, made and entered in said cases; "that said John M. Landon and R. S. Litchfield, plaintiffs, are in the actual possession and control of the property of the Kansas Natural Gas Company and the property under *lease* to it \* \* \* and are now in the actual possession and control of the pipe-line system of the Kansas Natural Gas Company, including the *leased* lines"; that the order of Sept. 22, 1914, made by this court "ordered, adjudged and decreed that this court, through its receiver, George F. Sharitt, shall

retain the potential possession of the estates, properties and assets of the Kansas Natural Gas Company, including the leasehold estates and *contracts of and with* The Kansas City Pipe Line Company, \* \* \* but the said John M. Landon and R. S. Litchfield and their successor shall have the right, as receivers, to retain the actual possession, control and management of the estate, property, money, funds, assets and earnings of the said Kansas Natural Gas Company, including the leasehold estates and *contracts of and with* The Kansas City Pipe Line Company, \* \* \* the intent hereof being that if and when said state court shall surrender, lose or abandon possession, jurisdiction or control over said properties or any part thereof (otherwise than a loss of control resulting from a sale or other disposition by order of said state court), the same shall thereupon revert to the possession of the Receiver of this court, to the end that no other person, officer or court shall be enabled or permitted to seize, levy upon, possess, control or exercise jurisdiction over the estates, properties and assets of said Kansas Natural Gas Company, including the leasehold estates and *contracts of and with* The Kansas City Pipe Line Company"; that the "natural gas is delivered to the consumers in the several cities by *plaintiffs* through distributing companies *under written contracts*, of which those set out in the files and records in cases No. 1351 and No. 1-N, Equity, of this court, are typical. That the amount paid by the consumer for the natural gas purchased as measured by his meter is divided between plaintiffs and the distributing company in payment of the services rendered by each according to the percentage set out in the contracts above referred to".

These are all the allegations of the bill leveled at the contracts, except paragraph XXXIII, which admits that the gas is sold by the distributing companies and that "It is obtained from plaintiffs *as hereinbefore alleged*," and that "Gas has been delivered pursuant to the established system

of doing business prior to the appointment of plaintiffs as receivers."

The entire allegations show that the Receiver is furnishing the gas under and pursuant to the contracts and accepting the price agreed upon. The only allegation which the Receiver in his representative and disinterested capacity could make was that he had never "*adopted*" the contracts, which is a long way from alleging that he or the court had disavowed them. Even the allegation that the contracts "*are a legal and equitable fraud upon the rights of creditors*" is a conclusion of law unsustained by any fact showing that the creditors' security was impaired by virtue of said contracts to the danger point of injuring the creditors. There is no allegation that the creditors have moved for the cancellation or disavowal of said contracts or even that the Receiver has done so.

The supplemental bill set out a series of correspondence between the Kansas City Gas Company and The Wyandotte County Gas Company on the one hand, and the Receiver on the other, showing that the former were standing on their contracts and the latter was complying with the terms thereof, and that payment was being tendered under and pursuant to the terms of said contracts by the Kansas City Gas Company and accepted and received by the Receiver (Rec. 507-517). Thus it appears that the bill and supplemental bill on their face are wanting in any allegation of fact that the contracts *have been disavowed by the court or canceled by the Receiver*.

Nothing appearing on the face of the bill and supplemental bill showing that these contracts have in fact been disavowed or canceled, and it appearing that no order of disavowal or cancellation could possibly be legally made in this case, but must, if at all, be made in the administration case, it follows that any and all evidence offered in this case, tending or purporting to show that the trial court should **make an order decreeing the cancellation and disavowal**



of said contracts, is immaterial and cannot be considered in this action *in personam*, but can be offered and considered, if at all, only in the administration case.

Looking to the record in the administration case to find what has in fact been done with these contracts. The order appointing the Receivers, Holmes, Mackey and Sharitt, under which the property is still held, and by virtue of which it has always been held and the business transacted in Missouri and Oklahoma at least, and the order under which the Receiver now operates the property, commands the receivers, "to run, manage, conduct and operate such pipe lines and properties as the defendant Company holds and controls or operates under leases, contracts, arrangements or otherwise. All of which is to be done until the further order of the court, *as heretofore done, run or operated by the defendant Company*; but the court expressly *reserves to itself* the right to pass upon, *approve, disapprove, disavow and cancel* any and all leases, arrangements and *contracts* of every nature, kind and description, under or by virtue of which the defendant Company has been or is now operating any of its *leased* lines and property; or *selling or furnishing any of its gas for distribution and sale*; \* \* \* and no such lease, arrangement or contract shall be regarded as binding or taken by the receivers until expressly ordered by this court in these proceedings; and nothing herein contained shall be considered or taken as in any way accepting, approving, satisfying or adopting any such lease, arrangement or contract."

The Receiver was further ordered to acquaint himself at once with the company's affairs and report to the court, among other things: "(d) The *prices* which it realizes for the gas it sells and copies of the *contracts with the distributing companies*" and "(j) The Receivers' suggestions as to the value of the company's leases and *contracts*, both for operating lines and *furnishing gas to the local distributing companies* in the several cities reached by the operated

lines of the defendant company and the *advisability* of *disapproving* and *disavowing* any or all of them." Full power was reserved for other and future orders in the cause.

No further order was ever made in said cause by said court either approving or *disapproving* or avowing or *disavowing* said contracts.

The order of the trial court in the administration case dated Jan. 24, 1914, directing the delivery of said properties to the state court, did not modify the provisions of said appointing order above quoted; nor did the mandate of the Circuit Court of Appeals modify said original order; nor did the order spreading the mandate dated Sept. 22, 1914, modify said order, but on the contrary it expressly provided that the Receiver of this court "shall retain the potential possession of the estates, properties and assets of the Kansas Natural Gas Company, including the leasehold estates and *contracts of and with* the Kansas City Pipe Line Company," and said order further provides for the return of said properties to this Court "including the leasehold estates and *contracts of and with* the Kansas City Pipe Line Company," which embraced and included the supply-contracts with the Kansas City Gas Company and The Wyandotte County Gas Company and the State Court Receiver was required to accept this property, and did do so, under order of the State Court upon the conditions and limitations therein contained.

It will doubtless be claimed that the State Court in said *quo warranto* suit cancelled these contracts, but on appeal from that order the Supreme Court of Kansas in *State v. Independence Gas Company et al.*, 172 Pac. 713 l. c., 714; .....Kan....., said: "In this action, under the pleadings as they then stood, with the action dismissed as to The Wyandotte County Gas Company, the court did not have power or jurisdiction to cancel the contracts between that company and the Kansas Natural Gas Company

(opinion p. 714)." • • • "Neither the court nor the Receiver could compel that company to receive gas at any price other than the one named in the *contract* between The Wyandotte County Gas Company and the Kansas Natural Gas Company (opinion 715)."

The Kansas City Gas Company of Kansas City, Missouri, appellant herein, was not a party to that Kansas case, and its contract was never before that court.

But the State Court itself said:

"This court, recognizing that its power does not extend beyond the State of Kansas, hereby directs said Receiver to present to the District Court of the United States for the District of Kansas, First Division, the foregoing findings of fact and conclusions of law and this order, and to pray said Federal Court for such orders as will effectuate the law applicable to the Kansas Natural properly in Missouri and Oklahoma" (Rec. 554).

This is a finding and complete recognition of the want of jurisdiction of the State Court to cancel, disavow, or set aside said contracts in Missouri.

The contracts in question, both of the Kansas City Gas Company and The Wyandotte County Gas Company, were attached to and made a part of the lease dated Jan. 1, 1908, between the Kansas Natural Gas Company and the Kansas City Pipe Line Company, and it appears from the entire record of all the cases in all the courts and the orders and decrees of all the courts that the continued possession, use and operation of all the properties of the Kansas City Pipe Line Company is essential, absolutely indispensable, to the preservation of the trust estate and the security of the creditors. The intervening petition of The Kansas City Pipe Line Company in said case No. 1351 is still pending, awaiting trial and final judgment in said cause. Until said matter is there determined, the disavowal and cancellation

of said contracts is impossible, either under the facts or law.

It follows that even though said contracts may not have yet been *adopted* by the Receiver in the sense that they run with and bind the trust estate in the hands of purchasers at foreclosure sale, yet they continue to measure the rights and liabilities of the Receivers as well as the parties thereto; and that whatever price the Receiver gets for his gas is and must continue to be contractual, either under these or some other contracts; that he has no legal or actionable interest in any rates charged by the local companies to their patrons and no cause of action against the rate-making powers of said states, irrespective of whether the business is interstate commerce or the Receiver's price is so low as to be burdensome or ruinous. If the rate is contractual it cannot be confiscatory, under the authorities heretofore cited, and the decree holding that: "The contracts heretofore existing between the Kansas Natural Gas Company or its predecessors and the defendant distributing companies or their predecessors are not binding upon the plaintiff" (Rec. 623), and the injunction against the rate-making powers in favor of said Receiver was error.

### POINT III.

**The Wyandotte County Gas Company's rate for natural gas is legislative.**

This proposition has been finally determined by the Supreme Court of Kansas in *State ex rel. v. Wyandotte County Gas Company*, 88 Kan. 165, and affirmed by this court in *Wyandotte County Gas Company v. Kansas*, 231 U. S. 621. The same identical gas-supply-contract with the Kansas Natural Gas Company and the same franchise-ordinance, Public Utilities Act and business now before this court were here then and construed and adjudicated.

The Wyandotte Company's franchise-ordinance 6051 (Rec. 821) (Rec. in that case, p. 33), named a schedule of ~~rates commencing~~ at 25 cents per thousand cubic feet and increasing from time to time to 30 cents per thousand cubic feet. In the interim before the final increase the legislature of that state passed Chapt. 238, Laws 1911, creating a Public Utilities Commission, conferring upon it plenary powers, among which was a provision that no rates should be charged by any public utility without the consent of the commission. The Wyandotte Company claimed that its franchise rates were contractual under the authority conferred upon the city to grant said franchise, and accordingly attempted to increase its rates in conformity with said contract without the consent of the commission. The Supreme Court of the state said (page 174):

"We conclude that by the provisions of Chapter 122 of the Laws of 1903 the mayor and council of Kansas City were not authorized to contract with the appellant the rates for supplying gas to the city or its inhabitants for a period of twenty years, or for any term; that without such authority no such contract is valid; \* \* \* that the appellant had no right to raise the rate from twenty-five to twenty-seven cents on Nov. 19, 1911, without the consent of the Public Utilities Commission."

On writ of error, this court affirmed that decision, saying, 231 U. S. 623:

"In this case, this court reaches independently the same conclusion as the state court in determining that under the authority conferred by the statute of Kansas the municipality cannot divest itself by contract of its duty to see that only reasonable rates are enforced under a public utility franchise."

It follows from the foregoing that the franchise rates of The Wyandotte County Gas Company are not contractual

but legislative; that when the state passed said Public Utilities Act (Chapt. 238, Laws 1911) Sec. 30 of which\* fixed the rates in force Jan. 1, 1911, as the legal rates and precluded changes therein without the consent of the commission; and when thereafter said commission on Dec. 10, 1915 (Rec. 54), entered an order fixing a 28-cent rate for and on behalf of said The Wyandotte County Gas Company, said company was then and thereafter relieved from the obligations of said franchise-ordinance to furnish and sell natural gas at the rates therein named, "hence the rate for gas therein may be increased by the appellant to whatever sum per thousand cubic feet shall receive the consent and approval of the Public Utilities Commission" *State ex rel. v. Gas Co.*, 88 Kan. 174. Herein lies the vital interest of this appellant, The Wyandotte County Gas Company. Under the decisions of the Supreme Court of Kansas The Wyandotte County Gas Company is bound by its franchise rates, even though granted without authority, except for the operation of said Public Utilities Act and orders of said commission relieving said company therefrom, and assuming the legislative rate-making power by the state through its Public Utilities Commission. Public utility rates prescribed by a franchise ordinance "will govern until action is taken by the state or by its authority." *Emporia v. Telephone Co.*, 87 Kan. 465; 88 Kan. 443; 129 Pac. 187. If the business is interstate commerce and the commission has no jurisdiction to regulate this appellant's rates, it cannot relieve this appellant of the binding force and effect of said franchise rates and this appellant and all parties under contract with it, including the Kansas Natural Gas Company and its Receivers, are and will continue to be bound by the inadequate rates named in said franchise-ordinance 6051 (Rec. 821).

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\*"Sec. 30. Unless the commission shall otherwise order, it shall be unlawful for any common carrier or public utility governed by the provisions of this act within this state to demand, collect or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same services on the 1st day of January, 1911."

## POINT IV.

**The Kansas City Gas Company's rate for natural gas is legislative.**

At the time of the passage of ordinance 33887 by the authorities of Kansas City, Missouri, granting a franchise to the predecessors of the Kansas City Gas Company to furnish natural gas in said city, the general statutes of said state,\* provided that a gas corporation formed for the purpose of supplying any city, town or village with gas shall have the power to lay mains in the streets with the consent of the municipal authorities under such "reasonable regulations as such authorities may prescribe." The powers conferred upon the city by the Constitution, statutes and city charter are set out in the margin. \* \*

It readily appears that there was at the time of granting said franchise no power conferred by the legislature upon Kansas City, Missouri, to suspend by contract the sovereign power of rate regulation.

Thereafter in 1913 the General Assembly passed the Public Service Commission Act.†

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\*Revised Statutes of Missouri, 1909:

"Sec. 2367.—Gas, Electricity and Water Companies—Powers of.—Any corporation formed under the provisions of this article, for the purpose of supplying any town, city or village with gas, electricity or water, shall have full power to manufacture and sell, and to furnish such quantities of gas, electricity or water as may be required in the city, town or village, district or neighborhood where located, for public or private buildings or for other purposes; and such corporations shall have the power to lay conductors for conveying gas, electricity or water through the streets, lanes, alleys and squares of any city, town or village, with the consent of the municipal authorities thereof, and under such reasonable regulations as said authorities may prescribe" (R. S., 1899, Sec. 1341).

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\* \*Art. IX, Sec. 16 of the Constitution of Missouri:

"Sec. 16.—Large Cities May Frame Their Own Charters, How Adopted and Amended.—Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the



From this Act it clearly appears that the state has, through the Public Service Commission resumed the legislative power of rate-making including rates for natural gas and that the commission has power to set aside and change the terms and rates named in said franchise ordinance.

In *State of Missouri on relation of Kansas City v. Kansas City Gas Company*, 254 Mo. 515, 163 S. W. 854, the court denied a writ of mandamus to compel compliance with the terms and provisions of said franchise-ordinance 33887 and remanded the parties to the Public Service Commission "for the flexible, speedy and sensible remedies prescribed by the Act" (page 540) saying:

"He who reads that Act, and does not see a complete rounded scheme for dealing with the business of public utilities at every spot where the shoe pinches the public or the utility, reads it to little purpose. He who reads it, and does not see that the yearning of the law-maker was to have the courts trust the commission in the first instance to solve such business problems as those presented in this case, reads it to still less purpose. We cheerfully bow to the evident intent of the lawmaker, shining on every page of his Act as expressive of the will of the people in constitutional form" (page 541).

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qualified voters of such city at any general or special election; which board shall within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board or a majority of them. Within thirty days thereafter, such proposed charter shall be submitted to the qualified voters of such city, at a general or special election, and if four-sevenths of such qualified voters voting thereat shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city, and supersede any existing charter and amendments thereof. A duplicate certificate shall be made, setting forth the charter proposed and its ratifications, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other, after being recorded in the office of the recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter, so adopted may be amended by a proposal therefor, made by the lawmaking authorities of such city, published for at least thirty days in three newspapers of the largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified

Other recent Missouri cases specifically holding that the Public Service Act and orders of the commission supersede franchise-ordinance rates are as follows:

*State of Missouri on relation of City of Sedalia v. Public Service Commission*, ..... Mo. ...., 204 S. W. 497;

*State ex rel. v. Public Service Commission*, 259 Mo. 704, 168 S. W. 1156;

*State v. Public Service Commission*, 270 Mo. 547, 194 S. W. 287.

From the foregoing authorities it is clear that the Public Service Act of Missouri relieves the Kansas City Gas Company from continuing to furnish and sell natural gas to said city and its inhabitants at the rates named in said franchise-ordinance and entitles it to a hearing before said commission and an allowance of reasonable and com-

voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the State."

"Sec. 9703.—City of Over 100,000 May Frame Charter.—Procedure.—Amendments.—(This section is the exact words of Sec. 16, Article IX of the Constitution above set forth with the addition of the following):

"A duplicate certificate shall be made, setting forth such amendment and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other after being recorded in the office of the Recorder of Deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof" (R. S., 1899, Sec. 6359) (Laws 1887, p. 42).

"Sec. 9704.—Takes Effect Thirty Days After Adoption.—After the expiration of said thirty days after the ratification and adoption of such charter as aforesaid, such charter shall be and constitute the entire organic law of such city, and shall supersede all laws of this state then in force in terms governing or appertaining to cities having one hundred thousand inhabitants or more" (R. S. 1899, Sec. 6360).

"Sec. 9752.—City Has Exclusive Control of Public Highways.—Such city shall have exclusive control over its public highways, streets, avenues, alleys and public places, and shall have exclusive power, by ordinance, to vacate or abandon any public highway, street, avenue, alley or public place, or part thereof, any law of this state to the contrary notwithstanding" (R. S., 1899, Sec. 6408) (Laws 1887, p. 51).

"Sec. 9753.—Regulation of Public Franchises.—It shall be lawful for any such city in such charter or by amendment thereof, to provide for regulating and controlling the exercise by any person or corporation of any public franchise or privilege in any streets or public places of such

pensatory rates. Herein lies the interest of the Kansas City Gas Company in reversing the order of the trial court holding the business conducted by this company to be interstate commerce free and therefore not entitled to the benefits of said Public Service Act and the right to reasonable, compensatory, legislative rates fixed by the commission thereunder.

It is obvious and axiomatic that if the business of this appellant is interstate commerce free from state regulation, it is not entitled to the benefits of said statute and commission orders and said business is subject to and regulated by contract, to-wit, the unremunerative franchise rates.

#### POINT V.

**The price paid by the Kansas City Gas Company and the Wyandotte County Gas Company to the Receiver and Kansas Natural Gas Company for gas is an item of operating cost of said local companies to be considered and approved by the commissions of said states in making rates for said local companies.**

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city, whether such franchises or privileges have been granted by said city or by or under the State of Missouri, or any other authority" (R. S., 1899, Sec. 6408) (Laws, 1887, p. 51).

The special charter of Kansas City, Missouri, in effect since May 9, 1889, contains the following provisions:

"Article III. Sec. 1. The mayor and common council shall have  
• • • power by ordinance:

"Twenty-eighth. To regulate the price to be charged by telephone, telegraph, gas and electric light companies, and to compel them and all persons and corporations using, controlling or managing electric wires for any purpose whatever to put and keep their wires under ground, and to regulate the manner of doing the same and the use of all such wires and all connections therewith."

"Thirty-first: To pass, publish, amend and repeal all such ordinances, rules and police regulations not inconsistent with the provisions of this charter or the laws of the State, as may be expedient in maintaining the peace, order, good government, health and welfare of the city, its trade, commerce and manufacturers, or that may be necessary and proper for carrying into effect the provisions of this charter."

"Article XIV. Sec. 1. The city shall have power to construct and operate gas works or electric light works, or any other kind of works for the purpose of lighting streets and public buildings and premises

## POINT VI.

The question of interstate commerce is immaterial, remote, incidental. Reasonable regulation of public utility rates including the approval or disapproval of items of operating cost purchased interstate, is not burdensome regulation of interstate commerce.

The foregoing points are so closely related that they will be considered together. From what has gone before it logically follows that the Kansas City Gas Company and The Wyandotte County Gas Company are local public utilities subject to the jurisdiction of the commissions of said states; and that the *price* they pay for gas is merely one item of the operating costs of said local companies to be considered and approved or disapproved as the cir-

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and property of private persons, and also to purchase any kind of such works heretofore or hereafter erected, and to operate the same for such purpose."

"Article XIV, Sec. 12. The city may grant to any person or corporation the right or franchise to conduct the material or means for lighting from any kind of works specified in the first section of this Article, under or along or over any of the streets, avenues, alleys or public highways, or public grounds of the city for the purpose of lighting streets, avenues, alleys and public highways of the city and public buildings and private premises; but no franchise or grant for any such purpose shall confer an exclusive right nor be made for a longer period than thirty years, nor be renewed or extended except within the last two years of such term, and then not beyond thirty years: provided, that no such person or corporation shall in any event charge more for light for the city or private parties than the price specified from time to time by ordinance of the city, and that the city shall also have power to regulate and fix from time to time the prices such person, or company may charge for the renting of meters or apparatus for ascertaining the quantity of material or means consumed for lighting: and provided further, that the city shall not, in making the original grant, nor in any manner subsequent thereto, ever agree or bind itself to pay any fixed price for lighting streets, avenues, public highways, alleys, public grounds or public buildings of the city for a longer period than one year at a time. In case of any such grant to a person or corporation the city shall always have the right to designate the kind of meter or apparatus to be used for the correct measurement of the material or means furnished for lighting under such grant, and to provide for inspecting and regulating same, and to compel an exact compliance with any provisions made by ordinance in that regard; and the city shall also have the right to appoint one or more measurers, whose duty it shall be to inspect all such meters and apparatus and certify to the correctness of all bills made against the consumers of the material or means for lighting, and per-

cumstances require by the commissions in making rates for said local companies. Of course, this price, like every other item of operating cost, is reflected in the consumers' rates. But one of the vital errors in this case is the assumption that the price of this gas to the Receiver is the whole or major part of the service furnished and sold by the local companies to their patrons. It is well settled that the "holder cost" (corresponding to the Receiver's price), of gas is only 30 or 40 per cent as compared to 60 or 70 per cent for distribution cost. When the gas starts from the wells its market value is 2, 4 or 6 cents (Rec. 1096 and 1101); the gathering and transportation costs are 8 to 12 cents and the distribution cost of the local company is from 20 to 70 cents depending upon the

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form such other duties as may be prescribed by ordinance. Every person or corporation using a grant or franchise under this section shall in using or occupying the streets, avenues, public highways, alleys, public grounds and public buildings of the city, conduct work and operations as may be from time to time prescribed by ordinance, as so as to avoid unnecessary injury or inconvenience to the public and all citizens, and so as to avoid injury and damage to all persons and parties and private property, and shall use at least the same care to avoid such injury and damage that the city would be bound to use if it was conducting such work and business, and shall save the city harmless from all loss, costs and expense on account of any such injury or damage, and on account of anything done in the prosecution of any such work, and the use of any such grant or franchise, and when any street, avenue, public highway or alley, or public ground shall be opened or disturbed in the construction of any such work, shall repair the same to the satisfaction and approval of the board of public works, and so as to leave the same in as good condition for ordinary public use as it was at the time of opening or disturbing the same, and no such opening or disturbance shall be continued longer than necessary. Whenever the city may grant any right or franchise under this section it shall have the right to purchase the works, and all the appurtenances belonging thereto for furnishing the material and means for lighting, at any time during the term for which such grant may be made, whether such right be reserved expressly in the grant or not. The city may exercise all power conferred by this section by ordinance, and may, by ordinance, from time to time, make provisions for accomplishing the results herein contemplated, and enforce the same."

"Article XVI, Sec. 1. The city shall have exclusive control of all its public highways, streets, avenues, alleys and public places, and shall have exclusive power to vacate or abandon any public highway, street, avenue, alley or public place, or any part thereof."

"Article XVII, Sec. 20. It shall be lawful for the city to regulate and control the exercise by any person or corporation of any public franchise or privilege in any of the streets or public places of the city, whether such franchise or privilege has been or may be granted by the city or by or under the State of Missouri, or any other authority."

character and volume of the business, the consumers' rates and the uses for which the gas is sold.

The functions of the commission are administrative and designed to be constructive and helpful to public utilities. *State v. Gas Company*, 254 Mo. 515, at page 534. The commission may ascertain the volume of gas available and determine upon a rate which will regulate and restrict the use to the more necessary purposes for which it is available and upon such determination it will approve such contract between the local company and the supply company as will enable the latter to furnish and the former to buy said gas for such uses and insure adequate and satisfactory service to the consumers. This is very much the same as the contracting parties themselves did in the early history of the business when they agreed upon the rates at which the gas would be sold to consumers and the price to be paid the Kansas Natural, and the purposes for which it was to be used, namely, not only

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†The Public Service Act of Missouri, Laws 1913, pages 556 to 651, as amended by Laws 1917, pages 432 to 441 contain the following provisions (Rec., 780):

"Sec. 1.—Short Title.—This act shall be known as the 'public service commission act', and shall apply to the public services herein described and the commission herein created, and to the public service corporation, persons and public utilities mentioned and referred to in this act" (Laws, 1913, p. 557).

"Sec. 2, Sub-div. 10. The terms 'gas plant', when used in this act, includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas (natural or manufactured) for light, heat or power" (Laws, 1913, p. 558).

"Sec. 2, Sub-div. 11. The term 'gas corporation', when used in this act, includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or any political sub-division, county, or municipality thereof" (Laws, 1913, p. 558).

"Sec. 2, Sub-div. 25. The term 'public utility', when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation and heat or refrigerating corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act" (Laws, 1913, p. 560).



domestic cooking and lighting but also vast quantities for heating, industrial, power and manufacturing purposes.

The record discloses that the Kansas Natural and Receiver are no longer able to furnish gas in quantities sufficient to meet the demands for heating and industrial uses and the entire relations of the parties must be readjusted and the business reconstructed upon a new basis. This can be done equitably and in fairness to all, only under the protecting, administrative and regulating powers of the Public Service Commissions. The commissions would, upon application of the local company, require said company to present a proposed contract with the supply company, setting forth specifically the amount of gas available and how much the supply company would undertake to furnish at a given price and upon that contract when approved by the commission as an item of operating cost

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"Sec. 2, Sub-div. 26. The term 'service' when used in this act, is used in its broadest and most inclusive sense and includes not only the use and accommodation afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility, and to the use and accommodation of consumers or patrons" (Laws, 1913, p. 560).

"Sec. 2, Sub-div. 27. The term 'rate', when used in this act, shall mean and include every individual or joint rate, fare, toll, charge, re-consigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, re-consigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof" (Laws, 1913, p. 560).

"Sec. 67.—Application of Article.—This article shall apply to the manufacturing and furnishing of gas for light, heat or power and the power and the furnishing of natural gas for light, heat or power and the generation, furnishing and transmission of electricity for light, heat or power, and the supplying and distributing of water for any purpose whatsoever" (Laws, 1913, p. 602) (Rec., 781).

"Sec. 69.—General Powers of Commission in Respect to Gas, Water and Electricity.—The commission shall: \* \* \* 12.—Have power to require every gas corporation, electrical corporation, water corporation and municipality to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established and enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates; charges or service used or to be used, and all general privileges and facilities granted or allowed by such gas corporation, electrical corporation, water corporation or municipality; but this sub-division shall not ap-



of the local company, the commission could compute, ascertain and determine the total operating costs and fair return of the local company and reasonable rates to consumers for adequate and satisfactory service. In the absence of such a basis, no rate can ever be determined and no adequate and satisfactory service can ever be furnished to the consumers. It is admitted in this case that the service is irregular, inadequate and intolerable.

In this very litigation *St. Joseph Gas Co. v. Barker, Atty. Gen., et al.*, 243 Fed. 206, an enlarged court convened on the application of the St. Joseph Gas Company, denied an injunction on the ground that the price to be paid by the St. Joseph Gas Company to the Receiver was a matter of contract. "Until the question of the abrogation or modification of the contract between complainant and the producing company should be presented to the

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ply to state, municipal or federal contract. Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement, or any rule or regulation relating to any rate, charge of service, or in any general privilege of facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation or municipality in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe. No corporation or municipality shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation or municipality refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. The commission shall have power to prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise. The commission shall also have power to establish such rules and regulations, to carry into effect the provisions of this subdivision, as it may deem necessary, and to modify and amend such rules or regulations from time to time" (Laws, 1913, p. 607) (Rec., 782).

"Sec. 70—Power of Commission to Stay Increased Rate.—Whenever there shall be filed with the commission by any gas corporation, electrical corporation, water corporation or municipalities any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service

court appointing the Receiver, complainant was not entitled to have enjoined an order of the Missouri Commission prohibiting an increase of its rates, for such increase might only result in a detriment to its patrons, and not increase complainant's income." In the same case before the commission (*City of St. Joseph v. St. Joseph Gas Co.*, P. U. R., 1917F, 743) the commission denied an increase in rates to the St. Joseph Gas Company because it appeared from the record that the contract price 26  $\frac{2}{3}$  cents paid by the St. Joseph Gas Company to the Receiver for said natural gas was far in excess of the price paid by other distributing companies similarly situated (Rec. 308; 243 Fed. 210) and was an improvident—an unreasonable item of operating cost.

It is fundamental that a commission in fixing rates is not bound by the improvident contracts of public utilities.

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or to any general privilege or facility, the commission shall have, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested gas corporation, electrical corporation, water corporation or municipality, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation, or practice, and pending such hearing and the decision thereon, the commission upon filing with such schedule, and delivering to the gas corporation, electrical corporation, water corporation or municipality affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, form of contract or agreement, rule, regulation or practice, would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, form of contract or agreement, rule, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, form of contract or agreement, rule, regulation or practice as would be proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule, regulation or practice had become effective: Provided, that if any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation, or municipality, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible" (Laws, 1913, p. 608) (Rec., 783).

## INTERSTATE COMMERCE.

Much space and labor is devoted to the subject of interstate commerce by counsel for the commissions, the cities and the Receiver. The original package doctrine, the right of an importer to a clear sale, the commingling of imports in the mass of goods in the state, and the intent of the shipper, are all ably discussed and authorities cited. We will not attempt a discussion of the subject for we regard it wholly immaterial to the issues, remote and incidental for the following reasons.

The contracts existing between the Kansas Natural and the Kansas City Gas Company and other distributing companies are primarily and essentially contracts for *furnishing* gas to said local companies. It is wholly immaterial where the gas comes from. The original contracting parties contemplated the bulk of the business would be done in Kansas. The accident of geography does not change the contract or the intent of the parties in which the obligation of the supply company was to *furnish gas at the city gates*. The entire transaction as between the supply company and local company is local, the Receiver merely succeeded to the rights and liabilities of the Kansas Natural—no greater, no less. The Receiver cannot change or modify those contracts without the consent of the local parties. He has no right as an importer and no cause of action to force his product upon the local company against its will. "Neither the court nor the Receiver could compel that company to receive gas at any price other than the one named in the contract between the Wyandotte County Gas Company and the Kansas Natural Gas Company" (*State v. Independence Gas Co. et al.*, 172 Pac. 713, 1. c. 715).

If the contract were legally disavowed by the court in the interest of the trust estate, it would create no right in the Receiver to usurp the right of the local gas company to determine its own rates and secure the approval of the

Public Service Commission therefor. The Receiver had no right, title or interest in or to the local company's plant (Rec., 806) or any rights or franchises upon the streets of said city (Rec., 806). The right of an importer to import does not create a property interest in the local company nor does it carry franchise rights on the city streets.

The reasonable regulation of public utility rates necessarily involving a consideration of the reasonable operating costs which includes an inspection and allowance or disallowance of the price paid by a public utility for all articles of interstate commerce entering into said operating cost such as oil, coke, coal and gas, is not the regulation of interstate commerce. If such were true, a state commission could never question the price paid by a local public utility for coal, coke, oil, iron, materials or supplies purchased interstate. Such a rule would nullify all state regulation of public utilities.

Again, it must be presumed that rates fixed by Public Service Commissions are compensatory. This presumption prevails until proven to the contrary. If found to be unreasonable or confiscatory they may be set aside by a court. When so annulled the utility is free to put into effect reasonable rates of its own making. "Where a court having jurisdiction determines that a rate fixed by the statute and approved by the utilities commission is confiscatory, the utility is left free to operate under such rate as it may establish until a new one has been fixed by the commission" (*Telephone Co. v. Utilities Commission*, 97 Kan., 136; *State v. Indep. Gas Co.*, 172 Pac., 713; *Love v. Railway Co.*, 185 Fed. 321).

It follows that if the rates are reasonable they can not be a burden upon or an interference with interstate commerce. Without regulation they would probably be so high as to restrict and interfere with interstate commerce.

The corollary from the foregoing is that all the court

below was required to determine was whether or not the 28-cent rate fixed by the Kansas Commission was confiscatory. That done, the local utilities were free to make new contracts for gas with the Receiver and put into effect rates of their own liking sufficient to pay the Receiver and afford themselves a fair return. It follows that the findings, holdings and decree of the court below that the business was interstate commerce were unnecessary to a decision and obiter.

Assuming that the question of interstate commerce was material, the Kansas Natural Gas Company and Receiver, to the extent that they participate in the business of the local companies affected with a public interest have *pro tanto* devoted their properties to a local public use and to that extent submitted to state regulation.

The record shows that the Kansas Natural Gas Company and its Receiver maintain a physical connection (Rec., 809-10) between their pipe-lines and the plants of the local utilities; that they have by contract undertaken to furnish gas pursuant to and in accordance with franchises duly granted by the cities served; that they assume an interest in the rates charged consumers by the local companies and have even undertaken to dictate to said local companies what such rates will be. By this course of procedure the Kansas Natural and its Receiver have devoted their properties to a local public utility business affected with a local interest subject to state regulation and control. They must assume that such regulation is reasonable and will result in reasonable rates commensurate with the value and character of the service furnished.

The instant case may be distinguished from all the cases cited by appellees by the following essential facts:

(1) The purchase of gas by the consumer, the sale of gas to the consumer and the delivery of gas to the consumer are all wholly, exclusively and essentially local transactions.

(2) The purchase of gas by the Kansas City Gas Company, the sale of gas by the Kansas Natural Gas Company to the Kansas City Gas Company and the delivery of gas to said local company are all wholly, exclusively and essentially local transactions.

(3) When the consumer elects to buy a foot or 10,000 feet of gas, delivery is made to him "instantly" out of the stock on hand (Rec., 812).

(4) The maintenance of service pipes on the consumer's premises filled with gas and a meter to record the measurement thereof constitute an implied standing offer to deliver, measure and sell locally, at and on the consumer's premises, at a reasonable or authorized price; the turning of the cock constitutes an acceptance of that offer and a receipt of the gas on the premises locally and a promise to pay a reasonable or authorized price.

(5) There is no contract or agreement as to volume, price or time of delivery between any consumer and the Kansas City Gas Company or Kansas Natural Gas Company, or between the Kansas City Gas Company and the Kansas Natural Gas Company.

(6) The Kansas Natural Gas Company not only carries gas to Kansas City, but produces, purchases and owns the commodity from the wells at least to the distributing system, and claims an interest in it at the time and place of delivery to the consumer. It is more than a carrier; it is a local merchant or dealer continuously offering its commodity for sale locally and for delivery locally, either to the local company or through it to the general public.

(7) The contract under which the business was launched and the undertakings and course of business of the Kansas Natural Gas Company has been "to supply gas" and "to furnish gas" at Kansas City to the Kansas City Gas Company. Transportation was and is merely incident to that contract and undertaking. It was and is a necessity to the business of *furnishing*. It is wholly immaterial

where the gas is found, produced or obtained, whether in Missouri, Kansas, Oklahoma, Texas or Louisiana; the obligation, undertaking and course of business of the supply company, is, always was and ever must be to *furnish* gas at Kansas City. If transportation is necessary thereto, it is a mere incident to the local transaction of furnishing gas at, to and for Kansas City and its inhabitants.

(8) The Kansas City Gas Company has dedicated its properties to "a public use," to "a business affected with a public interest", to a service to which the general public may resort at will and receive instantaneous, uniform and equal service, without discrimination, for a uniform and reasonable or authorized price.

(9) The Kansas Natural Gas Company has voluntarily devoted its properties and its gas to aiding and assisting the Kansas City Gas Company in the performance of said public business.

It is settled law that the right of conducting traffic and commercial intercourse between the states is independent of state control and that the non-action of Congress indicates it will that the commerce shall be free and untrammelled, and the states cannot directly interfere therewith. *South Covington & C. S. R. Co. v. City of Covington*, 235 U. S., 537.

It is also settled that the right of carrying natural gas from one state into another is the right of conducting traffic and commercial intercourse in natural gas between states and cannot be prohibited under color of the police power of the state. *Haskell v. Kansas Natural Gas Co.*, 224 U. S., 217; *West v. Kansas Natural Gas Co.*, 221 U. S., 229.

It is equally well settled that "rate-making is a legislative function" of the state. *City of Knoxville v. Knoxville Water Co.*, 212 U. S., 1; *Osborne v. San Diego L. & T. Co.*, 178 U. S., 22. And that "only the legislature of the state  
 • • • can surrender • • • a governmental power



such as fixing rates". *Home Telephone Co. v. Los Angeles*, 211 U. S., 265. And "one whose rights are subject to state restriction cannot remove them from the power of the state by making a contract about them, \* \* \* and one cannot acquire a right to property by his desire to use it in commerce among the states". *Hudson Water Co. v. McCarter*, 209 U. S., 349.

It is also well settled that "a general conception of the law-making bodies of the country that a business requires governmental regulation, is not accidental and cannot exist without cause," and "where a business \* \* \* is affected with a public use, it is the business that is the fundamental thing; property is but the instrument of such business." *German Alliance Ins. Co. v. Kansas*, 233 U. S., 289. And that the business of furnishing, distributing and selling natural gas is a public utility business, a business affected with a public use, "requiring governmental regulation" and subject to state control. *The Wyandotte County Gas Co. v. Kansas*, 231 U. S., 622.

It is equally well settled that one who devotes his property to a public use, to a use affected with a public interest, to a use to which all the public may resort on equal terms thereby submits to governmental regulation and control all such property and the use thereof. *Terminal Taxicab Co. v. Dist. of Col.*, 241 U. S. 252; *People v. Ricketts*, 94 N. E. 41; *State Pub. Util. Com. v. Bethany Ass'n*, 110 N. E. 334.

Thus the constitutional right of the individual to engage in interstate commerce must be reconciled with the constitutional right or the sovereign power of each state to regulate the public utilities serving its citizens. "It constantly is necessary to reconcile and to adjust different principles, each of which would be entitled to possession of the disputed ground but for the presence of the others." *Hudson Water Co. v. McCarter*, 209 U. S. 349, at 357. These two constitutional rights must be reconciled by a consideration of the principle that "one whose rights are

subject to state restriction cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject matter." *Hudson Water Co. v. McCarter*, *supra*; *Knoxville Water Co. v. Knoxville*, 189 U. S. 434, 438; *Manigault v. Springs*, 199 U. S. 473, 480.

In these cases the paramount right of the state to regulate its own public utilities could not give way to the constitutional individual right of contract. In the case at bar the paramount sovereign right of every state to regulate its own public utilities serving its own citizens is not inconsistent with nor can it be superseded by the constitutional right of an individual to import a commodity into the state incidentally or directly used in the service of the public in a business affected with a public interest naturally and inherently subject to state regulation and control.

The reconciling principle is, that it must be presumed that the regulating power will allow just compensation for the imported articles in which event they would flow freely in due course of business into the state. The plaintiff's cause of action was not state action burdening commerce—it was state action confiscating property.

While it is true that the right of interstate commerce includes and embraces the right to sell and that any burden upon the introduction and incorporation of the imported article into and with the mass of property in the state is hostile to the power given to Congress to regulate commerce, yet the importer of such an article has only the right to seek the open market in the ordinary channels of trade. There is no duty devolving upon the state to furnish him a market or to provide ways, means and instrumentalities with which to market his wares, and where his goods are of such a character that he must seek the aid of the state in marketing them or procure the services of licensed agencies and instrumentalities of the state, then he departs from and exceeds the trafficking between states

and submits and becomes subject to regulation by the state. This principle was clearly announced by that great expounder of the Constitution, Chief Justice Marshall, in the early case of *Brown v. State of Maryland*, 12 Wheat. 419, at 443, thus:

"So if he (importer) sells by auction, auctioneers are persons licensed by the state, and if the importer chooses to employ them he can as little object to paying for their services as for any other for which he may apply to an officer of the state. The right of sale may very well be annexed to importation without annexing to it also the privilege of using the officers licensed by the state to make sales in a peculiar way. The power to direct the removal of gunpowder is a branch of the police power, which unquestionably remains and ought to remain with the states. If the possessor stores it himself, out of town, the removal cannot be a duty on imports, because it contributes nothing to the revenue. If he prefers placing it in a *public magazine*, it is because he stores it there, in his own opinion, more advantageously than elsewhere. We are not sure that this may not be classed among inspection laws. The removal or destruction of infections or unsound articles is undoubtedly an exercise of that power, and forms an express exception to the prohibition we are considering. Indeed, the laws of the United States expressly sanction the health laws of a state."

So in the case at bar, if the Kansas Natural or its Receiver choose to employ the licensed agency of the state, the Kansas City Gas Company, in the distribution and sale of gas, or if they prefer placing their goods in a public utility business for distribution and sale, they devote them to a public use and submit to state control.

The furnishing of gas or other public utilities to the inhabitants of the city is a state function kindred to building roads and paving streets over which the state alone has control. In *Field v. Barber Asphalt Co.*, 194 U. S. 618,

the claim was made that a Missouri statute was void because it authorized the common council to name the brand of material in paving contracts, thereby excluding an imported asphalt from competition with other asphalts. The Court held (page 622) that while the statute operated to exclude Trinidad Lake asphalt from the State of Missouri, it was a proper and rightful exercise of the state's power; that legislation of a state may in a great variety of ways affect commerce and persons engaged in commerce without constituting a regulation of it within the meaning of the Constitution (*Pa. Rd. Co. v. Hughes*, 191 U. S. 477), and that the right of the state in the exercise of its police power to make regulations which indirectly affect interstate commerce has frequently been sustained.

So in the case at bar, the price of gas to plaintiff is only incidental to the public service, and the right of the state to regulate gas service to its consumers, even to the extent of requiring the furnishing of manufactured gas to the exclusion of natural gas, is a rightful exercise of the state's governmental power of rate regulation of public utilities affected with a public interest.

We further submit that a careful reading of the following authorities demonstrates that before plaintiff can claim that the business of distributing and selling natural gas is interstate commerce he must show that neither himself nor any other party is engaged in the local business of simultaneous, immediate and indiscriminate sale and delivery of natural gas. *Heyman v. Hays*, 236 U. S. 178; *In re Rahrer*, 140 U. S. 545; *McDermott v. Wisconsin*, 228 U. S. 115.

These are liquor cases and involve special Acts of Congress, but they established the fact that when the Kansas Natural Gas Company, either directly or through the instrumentality of distributing companies, splits up its alleged importation of gas into 150,000 parcels and carries these parcels to the consumers' premises and there trans-

acts the business of locally offering for sale, locally selling, locally measuring, locally delivering and locally collecting, it cannot claim to be interstate commerce.

The true conclusion on this head of interstate commerce must be that the Kansas City Gas Company, and other local distributing companies, are public utilities, doing a business affected with a public use, a local state use, subject to the state's uncontrovertible power of state regulation. *The Wyandotte County Gas Co. v. Kansas*, 231 U. S. 622; *State ex inf. v. Kansas City Gas Co.*, 254 Mo. 515; *Manufacturers H. & L. Co. v. Ott*, 215 Fed. 940. And that, in so far as the Kansas Natural or its Receiver are interested or contribute to such local public utility business, they *pro tanto* submit their rights and become subject to state restriction and regulation. *Hudson Water Co. v. McCarter*, 209 U. S. 349. And that all parties dealing and contracting with a public utility, a business affected with a public interest, a business subject to state control, are deemed to do so with knowledge and take notice of and consent to state regulation and control. *Knoxville Water Co. v. Knoxville*, 189 U. S. 434, 438; *Manigault v. Springs*, 199 U. S. 473, 480. Even mortgagees loaning money on public utility properties *pro tanto* dedicate their investments to public use, subject to state regulation; and that, when the Kansas Natural Gas Company and its Receivers connected their pipe-lines to the properties of the Kansas City Gas Company, devoted to a public use, and chose to employ a licensed state agency, they departed from and exceeded their constitutional right to import and sell in the open market and dedicated their properties and their product to a public use, subject to public regulation and control. *Brown v. State of Maryland*, 12 Wheat. 419, at 443.

Thus also can the paramount constitutional right of the state to regulate its own public utility service be harmonized with the personal constitutional right to import and sell in the open market.

It follows from the foregoing that the price or consideration paid by the local companies to the Kansas Natural Gas Company and its Receiver for gas is merely an item of operating cost to said local companies to be considered and approved or disapproved by the state commissions in making rates for said local companies; that it must be assumed that said rates are and will be reasonable and compensatory and when this presumption is indulged there is no regulation or burden on interstate commerce and that question becomes immaterial, remote and incidental.

#### POINT VII.

**The Receiver and Kansas Natural Gas Company offered no evidence of any agreement with the local companies to modify their supply-contracts or to increase the price to be paid by the local companies to the supply-company for the gas furnished.**

Assuming, without admitting, that the Receiver had a right to maintain an action to enjoin natural gas rates charged and collected by the local companies on the theory that he had a contract or vested right in those rates; the fact remains that there is no evidence (Rec. 786) of any agreement with the local companies to modify their supply-contracts so that the Receiver would participate in the increase. The price realized by the Receiver for his gas is measured by whatever rights the Kansas Natural had under said supply-contracts. Those contracts fixed the price substantially at  $62\frac{1}{2}$  per cent of 30 cents, or 18.75 cents per thousand cubic feet for the gas measured at the consumers' meters. This is just as definite and certain as if the contract had read 18.75 cents per thousand cubic feet for the gas measured at the city gates and there assigned, sold, transferred, delivered and set over to the local companies.

Again, any modification of said contract or future arrangement will necessitate a contract between the local company and the Receiver or the owner of said property fixing a price for gas measured either at the city gates or the consumers' meters. Under no circumstances can the Kansas Natural Gas Company ever acquire any right, title or interest in or to the distribution properties or to the rates charged by the local companies.

"Until the question of the abrogation or modification of the contract between the complainant and the producing company should be presented to the Court appointing the Receiver, complainant was not entitled to have enjoined an order of the Missouri Commission prohibiting an increase of its rates." *St. Joseph Gas Co. v. Baker et al.*, 243 Fed. 206-7.

It follows that in any event before the Receiver or the Kansas Natural Gas Company can maintain or even join in a suit to enjoin legislative rates, they must offer in evidence a contract or agreement with the local companies by the terms of which they would legally participate in the increase.

It is fundamental that a party must have an interest in the subject of the action and the relief demanded before he can maintain or join in a suit.

#### POINT VIII.

The Receiver and Kansas Natural Gas Company offered no evidence of the operating cost or value of the properties of the local companies, used and useful in the natural gas service to the public.

Finally, assuming that all the foregoing infirmities are overcome; and that the entire properties devoted to the production, transportation, distribution and sale of gas are a



unit and that the rates are joint, the fatal weakness of the plaintiff's case remains, to-wit, that he has offered no evidence showing either the operating costs or the reasonable value of the properties of the local companies used and useful in the joint service of furnishing natural gas to the public. Both statements of the evidence agreed to by all the parties are silent as the tomb on the value and operating costs of the distributing companies' properties. The foreclosure bill recites that these properties would be at least \$20,000,000 (Rec. 872) in 1906 when the business commenced and yet they are ignored in fixing an alleged joint rate.

In the opinion (Rec. 563) rendered by the court below, the court said (Rec. 578):

"Considerable evidence was introduced touching the financial status of the various distributing companies, the valuation of their plants, the character and extent of their business, their operating expenses and other allied matters. This evidence was introduced, *not for the purpose of ascertaining with accuracy what would be a just and fair rate to be charged by the various distributing companies*, but solely for the purpose of ascertaining whether there was any reasonable grounds for holding that the Receiver could obtain more than two-thirds of the 28-cent joint rate. This evidence was taken and the inquiry made on the basis of laying aside temporarily the contracts between the Kansas Natural Company and the distributing companies, and without undertaking to pass upon the validity of those contracts as between the original parties. Without reviewing this evidence in regard to these various distributing companies, but after a full and careful consideration thereof, I am clearly of the opinion that there is no reasonable basis for holding that the Receiver could obtain more than two-thirds of the 28-cent joint rate, in case that rate should be established." (Italics ours).

Thus it appears that the hearing was not for the purpose of reviewing a legislative rate, but for the purpose of changing a contract in some undefined way without the consent of one of the parties, and there was no evidence taken or considered or any valuation made or found by the court of the distribution properties in determining the reasonableness of the 28-cent rate. This is fatal to the plaintiff's case under all the authorities.

The record further shows that these pipe-lines were built to carry 120 million cubic feet of gas per day to the markets of Kansas City, Missouri, and Kansas City, Kansas, and other cities; that they consisted of two parallel 16-inch lines from Grabham, Kansas, to Kansas City, Missouri (Rec. 937); that the business originally consisted of furnishing gas for not only lighting and cooking but all domestic and furnace heating in winter and boiler, power and manufacturing uses in summer, thus using said lines to their approximate carrying capacity the year around; that the gas is so far exhausted that it is no longer available in sufficient quantities for heating in winter or for boiler, power and manufacturing purposes in summer and that one of said lines would now be amply sufficient to carry the gas available now insufficient for even domestic uses, that by reason thereof said double pipe-line system with its many thousands of horse-power engines thereon (Rec. 948, map) is no longer used and useful in the service of the public and should not have been included in a valuation for rate making.

### CONCLUSION.

In conclusion appellants state that the Receiver and the Kansas Natural Gas Company have wholly failed to prove any legal right or actionable interest in the rates charged by appellants; have failed to show any agree-

ment with appellants to modify said supply-contracts or change the rates charged by appellants to the benefit of the Receiver or the Kansas Natural Gas Company; have failed to prove the operating costs or value of appellants' properties and of 30 or more other local companies used and useful in the service of the public; and have failed to prove the value of that part of their own properties actually used and useful in the service of the public.

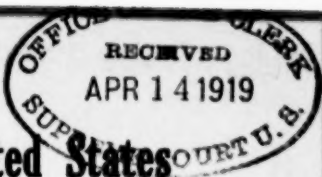
It follows that the decree of the trial court enjoining the 28-cent rate and enjoining the regulation of rates by the Public Service Commission of Missouri and the Public Utilities Commission of Kansas, and enjoining the enforcement of said supply-contracts was erroneous and should be reversed and the cause remanded with instructions to deny the relief prayed by plaintiff and the Kansas Natural Gas Company, without prejudice to the rights of these appellants to fix and establish rates for their consumers in conformity with the laws of the states of Kansas and Missouri.

Respectfully submitted,

J. W. DANA,  
*Solicitor for Appellants.*

910 Grand Ave., K. C., Mo.

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**IN THE  
Supreme Court of the United States**

**Nos. 26160, 26283, 26284, 26323.**

**OCTOBER TERM, 1918.**

**No. 277.**

The Public Utilities Commission for the State of  
Kansas et al., *Appellants*,

vs.

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

**No. 329.**

Kansas City, Missouri, the Public Service Commission of  
the State of Missouri et al., *Appellants*,

vs.

John M. Landon, Receiver of the Kansas Natural  
Gas Company et al.

**No. 230.**

Kansas City Gas Company, The Wyandotte County  
Gas Company et al., *Appellants*,

vs.

Kansas Natural Gas Company, John M. Landon and  
George F. Sharitt, Receivers, and Fidelity  
Title and Trust Company.

**No. 353.**

The Public Utilities Commission of the State of  
Kansas et al., *Appellants*,

vs.

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

**APPEALS FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF KANSAS.**

**Petition of Receivers to Modify the Opinion and De-  
cree of this Court by Declaring the Effect on  
the Receiver of the 28-Cent Rate Order, and by  
Affirming the Decrees of the Court Below as to  
the Distributing Companies, or in the Alterna-  
tive to Permit the Lower Court to try the Valid-  
ity of the Orders of the Commissions as They  
Affect the Distributing Companies, and the Other  
Issues in the Cause not Disposed of by the Opin-  
ion of this Court.**



IN THE

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Gas Company et al.

**No. 329.**

Kansas City, Missouri, the Public Service Commission of  
the State of Missouri et al., *Appellants*,

vs.

John M. Landon, Receiver of the Kansas Natural  
Gas Company et al.

**No. 230.**

Kansas City Gas Company, The Wyandotte County  
Gas Company et al., *Appellants*,

vs.

Kansas Natural Gas Company, John M. Landon and  
George F. Sharitt, Receivers, and Fidelity  
Title and Trust Company.

**No. 353.**

The Public Utilities Commission of the State of  
Kansas et al., *Appellants*,

vs.

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

---

**PETITION.**

The uncertainty in Judge Booth's mind as to his duty under the clause of the opinion that the "decrees below must be reversed and the cause remanded for fur-

ther proceedings in conformity with this opinion" causes him to approve this action of his Receivers in suggesting to this court that in the event a rehearing is not deemed wise, at least he should be given such direction as is hereinafter indicated.

### I.

This court in its opinion says the Receiver cannot challenge the 28-cent rate of the Kansas Commission because he is not directly interested in it, although the rate was made for him by the Commission and on consideration of his business and property. At the conference referred to in our petition for rehearing the purpose to proceed against the Receiver for a refund under the Commission's order of December 10, 1915, was expressed by the Attorney General of Kansas, although that order has the same infirmity as the decree of the District Court and the bill of complaint, as stated by this court, to-wit, it does not affect his business. The 28-cent rate was made in law, as proclaimed in this opinion, for the distributing companies, but in fact was made for the Receiver upon a consideration of his business and his business alone. This is conclusively shown by the opinion of the Kansas Commission, Exhibit K attached to the bill of complaint (Record, p. 53). No evidence was introduced before the Commission on the valuation of the distributing companies' properties or their requirements (See p. 20 of "Brief on Behalf of Various Distributing Companies, Appellees").



A rate cannot lawfully be made for the distributing companies upon a consideration of, *not* their business and requirements, but those of the Receiver, without a hearing on the reasonableness of the 28-cent rate as to them.

If the Receiver has not sufficient interest in the 28-cent rate to challenge it in a court of equity, it cannot be enforced against him for refund, when he has exercised his right to charge higher rates since the date such rate order was enjoined on his complaint. The infirmity in the bill as found by this court (that he was not directly concerned in the rate and could not complain thereof) goes back to the order of the Kansas Commission, and makes that order void because the order was in fact made for him and his business when the Commission had no power to make a rate for him.

## II.

The 28-cent rate made for the Receiver, and of which he cannot complain for the reason stated in the opinion, cannot be valid as against the distributing companies, because it was not made for them. There was no evidence taken by the Commission to support the order so far as it related to the distributing companies. The Commission considered the distributing companies as the agents of the Receiver and the 28-cent rate as a *joint rate* to the consumers (Record p. 83), referring to the distributing companies as "their" (the Receivers') distributing companies.

The decree against the Kansas defendants found that the 28-cent rate was confiscatory generally, and then

permanently enjoined it as to the distributing companies as well as to the Receiver (Record, p. 602, paragraphs "Second" and "Fifth"). There were no assignments of error against this part of the decree, no evidence to support the decree in favor of the distributing companies is included in the transcript, and there is no discussion of the matter in appellants' briefs. Neither was any reference made in the oral argument as to the part of the decree granting the injunction in favor of the distributing companies against the 28-cent rate. In this state of the record, the opinion should not be so interpreted as to direct a dissolution of the injunction in favor of the distributing companies. It says in the opinion that it is unnecessary to discuss the effect of rates prescribed for the "latter" (distributing companies) for the Receivers were in no position to complain of them. But the distributing companies were in position to complain, and some did, and obtained a decree enjoining the 28-cent rate. That injunction should not be dissolved even though the Receiver cannot complain, and his injunction be dissolved. The interested parties have a constitutional right to challenge the 28-cent rate. They did so and got an injunction in their favor. It is now claimed that it is the duty of the court below to set aside the injunction under the mandate and opinion. If it does so, the distributing companies should have the right to challenge the reasonableness of the 28-cent rate on a demand for an injunction in this suit.

Either the distributing companies have had their day in court on the question of the confiscatory nature

of the 28-cent rate as to them and the injunction in their favor should not be dissolved, or if the decree as to them is reversed they should be permitted to re-try the question of the confiscatory nature of the 28-cent rate as to them. They should not be penalized for the wrong theory of agency adopted by the Kansas Commission over their objection and be refused a hearing on the confiscatory nature of the rate as to them. Under the case of *Florida, East Coast R. Co. v. United States*, 234 U. S. 167, 34 S. Ct. 867, 872, the evidence introduced against the Receiver will not support an order for a 28-cent rate as to the distributing companies. The order as to them was void. *Interstate Commerce Commission v. L. & N. R. Co.*, 227 U. S. 88, 33 S. Ct. 186; *L. & N. R. Co. v. Finn*, 235 U. S. 601, 35 S. Ct. 146, 149. Under the case of *Arkadelphia Milling Company v. St. L. S. W. Ry. Co.*, 39 S. Ct. 237, . . U. S. . . (decided March 3, 1919), and cases cited, the distributing companies had a right to dispute the validity of the rate order as related to them. To deny them this right in and of itself makes the order of the Kansas Commission void. Any act or procedure that denies to a litigant the right to test an order of the Commission in court makes the order of the Commission and the Act or both unconstitutional. *Chicago, etc. Co. v. Minnesota*, 134 U. S. 418, 460, 10 S. Ct. 462, 702, concurring opinion of Mr. Justice Miller.

### III.

Since the 28-cent rate order was directed to the Receiver, he supposed he was attacking it in the court

below, but this court decided he had no right to challenge the order, on the ground that it was not made against him, though it was in fact directed to him. If it was not made against him, it cannot be enforced as against him until he has had opportunity to exercise his constitutional right to test it by judicial review. If the decrees are reversed, the court below should be directed to modify the injunction as to the Receiver and continue it in force as to the distributing companies. As to the Receiver it should provide that the Kansas Commission cannot enforce the order against him, either as to the penalties provided by the Kansas statute or as to the rates, which are inapplicable to him.

The distributing companies attempted to review the order in the trial court and got an injunction against it. This it is claimed the court below should dissolve because of the opinion of this court denying relief to the Receiver. If the distributing companies are to have their injunction dissolved and are denied a trial in the court below, then the distributing companies will have had the 28-cent rate order enforced against them without being permitted to exercise their constitutional right of judicial review.

#### IV.

In the proceedings below, two issues were framed in relation to the supply contracts, one as to whether they were binding on the Receiver, the other as to whether they were binding on the Kansas Natural Gas Company. The court below decided that the supply contracts were

not binding on the Receiver, and its decree in that respect has been affirmed by this court. The other issue, as to whether they are binding on the Kansas Natural Gas Company, has not been tried, as the court below did not consider it necessary to try that issue in determining the validity of the orders of the Commission. Under the changed conditions brought about by the reversal of these cases, it is necessary to try the issue as to the binding force and effect of these supply contracts on the Kansas Natural Gas Company. But a trial of this issue cannot be had in the court below, without the permission of this court.

We have been thus insistent, because of the fact that the people, the consumers, who are bound to be directly affected, number hundreds of thousands, and improper action may well result in great distress and inconvenience; that the monetary interests of the parties litigant mount into the millions of dollars; that the time consumed in the various trials of the various branches of this litigation has been so great as to approximate a travesty upon justice; and finally, that the expense to all the parties, receivers, distributing companies and cities, is very great.

It is thought by your petitioners that with a few sentences, this court can make perfectly clear the rights of the parties and the duties of the court below in these matters. To permit the trial court to proceed without further guidance is bound to result in the matters being again brought before this court, either upon mandamus or new appeal. The shorter road to a final determina-

tion, we submit, is for this court to so modify the opinion which must be the guide in obeying the mandate, as to remove those doubts which now trouble the trial court and the parties whose rights he is passing upon.

We submit that the injunction should remain in force at least as to the distributing companies, and that the decrees in their favor should be affirmed. If this court does not so order then specific permission should be given to the court below for him to reframe and to try the issues as to the validity of the orders of the Commissions as they affect the distributing companies, and also as they affect the Receiver.

We further ask that the court below be given specific permission to reframe and try the issues as to the validity of the supply contracts above mentioned, and especially as to their binding force on the Kansas Natural Gas Company.

Respectfully submitted,

CHESTER I. LONG,

JOHN H. ATWOOD,

ROBERT STONE,

*Solicitors for John M. Landon, Receiver of the Kansas Natural Gas Company.*

JOHN J. JONES,

*Solicitor for George F. Sharitt,  
Receiver of the Kansas Natural  
Gas Company.*

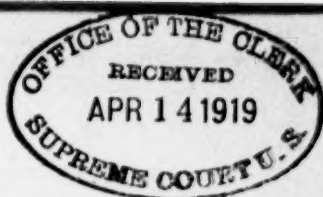
*State of Missouri, County of Jackson, ss.*

We hereby certify that in our opinion the foregoing petition is well founded in fact and in law, and not made for delay.

CHESTER I. LONG,  
JOHN H. ATWOOD,  
ROBERT STONE,  
JOHN J. JONES







IN THE  
**Supreme Court of the United States**

Nos. 26160, 26283, 26284, 26323.

OCTOBER TERM, 1918.

**No. 277.**

The Public Utilities Commission for the State of  
Kansas et al., *Appellants*,

vs.

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

**No. 329.**

Kansas City, Missouri, the Public Service Commission of  
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vs.

Kansas Natural Gas Company, John M. Landon and  
George F. Sharitt, Receivers, and Fidelity  
Title and Trust Company.

**No. 353.**

The Public Utilities Commission of the State of  
Kansas et al., *Appellants*,

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

APPEALS FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF KANSAS.

**PETITION FOR REHEARING BY KANSAS  
NATURAL GAS COMPANY.**



IN THE

# Supreme Court of the United States

---

**No. 277.**

The Public Utilities Commission for the State of  
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**No. 353.**

The Public Utilities Commission of the State of  
Kansas et al., *Appellants*,

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

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## PETITION FOR REHEARING BY KANSAS NATURAL GAS COMPANY.

The receiver under the opinion of this court is held  
"Free from unreasonable interference by the state,"  
"under no compulsion to accept unremunerative prices,"  
not bound by the original supply contracts, and engaged

in interstate commerce to the gates of the cities. This would seem to give him complete relief but because the orders complained of fix rates at the burner tips he is held to be in no position to complain of them. For this reason it is claimed by the cities and commissions that no injunction as to business, either in the past or future, should issue in his favor. Since the granting of the temporary injunction increased rates have been collected by the distributing companies, of which the receiver has received his proportion. If the injunctions fall it is claimed by the cities and the commissions that a refund of all excess so collected, amounting to over three million dollars, must be paid back by the distributing companies and the receiver. If that construction of this court's opinion be correct the property of the Kansas Natural will be confiscated and a great substantial wrong will be permitted.

There are four distinct classes of litigants involved in these cases. (1) The Kansas Natural, its receivers and creditors; (2) the distributing companies; (3) the Public Utility Commissions of two states and the cities; (4) the consumers of gas. These four classes of litigants place divergent and irreconcilable construction upon the opinion in question. So divergent were their views that the trial court, Honorable Wilbur F. Booth, propounded a questionnaire and summoned a conference. More than fifty representatives of the different parties assembled and attempted to answer the following questions which had been propounded by him:

"My dear Sir:

Enclosed herewith is a copy of the opinion of the Supreme Court on the appeals in the Gas case. At the suggestion of a number of attorneys interested, an informal conference will be held April 3rd, 1919, to discuss various questions which now arise, among others:

1. What 'further proceedings in conformity with this opinion' should the court take?
2. Does the Supreme Court decision furnish any basis for a claim of refund at this time from either the Receiver or the Distributing Companies?
3. Does your client anticipate filing a petition for a rehearing, and, if so, along what lines?
4. In view of the decision, what status does your client now occupy in relation to the receiver?
5. Is there any reason why the receiver should not now fix a schedule of rates at the city gates?
6. In view of the decision, is not the time opportune for a full and amicable adjustment of all controversies between the parties.

A frank expression of views from all parties is desired.

In case you cannot be present, a communication by letter will be appreciated.

Very truly yours,

W. F. BOOTH."

Two days' discussion brought neither harmony among the litigants nor enlightenment to the court. Each party claimed that by proper interpretation of the opinion its contentions were sustained.

The record in this case is voluminous. The facts involved are exceedingly complicated. The method of business is *sui generis*, the business of the receiver is partly mining, partly producing, partly merchandising,

and largely transportation. It partakes of but is not in reality a public utility unless it be held that the receiver is selling to the ultimate consumer.

It is not strange that this court, cutting through the maze of facts, figures and methods of doing this peculiar sort of business, should arrive at the ultimate legal proposition of interstate commerce to the gates of the cities and feel that that conclusion solved all the questions in the suit.

The Kansas Natural more than anyone else is vitally interested in maintaining the integrity and usefulness of its property, and in view of the situation most respectfully requests this Honorable Court to grant a rehearing in order that substantial as well as technical justice may be attained.

In support thereof it submits the following:

I.

The receiver is engaged in interstate commerce to the burner tips. He has never adopted the original supply contracts. His relations to the distributing companies are those established by his business practice.

In its opinion this court says:

"Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

It has been the almost universal method of selling natural gas for the producing and transporting company to supply the ultimate consumer on exactly the plan



followed by the receiver in this case. That is, the gas passes directly and continuously from the mains of the supply company into the lines of the distributing companies to the burner tips. The propulsion which makes distribution to the consumer possible, is given to the gas by the supply company (in this case the receiver) before the gas enters the distributing lines. The title to the gas remains in the supply company until it is burned; the supply company receives pay only for gas delivered to the consumer and paid for by him; the gas lost in transportation through the distributing as well as through the supply pipes is the loss of the supply company. The uncollected bills are its loss. The service from well to burner tip is a continuous and single service, consisting largely of transportation, and the rates charged are joint rates. The distributing company receives for its service a certain percentage of the gross amount collected, and in consideration thereof furnishes the distributing lines and equipment, as well as service in connection therewith. This is an essential part of the method of doing business and is not a mere device for providing the manner of payment for gas delivered by the supply company to the distributing company.

Not only is the above the uniform method of selling natural gas, but because of the varying pressure incident to the transportation of large quantities of gas through the main lines and the varying temperature of the weather, at least up to the time of the commencement of this action, there had never been devised satisfac-

tory meters which could measure the gas as delivered from the transportation lines into the distributing system.

The Utilities Commission of Kansas (Brief of Appellant, P. U. C. p. 6), and the Supreme Court of Kansas (*State v. Flannelly*, 96 Kan. 372), found that this relation was one of agency and not of vendor and vendee.

This court, speaking of the receivers, said:

"In fact they lack authority to engage by agents or otherwise in retail transactions carried on by the local companies."

This court cannot mean by this statement that the charter of the Kansas Natural would not permit it to acquire franchise rights because that right, under its charter has never been questioned and is not at issue. It has every power and authority so to do and exercises that right without question in the distributing plant at Independence, Kansas.

The peculiar nature of the gas business and the practical and known commercial method of carrying it on as above described make it almost vital that the relation between the producing company and the distributing company should be that of principal and agent. That well recognized and well established relation was not recognized by this court because this court's attention was not particularly directed thereto by counsel. It was not in serious dispute. The Utilities Commission recognized it and the orders complained of were based upon that premise. The Supreme Court of the State of Kansas had

adopted that view of the relation and the attorneys for the Public Utilities Commission, not only throughout the hearing, but in their brief in this court (see Brief of Appellant, P. U. C., p. 6), stated it in the following words:

"The gas sold in Kansas is delivered to the consumer thereof in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities, fixing the rates charged customers for gas. These distributing companies act as agents for the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Company, under the control of the receivers, into the pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers."

We believe that this well established and known commercial method followed by the receiver should be recognized by this court so that the entire business might be protected from unreasonable interference by the state.

## II.

The order of December 10, 1915, was an order directed to the receiver and not to the distributing companies. While couched in permissive language, it fixes maximum rates which, under the statutes of Kansas, cannot be exceeded without incurring the penalties re-

ferred to below. This statute is set out at page 20 of the record and is found in Section 38, Chapter 238 of the Sessions Laws of 1911.

This order the receiver was compelled either to obey or disobey. If he obeyed, the confiscation of his property was inevitable because the rate fixed was not adequate to yield a return. If he disobeyed, and he was held to be wrong, he would be subject to the severe penalties of the statute set out in Paragraph 17 of the bill of complaint. This order directed to him was issued by a state board, with all of the authority of the state to compel its enforcement, with an assumption of authority to compel obedience by receiver under the claim that he was under their jurisdiction.

The receiver was engaged in interstate commerce and, as stated by this court, he was "under no compulsion to accept unremunerative prices." He "might sell and deliver gas so transported to local distributing companies, free from unreasonable interference by the state," but it does not follow that he could defend himself by force of arms against a police officer of Kansas who might come to arrest him for violation of the Kansas laws; nor that he should incur the risk of several millions of dollars of fines for violating this order of the Commission by putting in his own rate at the gates of the city. The fact that he was engaged in interstate commerce free from state regulation and not obliged to accept unremunerative prices is the very situation which entitled him to the injunction which he obtained against the commission. He had a right to choose his forum

and to ask the protection of a court of equity instead of violating the order and subjecting himself to possible punishment by summary proceedings brought by the commission to enforce the extraordinary, exorbitant and confiscatory fines provided by the statutes of Kansas (Rec. pp. 20 and 31).

The receiver chose the only safe course. The Supreme Court of the state had held that the interstate character of his business was ended when he "broke the package" and made his first sale of gas in Kansas. (*State v. Flannelly*, 96 Kan. 372.) The commission was further claiming that even though his business was interstate, it was not national, but local, and therefore under its control. No prudent man in charge of a great estate would risk its complete confiscation, even on advice of counsel, by defying the state without the protecting arm of the court.

For three years under that protection he has collected rates in excess of two-thirds of 28 cents. If now this court withdraws the protection granted by the lower court, it has been publicly threatened in press and in open court, that the receiver will be compelled to refund to the consumers all of the excess above his portion of the 28-cent rate. This will amount to nearly two million dollars and the confiscation sought to be averted will have been accomplished.

When the preliminary injunction was granted by the enlarged court the receiver was required to furnish a bond for \$750,000, conditioned that "in case the injunction decreed here shall be adjudged to have been im-

providently issued by the final decision of that question, he will pay back to each of the consumers of the gas he furnishes herein the excess paid by such consumers therefor above what he would have paid at the rates fixed by the order of the commission of December 10, 1915." It is claimed that there will be a liability on this bond under that condition if the injunction granted by the lower court is not sustained.

The Commission of Kansas still claims jurisdiction over the receiver (Brief, pp. 25, 28, 31, and Rec., pp. 186, 605, 745, 766), and in the conference reiterated the claim that it has power to fix a rate at which the receivers shall sell gas to the distributing companies at the gates of the city.

Under these circumstances we respectfully suggest that the injunction in favor of the receiver should be sustained.

### III.

In its opinion this court says "The challenged orders related directly to the price of the gas at the burner tips and only indirectly to the receiver's business," and, "The receivers were in no position to complain of them."

This court evidently overlooked the fact that the rates established by the challenged orders were joint rates and as such are directed to the receiver (Rec. 83 and 85). The receiver asked permission of the commission to file his own rate at the gates of the city. This is stated in the commission's opinion of July 16, Exhibit H, attached to plaintiff's bill of complaint, where the commission says :

"On April 26, 1915, however, there was filed with the commission a document which may be regarded as an amendment to the complaint, in which the commission was requested to establish and make effective a schedule of rates to be collected from the distributing companies for natural gas delivered at the gate of each plant. This schedule of rates was constructed upon the distance plan, and varied from 13 1/3 cents per thousand cubic feet for gas delivered at Coffeyville, on the Oklahoma border, to 29 cents per thousand cubic feet for gas delivered at Atchison. As, however, this schedule was subsequently abandoned and superseded by another, no further attention need be given it."

This application was abandoned and superseded by another because the commission refused to consider any rate except a joint rate to the ultimate consumer. This position was taken by the commission in order to maintain its jurisdiction over the local distributing companies as well as the receiver. The Commission Law of Kansas, Chapter 238, 1911, provides that any utility operating in only one city shall not be under the supervision of the commission. By considering the Kansas Natural gas business as one whole plant and the distributing companies its agents the commission claimed power to extend its jurisdiction over the whole system. Under this compulsion the receiver filed his joint schedule.

The rate fixed by the order of December 10th was a joint rate. The cost of the gas in the field was a comparatively small item. At the time this rate was fixed it was only six or eight cents per thousand. The principal cost to the consumer is the cost of transportation all the



way from the well to the burner tips. The twenty-eight cent rate is the fixing of an interstate rate and therefore is a direct burden upon interstate commerce.

#### IV.

This court in its opinion says that the "interstate movement ended when the gas passed into the local mains." Admitting that to be true, it does not necessarily follow that because the lower court adopted the contrary view the conclusion that the commissions were interfering with the establishment of compensatory rates by the receiver was an erroneous conclusion. The fact is that the direct result of the orders of the Public Utilities Commission, if followed out and enforced, would result in the complete destruction of the receiver's property. His customers are limited to the few distributing companies that serve the several cities. He has no other possible use for his plant which has cost millions to install. If those patrons are taken from him his property must be junked.

What amounts to a direct burden upon interstate commerce depends upon the conditions in the case at hand. In this case the receiver is operating an expensive plant, a plant which cost millions of dollars, constructed for the express purpose of transporting gas from Oklahoma into Kansas and Missouri. He cannot supply gas at the gates of the respective cities for less than all of the 28 cents. The commission has fixed a rate of 28 cents to the ultimate consumer, to include compensation both to receiver and distributor. His only customers

therefore are absolutely unable to buy of him. The effect of the order is as direct, potent and disastrous as though it were an order prohibiting the importation of gas at the state line.

#### V.

The 28 cent rate, that is the challenged order is void. The commission had no authority to fix a rate for the receiver's interstate business, but the receiver's interstate business constituted the basis for two-thirds of the 28 cent rate. It was an attempt directly to burden the interstate commerce of the receiver, and the whole rate therefore must fall.

#### VI.

The rate complained of was challenged not only by the receiver but by this appellee (Kansas Natural Gas Company) and by several of the distributing companies, which answered, praying similar relief as the receiver. Those distributing companies contended that the 28 cent rate was confiscatory as to them and prayed that it be enjoined.

#### VII.

It has never been held that, when a telegram reaches the pole line constructed in accordance with the franchise granted in a local city, or when a traveler or a package arrives on a section of a railroad built under the terms of and in accordance with a franchise from a local community, that the character of the interstate service changed in any respect merely because the local

right to use a private property of the city had been entered upon. But, on the other hand, it has been distinctly decided that the use of local franchises does not change interstate commerce into intrastate commerce.

*Ticker cases, 38 Sup. Ct. Rep. 438 (Western Union Co. v. Foster).*

*Wherefore, your petitioner now respectfully prays that a rehearing be granted in the above entitled suits.*

R. A. BROWN,  
T. S. SALATHIEL,  
*Solicitors for Kansas Natural Gas  
Company, Appellee.*

*State of Missouri, County of Jackson, ss.*

We hereby certify that in our opinion the foregoing petition is well founded in fact and in law, and not made for delay.

R. A. BROWN,  
T. S. SALATHIEL,  
*Solicitors for Kansas Natural Gas  
Company, Appellee.*

Supreme Court, U. S.  
*W. D. P.*  
APR 16 1918  
JAMES D. NAHER,  
CLERK.

In the  
**Supreme Court of the United States**  
October Term, 1918.

No. 330.

(Submitted and Considered in Nos. 227, 329 and 353.)

KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY ET AL., *Appellants,*

VS.

KANSAS NATURAL GAS COMPANY, JOHN M. LAN-  
DON and GEORGE F. SHARITT, Receivers, and  
FIDELITY TITLE & TRUST COMPANY,  
*Appellees.*

Filed January 14, 1919.

*Appeal from the District Court of the United  
States for the District of Kansas.*

Petition of Kansas City Gas Company, The Wyandotte  
County Gas Company and Chicago Light, Heat & Pow-  
er Company (1) for leave to file bills below in the na-  
ture of bills of review or bills to suspend or avoid the  
operation as to these parties of the orders and decrees of  
said court entered under the mandate, and for affirmative  
relief; (2) or, for direction to the court below to construe  
the opinion to preserve and protect the rights of these  
parties; (3) or, for a rehearing—and brief supporting  
same.

J. W. DANA,  
*Solicitor for Petitioners.*

910 Grand Ave., K. C., Mo.

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In the  
Supreme Court of the United States  
October Term, 1918.

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No. 330.

(Submitted and Considered in Nos. 227, 329 and 353.)

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KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY ET AL., *Appellants*,

VS.

KANSAS NATURAL GAS COMPANY, JOHN M. LAN-  
DON and GEORGE F. SHARITT, Receivers, and  
FIDELITY TITLE & TRUST COMPANY,  
*Appellees*.

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*Appeal from the District Court of the United  
States for the District of Kansas.*

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Petition of Kansas City Gas Company, The Wyandotte  
County Gas Company and Citizens Light, Heat &  
Power Company (1) for leave to file bills below in the  
nature of bills of review or bills to suspend or avoid the  
operation as to these parties of the orders and decrees of  
said court entered under the mandate, and for affirmative  
relief; (2) or, for direction to the court below to construe  
the opinion to preserve and protect the rights of these  
parties; (3) or, for a rehearing—and brief supporting  
same.

*To the Honorable Justices of the Supreme Court:*

Now come the Kansas City Gas Company and  
The Wyandotte County Gas Company, appellants  
in the above entitled cause and appellees in cases



Nos. 227, 329 and 353, and the Citizens Light, Heat & Power Company of Lawrence, Kansas, appellee in said last mentioned cases, and represent and show to the court that they are and were defendant distributing companies in the case entitled *John M. Landon, Receiver, v. Public Utilities Commission of Kansas et al.*, No. 136-N, in the court below; that they and other distributing companies similarly situated sought to file pleadings and offer evidence in their own behalf in said cause and court for the purpose of showing that the rates fixed and maintained in force and effect by the ordinances of their respective cities and by the Public Utilities Act of Kansas and Public Service Act of Missouri and by the orders of the Commissions of said states were at the commencement of said suit and during the trial of said suit confiscatory of the property of these petitioners and denied these petitioners due process of law in violation of the Fourteenth Amendment to the Constitution of the United States; that these petitioners were denied the right so to do upon the mistaken theory that the Kansas Natural Gas Company and its Receivers were the principals or real parties in interest entitled to prosecute said suit in the court below against said confiscatory rates and that these distributing companies were mere agents or instrumentalities of the Receivers in the distribution and sale of said gas to the ultimate consumers; that in the opinion (Rec. 563) rendered by the court below it said (Rec. 578): "Considerable evidence was introduced touching the financial status of the various distributing companies, the valuation of their plants, the character and extent of their business, their operating

expenses and other allied matters. *This evidence was introduced, not for the purpose of ascertaining with accuracy what would be a just and fair rate to be charged by the various distributing companies, but solely for the purpose of ascertaining whether there was any reasonable grounds for holding that the Receiver could obtain more than two-thirds of the 28-cent joint rate."*

That your petitioners, together with many other distributing companies, were brought into said court by process and made parties defendant upon the assumed claim of right of the Receivers to control the price of gas to said distributing companies and to control the selling rate of gas to the ultimate consumer, and that your petitioners were never allowed an opportunity to make a proper case in their own behalf.

That notwithstanding the foregoing facts, the enlarged court on June 3, 1916, Justices Sanborn, Booth and Campbell, issued a temporary injunction (Rec. 294) running in effect in favor of your petitioners and finding that the rates fixed by the Public Utilities Act of Kansas for your petitioners on January 1, 1911 (Rec. 295), and also the rates ordered by the Public Utilities Commission of Kansas on December 10, 1915 (Rec. 296), for your petitioners, were and are unreasonably low and confiscatory and temporarily enjoined the same; that thereafter, on July 5, 1917, said temporary injunction was made permanent as against the Kansas defendants and a final decree entered specifically enjoining said rates in favor of The Wyandotte County Gas Company and other defendants seeking the same relief (Rec. 602, 603); that thereafter said temporary injunc-

tion was made permanent and a final decree entered as against the Missouri defendants (Rec. 621) and specific relief granted to your petitioner, the Kansas City Gas Company, enjoining the rates in force in Kansas City, Missouri, as confiscatory, and finding that the Public Service Commission Act of Missouri, providing for the suspension of schedules of rates filed by, for and on behalf of distributing companies for 120 days and then for six months and then for thirty days, making eleven months, without a hearing, "together with the construction placed upon said Public Service Commission Act by said Commission and the acts and proceedings of said Commission thereunder, as hereinbefore set forth, constitute the taking of the property of \* \* \* the distributing companies above named without due process of law and without just compensation and deny to \* \* \* said distributing companies the equal protection of the law, all in contravention of the Constitution of the United States " (Rec. 623), and thereupon enjoined the operation of said statute and orders of suspension in favor of your petitioners and other distributing companies.

That in a public but informal and unofficial conference called and held by the judge of the court below and counsel representing all the parties in interest, the court on request and for the benefit of all parties expressed the view that the direction by this the Supreme Court that "the decrees below must be reversed and the cause remanded for further proceedings in conformity with this opinion" requires the trial court to reverse said decrees in so far as they grant any relief to your petitioners and other defendant distributing

companies and that said court will be powerless to entertain the cross-bills or applications of your petitioners and other defendant distributing companies for any relief against said confiscatory rates notwithstanding the fact that said decrees were reversed on the sole ground that the "Receivers were in no position to complain of" the rates charged by reason of the "relation between said Receivers and the local companies."

Your petitioners further show to the Court that the temporary injunction of the enlarged court enjoined and prohibited your petitioners from putting or maintaining in effect said confiscatory rates: "That because the rates above specified are non-compensatory, unreasonably low and confiscatory the \* \* \* Commission \* \* \* and *all the other parties to this suit* interested in such rates \* \* \* be, and they are hereby, enjoined and prohibited, \* \* \* from putting or maintaining in effect, \* \* \* any of said rates \* \* \*" (Rec. 296). That the decree against the Kansas defendants permanently enjoins your petitioners from putting and maintaining in effect said rates: "Sixth. That the Public Utilities Commission of the State of Kansas \* \* \* and *all other parties to this suit* \* \* \* are hereby permanently enjoined and prohibited from putting into force or maintaining in effect \* \* \* the rates prescribed by the Commission's order of December 10, 1915, or the rates in force January 1, 1911, prescribed by Sec. 30, Chapt. 238 of the Laws of Kansas, 1911, or any other rates hereafter prescribed by said Commission \* \* \*" (Rec. 603). The decree against the Missouri defendants likewise enjoins your petitioners from putting or maintaining in effect the

existing rates: "Seventh. \* \* \* and the defendant distributing companies are permanently enjoined from \* \* \* interfering with plaintiff in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri." (Rec. 625).

It follows from the foregoing that all existing rates were suspended and your petitioners were powerless to go to the Commissions to obtain new rates and were bound by said injunctions to put into effect rates promulgated by the Receivers and approved by the court below, and that thereafter your petitioners did put into effect certain rates; that the reversal of said orders in so far as they grant relief to these petitioners without further proceedings will subject your petitioners to a vast multiplicity of civil suits by consumers of gas and penal and criminal suits by the Commissions, and if successful will bankrupt your petitioners and confiscate their property to public use without a hearing in court, without due process of law and in violation of the 5th and 14th Amendments.

That the rates charged by your petitioners with the approval of the court below have been reasonable, just and favorable to the consumers and not even sufficient to afford a 6 per cent. return on the property of your petitioners used, useful and required in service to the public.

That the Commissions and Cities did not perfect and prosecute appeals from the decrees of the court below *in favor of your petitioners* enjoining said rates in their behalf and did not assign said decrees as error and did not perfect or bring up to

this court any sufficient record to show that said decrees *in favor of your petitioners* were erroneous; from which it follows that in so far as said decrees granted relief to your petitioners and others similarly situated they should be affirmed and not vacated by the court below; but said court entertains the view that the opinion and mandate of this court will require the reversal of said decrees in favor of your petitioners.

That the court below has all the parties in interest before it and has jurisdiction of the subject matter of the controversy under Sec. 56 of the Judicial Code as ruled by this court in the opinion, and is in a position to hear the application of your petitioners and to grant proper relief in the premises.

Your petitioners further state that at said conference between the court below and counsel, the court expressed the view that upon the coming down of the mandate the court below would, in conformity with the opinion of this court as construed by the court below, enter a final order holding and decreeing that said supply-contracts existing between the Kansas Natural Gas Company and your petitioners were not binding upon the Receivers at the time of the entering of the decrees appealed from and would issue a permanent injunction against your petitioners attempting to enforce said supply-contracts against the Receivers or the trust estate resulting in the shutting off of gas to your petitioners and leaving said cities without a supply; and that the court would be powerless to entertain any application by your petitioners or accept any proofs to show whether or not said contracts had been adopted by the Receivers by im-

plication and by their course of business or whether or not there were legal or equitable grounds for the disavowal and rejection of said contracts at the time of entering of said decrees or at the present time.

Your petitioners, the Kansas City Gas Company and The Wyandotte County Gas Company, respectfully submit that they assigned as error the decree of the court below holding that "said supply-contracts were not binding upon the Receivers" (Assignment No. 3, Brief, 41, 53; Record 710, 718); that they contended in their arguments and briefs that the Receivers' price for gas is contractual and that they had no legal or actionable right, title or interest in the rates charged by said local companies to their patrons (Brief 69 to 77), which view seems to have been approved by this court, "the Receivers were in no position to complain of them" (Opinion, 5); and that the question of whether or not said contracts had been adopted by implication and course of dealings or whether or not there were any legal or equitable grounds for their disavowal and rejection were still reserved to and pending in the court below (Brief 69 to 77); and your petitioners state that there never has been a hearing in the court below either in the case of *John M. Landon v. Public Utilities Commission* or in *Fidelity Title & Trust Co. v. Kansas Natural Gas Company*, the foreclosure suit upon which it is dependent, upon the question as to whether or not said contracts have been adopted by implication and course of dealings of the Receivers with the distributing companies or the question of the legal or equitable right of the Receivers or the court in the interest of cred-



itors or otherwise to disavow and reject said contracts, and that, if the court below should now enter its final order on the coming down of the mandate holding that the contracts were not binding upon the Receivers and thereby disavowing and rejecting the same, such order would be without a hearing and a denial of due process of law to your petitioners in violation of the 5th and 14th Amendments; and your petitioners are advised by counsel and believe that such an order would not be in conformity with the views expressed in the opinion of this the Supreme Court for the reason that said decrees are reversed upon the ground that the Receivers were in no position to complain of the rates charged by the distributing companies because the relation between the Receivers and the local companies was contractual and that such relation was created by said supply-contracts between the Gas Company and the local companies and continued in force and effect by the Receivers and existed at the time of entering of said decrees, and that while said contracts may not have been adopted and were "subject to rejection" at the time of entering the decrees below they had not been rejected and the matter of their adoption or rejection and binding force and effect on the Receivers was still open for adjudication; that said enlarged court when issuing said temporary injunction said: "It has not been and is not necessary for this court as at present constituted to determine the validity of the city ordinances, the contracts between the cities and the distributing companies, the contracts between the distributing companies and the Natural Gas Company *and the duties and obligations of the Receiver under them* in order

to adjudicate the issues it was constituted to decide and for that reason no opinion is expressed or adjudication made concerning them" (Rec. 311); and that the evidence in regard to the financial condition of the distributing companies "was taken and the inquiry made *on the basis of laying aside temporarily the contracts between the Kansas Natural Company and the distributing companies*, and without undertaking to pass upon the validity of those contracts as between the original parties" (Rec. 578); and that the final decree against the Kansas defendants specifically provided: "Nothing contained in this decree, nor in the opinion upon which it is based, shall be construed as determining the \* \* \* status of the distributing companies' contracts in Kansas or Missouri" (Rec. 604); that notwithstanding the foregoing and without any proofs, or hearing, and while the Receivers were still furnishing gas and accepting payments according to said contracts, and had made no agreement with your petitioners to modify the same, the court below in its decree against the Missouri defendants, held: "That the following described contracts heretofore existing between the Kansas Natural Gas Company or its predecessors and the defendant distributing companies or their predecessors *are not* binding upon the plaintiff" the Receiver, naming the contracts. By reason of all of which the decree holding that said contracts were not binding upon the Receivers has been reversed or said matter is still open for adjudication by the court below.

Wherefore, the premises considered, your petitioners pray this Honorable Court:

1. To issue its mandate to the court below spe-

cifically directing said court to affirm those parts of its decrees granting affirmative relief to your petitioners and other Distributing companies similarly situated enjoining as confiscatory the rates of your petitioners in force at the time of entering said decrees; and specifically directing said court to reverse that part of its decrees holding that said supply-contracts are not binding upon the Receivers; or

2. To grant leave to your petitioners and other distributing companies similarly situated to file in the court below in case No. 136-N and No. 1-N on which it is dependent, bills or supplemental bills in the nature of bills of review or bills to suspend or avoid the operation of the order of this court reversing said decrees of the court below as to these distributing companies, and for the purpose of determining whether or not the Receivers had, by implication and course of dealings, or otherwise, adopted said supply-contracts or whether or not any legal or equitable grounds existed at the time of entering said decrees or thereafter to justify the disavowal and rejection of said contracts. A copy in form and substance of said proposed bills is hereto attached, marked Exhibit A and made a part hereof.

3. Or, grant your petitioners and others similarly situated a rehearing or such other proper and appropriate orders as to this Honorable Court may seem equitable and just to the end that the rights of your petitioners may not be prejudiced by the orders of the trial court spreading the mandate of this court in conformity with its opinion.

J. W. DANA,  
*Solicitor for Petitioners.*

*State of Missouri, County of Jackson—ss.*

J. W. Dana, being first duly sworn, deposes and says that he is counsel for petitioners in the above entitled cause; that he has dictated and knows the contents of the foregoing ~~petition~~ <sup>and knows the contents of the</sup> petition; that he is personally familiar with all the facts therein alleged and that the same are true except such as are made on information and belief, and as to them he believes them to be true.

J. W. Dana

Subscribed in my presence and sworn to before me this <sup>12<sup>th</sup></sup> day of April, 1919.

*E. A. Terpening*

Notary Public within and for  
Jackson County, Missouri.

*(Seal)*

NOTARY PUBLIC, COM. EXPIRES OCT. 23, 1922

**Certificate.**

This is to certify that the above and foregoing petition is not filed for vexation or delay but is filed because the petitioners feel themselves aggrieved by the opinion of the court as interpreted and construed by the court below in his views expressed in conference.

J. W. DANA.

*Solicitor for Petitioners.*

**Exhibit "A."**

In the District Court of the United States for the  
District of Kansas. First Division.

John M. Landon, Receiver of Kan-  
sas Natural Gas Company, Plain-  
tiff,

vs.

No. 136-N

Public Utilities Commission of  
Kansas, et al., Defendants.

**Bill in the Nature of a Bill of Review to Suspend  
and Avoid the Operation as to The Kansas  
City Gas Company\* of the Orders and  
Decrees Herein Entered Under the  
Mandate, and for Affirmative  
Relief.**

Now comes the defendant Kansas City Gas Company, hereinafter the Company, and by leave of the United States Supreme Court files this its bill in the nature of a bill of review to suspend and avoid the operation of the orders and decrees herein entered under the mandate and for affirmative relief in its own behalf, and for its cause of action, complaint and grounds for relief against the plaintiff John M. Landon and the defendant George F. Sharitt, Receivers of the Kansas Natural Gas Company, hereinafter the Receivers, and against the defendant Kansas Natural Gas Company, hereinafter the Gas Company, and against the defendant Public Service Commission

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\*Leave is asked to file similar bills on behalf of The Wyandotte County Gas Company and Citizens Light, Heat & Power Company and copies will not be set out.

of Missouri, hereinafter the Commission, and the defendant City of Kansas City, Missouri, hereinafter the City, states and avers the following facts, to-wit:

1. That this bill and the above entitled case are ancillary to and dependent upon the foreclosure suit entitled *Fidelity Title & Trust Company v. Kansas Natural Gas Company et al.*, No. 1-N consolidated with No. 1351, pending in this court, and this bill is filed for the purpose of protecting the property now in the possession of this court and in aid of the jurisdiction of this court in said case to the end that equity and justice may be done to all the parties now before the court.

2. That this Company is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri and a citizen and resident of said state.

3. That the Receivers are the duly appointed, qualified and acting Receivers of the Gas Company, appointed by this court and are citizens and residents of the State of Kansas; that the Gas Company is a Delaware corporation; that the Commission is the Public Service Commission of the State of Missouri clothed with power of rate regulation; and that the City is a municipal corporation of said State.

4. That the matter in controversy herein, exclusive of interest and costs, exceeds the sum or value of three thousand dollars and this suit is of a civil nature in equity to enjoin confiscatory gas rates fixed by the City and Commission under authority of the State of Missouri for this Company, and to adjudicate rights, accounts and rates made, accrued and collected under the mandatory orders

of this court, and arises under the Constitution of the United States and the 5th and 14th Amendments thereof, providing that no person shall be deprived of property without due process of law nor shall private property be taken for public use without just compensation; and that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any state deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

5. That the Company owns, maintains and operates a gas plant in said City and is engaged in the business of purchasing, distributing and selling natural gas to said City and its inhabitants and occupies the public ways of said City for such purpose under authority duly granted so to do; and that its selling rates for gas are not contractual but subject at all times herein complained of to reasonable regulation by the Commission.

6. That during the years 1904-1908 the Gas Company and its predecessors and this Company and its predecessors entered into certain gas-supply-contracts under which the Gas Company undertook to supply this Company with gas for ultimate sale to this Company's consumers and to accept therefor a definite proportion of the gross amounts paid by such consumers at certain named rates as its compensation for the gas furnished; that said contracts continued in force and effect and gas was furnished thereunder by the Gas Company and received and paid for by this Company until October, 1912, unquestioned and unchallenged by either of the parties thereto.



7. That on October 9, 1912, when this court appointed Receivers for the Gas Company, said Receivers took over the Gas Company's property, affairs and business and operated them under orders of the court without specifically adopting or disavowing said supply-contracts and continued to deliver gas to this distributing company and to accept payments therefor as originally agreed, and said Receivers have continued so to do without any agreement by this Company to modify said contracts from the date of their appointment to the present time; and the Company avers that no legal or equitable grounds now exist for the disavowal by the court or rejection by the Receivers of said supply-contracts; that by reason thereof and the orders of this court and the equities of the parties in interest said Receivers have adopted said contracts by implication, acts and conduct and are now estopped and barred to deny the binding force and effect thereof; and that irrespective of whether or not said contracts are subject to rejection at this time, they are and have been, since the appointment of said Receivers, the only measure of the rights and liabilities of said Receivers and could not be varied or modified without the consent of this Company.

8. That the available gas has diminished, pipelines to new fields have become necessary, operating costs have increased, and the Receivers' income under said contracts was and is inadequate for their demands, and that this Company has no other source of supply of natural gas, by reason of which this Company has long recognized the business necessity of modifying said contracts in favor of the Receivers and the

Gas Company, and is now and long has been willing to enter into negotiations for such modification; but neither the Gas Company nor the Receivers have indicated any willingness to negotiate a modification of said contracts, but have assumed the right notwithstanding said contracts to dictate to this Company both its buying price and its selling rate for gas.

9. That on and prior to November 19, 1916, this Company's selling rate for natural gas was 30 cents net per thousand cubic feet as ordered and allowed by the Commission and the City, and said City and Commission have heretofore always refused to allow and opposed any increase over said 30-cent rate. True and correct copies of ordinance 33887 of said City and the order of said Commission fixing said 30-cent rate are filed herewith, marked Exhibits A and B, and made a part hereof.

10. That sections 69, subdivision 12, and 70 of the Public Service Commission Act of Missouri authorized said Commission to suspend natural-gas-rate-schedules filed with it and defer the use of rates and modified supply-contracts for a period of 120 days or four months beyond the 30 days' time when such schedules would otherwise take effect by operation of the Act; and further authorized said Commission to extend the time of suspension for a further period of six months and for a further period of thirty days during the publication of such schedule, constituting at least eleven months during which time a public utility may be denied a hearing and denied compensatory rates; and this Company avers that said Commission has exercised such power conferred upon it by

statute in numerous cases and at the time of commencement of the above entitled suit threatened to and would have suspended a schedule asking for compensatory rates filed by the Company; and that on April 9, 1919, said Commission did strike from its files the 60 and 80-cent schedules of rates heretofore filed by this Company with said Commission, which had taken effect by operation of the Public Service Commission Act and were put in force by leave and order of this court.

11. The Company avers that said ordinance 33887 fixing said 30-cent rate and said order of the Commission fixing said 30-cent rate and said Public Service Commission Act providing for said eleven months' suspension of new rates and continuing said 30-cent rate in effect were at the time of commencement of this suit and ever have been confiscatory of the property of this Company used, useful and required in the service of the public and deny to this Company due process of law, just compensation and the equal protection of the laws in violation of the 14th Amendment to the United States Constitution.

12. The Company further avers that on August 13, 1917, this Honorable Court having jurisdiction of all the parties and the subject matter and control over the gas supply of its Receiver, issued its decree herein mandatorily enjoining this Company from maintaining in effect said 30-cent rate and enjoining this Company from putting into force and effect any selling rate for gas except such as was or might be approved by this court, and enjoining this Company from enforcing said supply-contracts against the Receivers. Said decree is hereby referred to and made a part hereof.

13. That thereafter this court in said foreclosure suit entered an order approving a 60-cent rate for this Company and a certain division thereof between said Receivers and this Company. Said order is hereby referred to and made a part hereof.

14. That thereafter this Company filed said 60-cent rate together with copies of said decree and order with the Commission in the manner provided by the Public Service Commission Act and said rate became the legal rate by operation of said Act.

15. That the trial of said 60-cent rate from September 1, 1917, to November 15, 1918, proved to be confiscatory of the property of this Company used, useful and required in the service of the public.

16. That upon application of this Company this court, on November 15, 1918, found said 60-cent rate to be confiscatory and entered in said foreclosure suit an order granting leave to this Company to put into force and effect an 80-cent rate. Said order and opinion are hereby referred to and made a part hereof.

17. That thereafter on November 21, 1918, this Company adopted said 80-cent rate approved by this court and filed the same together with a copy of said order with said Commission and the same took effect as the legal rate by operation of the Public Service Commission Act of said state. A true and correct copy thereof is filed herewith and made a part hereof.

18. The Company avers that said 80-cent rate is reasonable and just and fair to the consumers and will not afford more than a 6 per cent. return on the property of this Company used, useful and required in the service of the public.

19. That the Company has collected large sums of money, in excess of \$....., from consumers under said 60 and 80-cent rates and the mandatory orders of this court and has paid large sums of money, in excess of \$..... to the Receivers of this court under the mandatory orders of this court; that this Company demands an accounting with said Receivers for said money so paid, and the consumers demand a refund of said rates so paid; that a refund or return of said moneys by either the Receivers or this Company would bankrupt the Receivers and this Company and confiscate their properties, wreck the business and immediately terminate the future supply of gas to consumers, and that the orderly administration of justice requires that this Honorable Court shall determine the rights of all parties in regard to said collections and disbursements so made by order of this court.

20. That the gas furnished by this Company to its consumers is reasonably worth the 80-cent selling rate now charged and was reasonably worth far in excess of the 60-cent rate.

21. That the City has filed with the Commission a complaint praying that said 60 and 80-cent rate schedules be stricken from the files and held for naught and praying the Commission to commence penal and criminal prosecutions against this Company for obeying the mandatory orders of this court; that the Commission has had a hearing thereon and on April 9, 1919, issued a certain order striking said schedules from its files and thereby purporting to reinstate said 30-cent rate and require refunding all sums collected in excess thereof, and said Commission reserved jurisdic-

tion to take certain other action in the premises; and said City is advising consumers to refuse to pay their bills, threatening to, and the Company is informed and believes it will commence or cause to be commenced numerous civil suits and criminal prosecutions for the purpose of extorting refunds from this Company notwithstanding the admitted fact that said rates and charges were at all times no more than reasonable; and the Company avers that such action and order by the Commission and the City is done and made under color of the Statutes of Missouri and is confiscatory of the property of this Company and in contravention of the 14th Amendment to the United States Constitution.

22. That this Company was by the decree of this court enjoined from appearing before the Commission or in any other court to determine its rights to compensatory rates or its rights to a supply of gas under said contracts; and that a denial of the relief herein prayed would deny this Company due process of law in contravention of the 5th Amendment; that this Company has no full, plain or adequate remedy at law and therefore files this bill in this court and suit where alone full, complete and adequate relief in equity may be had.

Wherefore, the premises considered the Company prays this Honorable Court as follows:

1. To decree the 30-cent rate fixed by ordinance 33887 of the City and by order of the Commission, confiscatory and void on and after September 1, 1917.

2. To decree sections 69, subdivision 12, and 70 of the Public Service Commission Act of Mis-

souri, authorizing suspensions of rates for eleven months without a hearing, unreasonable, confiscatory and void.

3. To decree the 60 and 80-cent selling rates of this Company in the interim from September 1, 1917, to date, reasonable, not excessive and legal.

4. To decree that said 60 and 80-cent rate schedule filed by this Company with the Commission took effect and became legal rates by operation of said Public Service Commission Act.

5. To enjoin the Commission, the City and their officers and all consumers from prosecuting any suits to enforce said 30-cent rate or any refunds heretofore collected.

6. To authorize the Receivers to negotiate and enter into new or modified contracts with this Company, and require the City and Commission to show cause, if any there be, why such contract should not be made and approved by the Commission as an item of operating costs of this Company.

7. To decree whether or not said supply-contracts have been adopted or rejected and if so find the date of such adoption or rejection.

8. To decree whether or not there were or are any legal or equitable grounds for the rejection of said contracts and adopt or reject the same accordingly.

9. To decree that the Receivers' compensation for the gas furnished to this Company in the interim from their appointment on October 9, 1912, to date and until said contracts are legally rejected or modified by agreement, is measured by said contracts.



10. To order an accounting and settlement between said Receivers and this Company.

11. To issue an alias subpoena to the Commission, the City, the Gas Company and the Receivers, requiring them to answer this bill and show cause, if any there be, why the relief herein prayed should not be granted.

12. And such other and further orders and relief as may to this Honorable Court seem equitable and just.

J. W. DANA,

*Solicitor for Kansas City Gas Company.*

*State of Missouri, County of Jackson—ss.*

J. W. Dana, being first duly sworn, deposes and says that he is counsel for Kansas City Gas Company in the above entitled cause; that he has dictated and knows the contents of the foregoing bill; that he is personally familiar with all the facts therein alleged and that the same are true except such as are made on information and belief, and as to them he believes them to be true.

.....  
Subscribed in my presence and sworn to before  
me this .... day of ....., 1919.

.....  
*Notary Public within and for  
Jackson County, Missouri.*

## BRIEF AND SUGGESTIONS.

### Point I.

**The opinion and mandate should be construed to cause no injustice and the orders spreading said mandate should be without prejudice to the rights of the distributing companies.**

Under the rule in *Story v. Livingston*, 13 Peters 359, that "the mandate issued by the Supreme Court, in a case decided by the court, is to be interpreted according to the subject matter; and it is in no manner to cause injustice," it would seem that the finding of this court that "the Receivers were in no position to complain of" the "challenged orders" which prescribed selling rates for the distributing companies because "the relationship between the Receivers and the local companies" was that of vendor and vendee and not that of principal and agent and gave the Receivers no right to determine the selling rates for gas or remove them from state regulation, would require that the decrees below be reversed only in so far as they granted relief to the Receivers, and should either be affirmed by this court or continued in force by the trial court in so far as they granted affirmative relief to the local companies, for the reason that the only questions pressed upon the attention of this court were that of interstate commerce, the jurisdiction of the Commissions, and the right of the Receivers to determine the selling rates for the distributing

companies under the existing relations created by the supply contracts. The confiscatory character of said rates as to the distributing companies was not seriously questioned below; much evidence was offered on that point but was considered by the court only with reference to the rights of the Receivers; the finding of confiscation and the decree for the distributors was not assigned as error here; no record was brought up showing confiscation as to them and was not argued or briefed. Yet the decrees below enjoined all rates as confiscatory *on behalf* of the local companies. Inasmuch as these decrees were not stayed and the distributing companies were ordered by the trial court to put into effect other rates and their relation to the Receivers and consumers has been materially changed to their great prejudice and they were at all times legally entitled to reasonable rates, the cities and commissions are estopped to deny the right of the distributing companies to have said decrees affirmed or continued in force in their behalf or to reopen the case below and try the confiscatory character of said rates on their behalf as of the dates of said decrees.

The trial court seems to hold the contrary view, unless this court issues its mandate directing the affirmance of said decrees as to the distributing companies or grants leave to reopen the case in their behalf.

The decision here turned upon the right of the Receivers to maintain the suit—their interest in the selling rates. The “relation between the Receivers and the local companies” which “renders it unnecessary to discuss the effect of the rates” was

created by contracts between the original parties and continued in effect by the Receivers "without specifically adopting or *disavowing* the supply-contracts of 1904-1908. They *continued to deliver gas* to local distributing companies and to accept payments as *originally agreed*"; "the original supply-contracts have not been adopted and were *subject to rejection*." This is a clear finding that they had *not* been rejected and that the question as to whether or not legal or equitable grounds existed for their rejection was still open for adjudication below. Notwithstanding these findings by this court, which are all sustained by the record, the trial court now entertains the view that it must find "that said contracts were not binding on the Receivers" on the date of entering said decrees below and that upon the coming down of the mandate a permanent injunction must issue enjoining these companies from litigating or attempting to enforce said supply-contracts against the Receivers and that the court will be powerless to entertain any application of these companies to determine the status of said contracts or the rights, duties and liabilities of the Receivers and these companies thereunder. Such an order will be a denial of any hearing and due process of law to these companies and cause great and irreparable injury and injustice. The foreclosure suit on which this suit is dependent is still pending and the decree of sale of said Kansas Natural estate must determine the status of said contracts on a proper hearing.

## Point II.

**Leave to file bills of review or bills in the nature of bills of review is granted in all equity cases where justice requires and where no mischief is done to adverse parties and is the approved practice especially in rate cases.**

In *Wiggins Ferry Co. v. O. & M. Railway*, 142 U. S. 396, the court said (page 413):

"When the facts of the case show the plaintiff to have an equitable title to relief, this court, while it may be unable to afford such relief upon the case made by the bill, has in several instances asserted its power to remand the case to the court below for an amendment of the pleadings and such further proceedings as may be consonant with justice."

In *Ballard v. Searls*, 130 U. S. 50, this court said (page 55):

"The only course which can be properly pursued is to remand the cause to the Circuit Court, with instructions to allow the appellant to file a supplemental bill, in the nature of a bill of review, or a bill to suspend or avoid the operation of the decree, according to the mode pointed out by Lord Redesdale in his work on Equity Pleading. He says on page 86: 'But if a case were to arise in which the new matter discovered could not be evidence of any matter in issue in the original cause, and yet clearly demonstrated error in the decree, it should seem that it might be used as ground for a bill of review, if relief could not otherwise be obtained.' And on page 95 he says:

'5. The operation of a decree signed and enrolled has been suspended in special circumstances, or avoided by matter subsequent to the decree, upon a new bill for that purpose'; and he gives an instance occurring in the time of Charles II. These views are adopted by Mr. Justice Story in his work on Equity Pleading. See Sec. 415 and note; and Sec. 428. We do not decide what precise form such a proceeding should take; the appellant will be advised by his counsel in this regard. \* \* \*

Our decision is that the cause be remanded to the Circuit Court, with instructions to allow the appellant, defendant below, to file such supplemental bill as he may be advised, in the nature of a bill of review, or for the purpose of suspending or avoiding the decree, upon the new matter arising from the reversal of the decree in the former case \* \* \* and that such proceedings be had thereon as justice and equity may require. And it is so ordered."

The same rule is applied in the following cases:

*Willcox v. Consolidated Gas Co.*, 212 U. S. 19.

*Northern Pacific Ry. v. North Dakota*, 216 U. S. 579.

*In re City of Louisville*, 231 U. S. 639.

*City of Louisville v. Cumberland Telephone Co.*, 231 U. S. 652.

*Hardin v. Boyd*, 113 U. S. 756.

*Butler v. Eaton*, 141 U. S. 240-243.

*Purcell v. Miner*, 4 Wall. 520.

*Hill v. Phelps*, 101 Fed. 650.

*Hopkins v. Hebard*, 194 Fed. 301.

*Novelty Tufting Machine Co. v. Buser*, 158 Fed. 84.

*Von Faber-Castell v. Faber*, 145 Fed. 626.  
*In re Gamewell Fire Alarm Tel. Co.*, 73  
 Fed. 908.

In *Keith v. Alger*, 124 Fed. 32, before Justices Lurton, Severens, and Richards, the court said (Syl. 1):

"The sufficiency of the reasons alleged in support of a proffered bill of review should be determined by the appellate court, although, where material matters are involved, which have transpired in the court below since the decision of the cause, or for other sufficient reasons, the appellate court may remit the inquiry, in whole or in part, to the lower court, and authorize it to settle the matter."

In *Seymour v. White County*, 92 Fed. 115, it is said (Syl.):

"On a petition to the Circuit Court of Appeals, after a decision of that court affirming a judgment of the Circuit Court, for leave to file in the lower court a bill in the nature of a bill of review, it is deemed the better practice to grant such leave as a matter of course, unless there are special reasons to the contrary, without considering the merits of the proposed bill." Citing *Southard v. Russell*, 16 Howard 547, 570, and *Kingsbury v. Buckner*, 134 U. S. 651, 671.

In *Northern Pacific Ry. v. North Dakota*, 216 U. S. 579, the court said (page 581):

"It seems to us that the nearest approach to justice that can be made at this time is

to follow the precedent of *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, as nearly as may be, and affirm the decree, but without prejudice to the right of the railroad company to reopen the case by appropriate proceedings if, after adequate trial, it thinks it can prove more clearly than at present the confiscatory character of the rates for coal."

In *Hardin v. Boyd*, 113 U. S. 756, the court said (Syl. 1):

"No rule can be laid down with reference to amendments of equity pleadings that will govern all cases. They must depend upon the special circumstances of each case, and in passing upon applications to amend, the ends of justice must not be sacrificed to mere form or by too rigid an adherence to technical rules of practice."

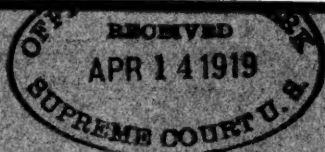
### **Conclusion.**

It follows from the foregoing that further proceedings in conformity with the opinion of this court require that the decrees below in favor of the distributing companies should continue in force and effect; that the decrees holding that said gas-supply-contracts were at the time of entering said decrees not binding upon the Receivers should be reversed, or that bills in the nature of bills of review should be allowed and filed below and proceedings had thereon.

Respectfully submitted,

J. W. DANA,  
Solicitor for Petitioners.  
910 Grand Ave.,  
K. C., Mo.





IN THE  
**Supreme Court of the United States**

**Nos. 26160, 26283, 26284, 26323.**

**OCTOBER TERM, 1918.**

**No. 277.**

The Public Utilities Commission for the State of Kansas  
et al., *Appellants*,  
vs.

John M. Landon, as Receiver of the Kansas Natural  
Gas Company et al.

**No. 329.**

Kansas City, Missouri; the Public Service Commission  
of the State of Missouri et al., *Appellants*,  
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**No. 230.**

Kansas City Gas Company, the Wyandotte County Gas  
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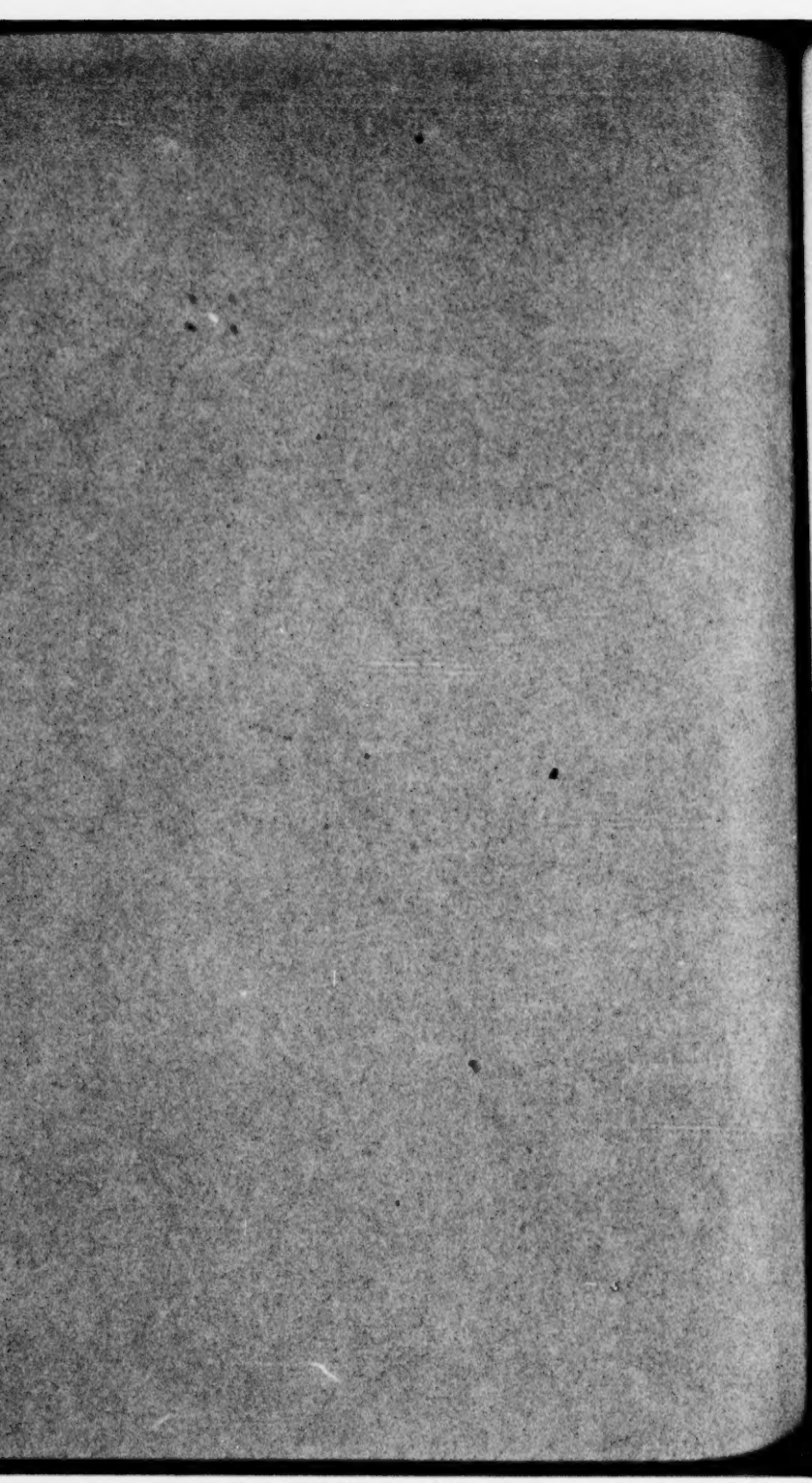
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APPEALS FROM THE DISTRICT COURT OF THE UNITED  
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**PETITION OF THE FIDELITY TITLE & TRUST  
COMPANY FOR REHEARING.**



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vs.

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Company et al.

**PETITION OF THE FIDELITY TITLE & TRUST  
COMPANY FOR REHEARING.**

Now comes The Fidelity Title and Trust Company,  
one of the appellees in the above entitled causes and  
shows to the court:

Of the two receivers of the Kansas Natural Gas Company, John M. Landon is the sole managing receiver. Reference herein made to the receiver means said Landon.

Mindful of the fact that the questions here presented could be submitted to this court upon a second appeal, yet your petitioner respectfully urges a further expression by this court on the points set out below, in the interest of speedy justice and the avoidance of prolonged and multitudinous litigation.

This litigation has been in progress for nearly seven years. The Kansas Natural property is located in three states and serves approximately one million five hundred thousand people. The amount of refund claimed upon reversal is not less than \$3,000,000. Upon entry of the decrees under the mandate dissolving the injunction hundreds of suits will be instituted by consumers for refunds and not less than twenty suits will be brought by the distributing companies to test the confiscatory nature of the 28-cent rate as to them. All the questions here presented will at some time have to be determined by this court.

Owing to the uncertainty of the decrees that should be entered and of the further proceedings to be had below, the trial judge on March 28, 1919, addressed the following letter to the interested solicitors:

"My dear Sir:

Enclosed herewith is a copy of the opinion of the Supreme Court on the appeals in the Gas Case. At the suggestion of a number of attorneys inter-

ested, an informal conference will be held April 3rd, 1919, to discuss various questions which now arise, among others:

1. What 'further proceedings in conformity with this opinion' should the court take?

2. Does the Supreme Court decision furnish any basis for a claim of refund at this time from either the Receiver or the Distributing Companies?

3. Does your client anticipate filing a petition for a rehearing, and, if so, along what lines?

4. In view of the decision, what status does your client now occupy in relation to the Receiver?

5. Is there any reason why the Receiver should not now fix a schedule of rates at the city gates?

6. In view of the decision, is not the time opportune for a full and amicable adjustment of all controversies between the parties?

A frank expression of views from all parties is desired.

In case you can not be present, a communication by letter will be appreciated.

Very truly yours,

W. F. BOOTH."

Pursuant to the above letter a conference between court and counsel lasting for two days was held to discuss the effect of the opinion and decree of this Honorable Court. Some fifty solicitors were present and the views of no two litigants coincided as to what this court actually decided.

At the conclusion of the conference, the judge was unable to determine what course he should pursue. The conference failed to clarify the situation. The lower court was also uncertain as to whether the injunctions

in favor of any of the distributing companies against the 28-cent rate should stand, or whether the distributing companies could be given a hearing upon the question of the confiscatory nature of the 28-cent rate as to them as raised by their pleadings. The judge, however, expressed the view that permission must first be obtained from this court, before a hearing as to the distributing companies could be given under the mandate for "further proceedings in conformity with" the opinion of this court.

Considering the divergent views of the litigants and the uncertainty of the court as to his duties under the opinion of this court, we desire to respectfully suggest the following reasons for a rehearing before this Honorable Court.

### I.

Because the Commission's order of December 10, 1915, was directed to the receiver and not to the distributing companies. This order the receiver was compelled either to obey or disobey. If he obeyed, the confiscation of the property in his control was inevitable because the rate fixed was not adequate. If he disobeyed, and he was held to be wrong, he would be subject to the severe penalties of the statute set out in paragraph 17 of the bill of complaint. This order directed to him was issued by the Kansas Commission with all of the authority of the state to compel its enforcement.

The receiver was engaged in interstate commerce, as found by this court, and he was "under no compulsion

to accept unremunerative prices." He "might sell and deliver gas so transported to local distributing companies, free from unreasonable interference by the state," but he could not take the law into his own hands and defend himself by force of arms against a police officer of Kansas, for violation of the commission's order, nor should he have incurred the risk of several millions of dollars of fines for violating this order of the commission by putting in his own rate at the gates of the city. The fact that he was engaged in interstate commerce free from state regulation and not obliged to accept unremunerative prices is just what entitled him to the injunction which he obtained against the commission. It was his duty to ask the protection of a court of equity, instead of disregarding the order and so subject himself to possible punishment by summary proceedings brought by the commission to enforce the extraordinary, exorbitant and confiscatory fines possible to be applied to him under the statutes of Kansas (Rec. p. 31).

The receiver chose the only safe course. No prudent man in charge of a great estate would risk its complete confiscation, by defying the state without the protecting arm of the court.

## II.

Because in its opinion this court says "The challenged orders related directly to the price of the gas at the burner tips and only indirectly to the receiver's business," and, "The receivers were in no position to complain of them."

The rates established by the challenged orders were *joint rates* (Rec. 83 and 85). The receiver asked permission of the commission to file his own rate at the gates of the city. The commission in its opinion of July 16, 1915 (Exhibit H, attached to plaintiff's bill of complaint), says:

"On April 26, 1915, however, there was filed with the Commission a document which may be regarded as an amendment to the complaint, in which the Commission was requested to establish and make effective a schedule of rates to be collected from the Distributing Companies for natural gas delivered at the gate of each plant. This schedule of rates was constructed upon the distance plan, and varied from 13 1/3 cents per thousand cubic feet for gas delivered at Coffeyville, on the Oklahoma border, to 29 cents per thousand cubic feet for gas delivered at Atchison. As, however, this schedule was subsequently abandoned and superseded by another, no further attention need be given it."

This application was abandoned and superseded by another because the commission refused to consider any rate except a joint rate to the ultimate consumer. This position was manifestly taken by the commission in order to maintain its jurisdiction over the local distributing companies as well as the receiver. The laws of Kansas, Chapter 238, 1911, provided that any utility operating in only one city should not be under the supervision of the commission. By construing the Kansas Natural Gas business as one whole plant and the distributing companies the agents of the Kansas Natural, the commission extended its jurisdiction over the whole system. Under



this compulsion the receiver filed his schedule for joint rates.

The rate fixed by the order of December 10th, 1915, was also a joint rate. At the time this rate was fixed the cost of the gas in the field was a comparatively small item, being only six or eight cents per thousand cubic feet. The principal item of cost to consumer is the cost of transportation through the receiver's lines and the lines of the distributing companies. This is a joint service that the twenty-eight cent rate is supposed to pay for. A part of this service is interstate and the rate therefore is a direct burden upon interstate commerce.

The opinion says that the "interstate movement ended when the gas passed into the local mains." This being so it does not necessarily follow that the lower court's view that the commission was interfering with the establishment of compensatory rates was erroneous. The direct result of the enforcement of the orders of the Public Utilities Commission, would be the complete destruction of the receiver's property. His customers are limited to the few distributing companies that serve the several cities. He has no other possible use for his plant which has cost millions to install. If those patrons are taken from him his property must be junked.

What amounts to a direct burden upon interstate commerce depends upon the conditions in the case at hand. In this case the receiver is operating an expensive plant, a plant which cost millions of dollars, constructed for the express purpose of transporting gas from Oklahoma into Kansas and Missouri. He cannot supply gas

at the gates of the respective cities for 28 cents. The commission has fixed a rate of 28 cents to the ultimate consumer. His only customers therefore are absolutely unable to buy of him. The effect of the order is as direct, potent and disastrous as though it were an order prohibiting the importation of gas at the state line.

Wherefore by reason of the premises a rehearing is respectfully prayed,

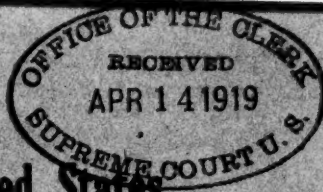
In the event of a failure of this Honorable Court to recognize the necessity for a rehearing we respectfully request that the decree of this court be so phrased as to make clear to the lower court the further proceeding which may be taken by it in conformity with the opinion.

Respectfully submitted,

CHARLES BLOOD SMITH,  
*Solicitor for The Fidelity Title & Trust Co.*

I hereby certify that in my opinion the foregoing petition is well founded in fact and in law and not made for delay.

CHARLES BLOOD SMITH,  
*Solicitor for The Fidelity Title & Trust Co.*



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OCTOBER TERM, 1918.

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REHEARING.**

Now come John M. Landon and George F. Sharitt,  
as receivers of the Kansas Natural Gas Company, appel-  
lees in the above entitled causes, and show to the court:

Of the two receivers of the Kansas Natural Gas Company, John M. Landon is the sole managing receiver. Reference herein made to the receiver means said Landon.

Mindful of the fact that the questions here presented could be submitted to this court upon a second appeal, yet your petitioners respectfully urge a further expression by this court on the points set out below, in the interest of speedy justice and the avoidance of prolonged and multitudinous litigation.

This litigation has been in progress for nearly seven years. The Kansas Natural property is located in three states and serves approximately one million five hundred thousand people. The amount of refund claimed upon reversal is not less than \$3,000,000. Upon entry of the decrees under the mandate dissolving the injunction hundreds of suits will be instituted by consumers for refunds and not less than twenty suits will be brought by the distributing companies to test the confiscatory nature of the 28-cent rate as to them. All the questions here presented will at some time have to be determined by this court.

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6. In view of the decision, is not the time opportune for a full and amicable adjustment of all controversies between the parties?

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In case you can not be present, a communication by letter will be appreciated.

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Pursuant to the above letter a conference between court and counsel lasting for two days was held to discuss the effect of the opinion and decree of this Honorable Court. Some fifty solicitors were present and the views of no two litigants coincided as to what this court actually decided.

At the conclusion of the conference, the judge was unable to determine what course he should pursue. The conference failed to clarify the situation. The lower court was also uncertain as to whether the injunctions in favor of any of the distributing companies against

the 28-cent rate should stand, or whether the distributing companies could be given a hearing upon the question of the confiscatory nature of the 28-cent rate as to them as raised by their pleadings. The judge, however, expressed the view that permission must first be obtained from this court, before a hearing as to the distributing companies could be given under the mandate for "further proceedings in conformity with" the opinion of this court.

While we believe no one will claim that the challenged rates were not in fact confiscatory rates, yet the conference disclosed that because of the technical reversal of the decrees it was claimed the properties involved were left without any legal rate other than such confiscatory rates and therefore refunds would be demanded for charges made since the decrees on that basis.

Considering the divergent views of the litigants and the uncertainty of the court as to his duties under the opinion of this court, we desire to respectfully suggest the following reasons for a rehearing before this Honorable Court:

#### I.

Because the order of December 10, 1915, was directed to the receiver and not to the distributing companies.

While couched in permissive language, it fixes maximum rates which, under the statutes of Kansas, cannot be exceeded without incurring the penalties referred to below. This statute is set out at page 20 of the record



and is found in Section 38, Chapter 238 of the Session Laws of 1911.

This order the receiver was compelled either to obey or disobey. If he obeyed, the confiscation of the property in his control was inevitable because the rate fixed was not adequate. If he disobeyed, and he was held to be wrong, he would be subject to the severe penalties of the statute set out in paragraph 17 of the bill of complaint. This order directed to him was issued by the Kansas Commission with all of the authority of the state to compel its enforcement.

The receiver was engaged in interstate commerce, as found by this court, and he was "under no compulsion to accept unremunerative prices." He "might sell and deliver gas so transported to local distributing companies, free from unreasonable interference by the state," but he could not take the law into his own hands and defend himself by force of arms against a police officer of Kansas, for violation of the Commission's order, nor should he have incurred the risk of several millions of dollars of fines for violating this order of the Commission by putting in his own rate at the gates of the city. The fact that he was engaged in interstate commerce free from state regulation and not obliged to accept unremunerative prices is just what entitled him to the injunction which he obtained against the commission. It was his duty to ask the protection of a court of equity, instead of disregarding the order and so subject himself to possible punishment by summary proceedings

brought by the commission to enforce the extraordinary, exorbitant and confiscatory fines possible to be applied to him under the statutes of Kansas (Rec. p. 31).

The receiver chose the only safe course.

For three years under that protection he has collected rates in excess of two-thirds of 28 cents. If now this court withdraws the protection granted by the lower court, it has been publicly threatened in press and in open court, that the receiver will be compelled to refund to the consumers all of the excess above his portion of the 28 cent rate. This will amount to nearly two million dollars and the confiscation sought to be averted will have been accomplished.

When the preliminary injunction was granted by the enlarged court the receiver was required to furnish a bond for \$750,000, conditioned that "in case the injunction decreed here shall be adjudged to have been improvidently issued by the final decision of that question, he will pay back to each of the consumers of the gas he furnishes herein the excess paid by such consumers therefor above what he would have paid at the rates fixed by the order of the commission of December 10, 1915." It is claimed that there will be a liability on this bond under that condition if the injunction granted by the lower court is sustained.

The Commission of Kansas still claims jurisdiction over the receiver (Brief, pp. 25, 28, 31, and Rec. pp. 186, 605, 745, 766) and in the conference reiterated the claim that it has power to fix a rate at which the

receivers shall sell gas to the distributing companies at the gates of the city.

Under these circumstances we respectfully suggest that the injunction in favor of the receiver should be sustained.

No prudent man in charge of a great estate, would risk its complete confiscation, by defying the state without the protecting arm of the court.

## II.

Because in its opinion this court says "The challenged orders related directly to the price of the gas at the burner tips and only indirectly to the receiver's business," and "The receivers were in no position to complain of them."

The rates established by the challenged orders were *joint rates* (Rec. 83 and 85). The receiver asked permission of the Commission to file his own rate at the gates of the city. The Commission in its opinion of July 16, 1915 (Exhibit H, attached to plaintiff's Bill of Complaint), says:

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for gas delivered at Coffeyville, on the Oklahoma border, to 29 cents per thousand cubic feet for gas delivered at Atchison. As, however, this schedule was subsequently abandoned and superseded by another, no further attention need be given it."

This application was abandoned and superseded by another because the Commission refused to consider any rate except a joint rate to the ultimate consumer. This position was manifestly taken by the Commission in order to maintain its jurisdiction over the local distributing companies as well as the receiver. The Laws of Kansas, Chapter 238, 1911, provided that any utility operating in only one city should not be under the supervision of the Commission. By construing the Kansas Natural Gas business as one whole plant and the distributing companies the agents of the Kansas Natural, the Commission extended its jurisdiction over the whole system. Under this compulsion the receiver filed his schedule for joint rates.

The rate fixed by the order of December 10th, 1915, was also a joint rate. At the time this rate was fixed the cost of the gas in the field was a comparatively small item, being only six or eight cents per thousand cubic feet. The principal item of cost to consumer is the cost of transportation through the receiver's lines and the lines of the distributing companies. This is a joint service that the twenty-eight cent rate is supposed to pay for. A part of this service is interstate and the rate therefore is a direct burden upon interstate commerce.

The opinion says that the "interstate movement ended when the gas passed into the local mains." This being so it does not necessarily follow that the lower court's view that the Commission was interfering with the establishment of compensatory rates was erroneous. The direct result of the enforcement of the orders of the Public Utilities Commission, would be the complete destruction of the receiver's property. His customers are limited to the few distributing companies that serve the several cities. He has no other possible use for his plant which has cost millions to install. If those patrons are taken from him his property must be junked.

What amounts to a direct burden upon interstate commerce depends upon the conditions in the case at hand. In this case the receiver is operating an expensive plant, a plant which cost millions of dollars, constructed for the express purpose of transporting gas from Oklahoma into Kansas and Missouri. He cannot supply gas at the gates of the respective cities for 28 cents. The Commission has fixed a rate of 28 cents to the ultimate consumer. His only customers therefore are absolutely unable to buy of him. The effect of the order is as direct, potent and disastrous as though it were an order prohibiting the importation of gas at the state line.

Wherefore, by reason of the premises a rehearing is respectfully prayed.

In the event of a failure of this Honorable Court to recognize the necessity for a rehearing we respectfully

request that the decree of this court be so phrased as to make clear to the lower court the further proceeding which may be taken by it in conformity with the opinion.

Respectfully submitted,

JOHN H. ATWOOD,  
ROBERT STONE,  
CHESTER I. LONG,

*Solicitors for John M. Landon, Receiver of  
Kansas Natural Gas Company.*

JOHN J. JONES,  
*Solicitor for George F. Sharitt, Receiver  
of Kansas Natural Gas Company.*

I hereby certify that in my opinion the foregoing petition is well founded in fact and in law and not made for delay.

JOHN H. ATWOOD,  
*Solicitor for John M. Landon, Receiver of  
Kansas Natural Gas Company.*



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1918.**

**Nos. 277, 329, 330, 353.**

**277.**

**THE PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS ET AL., APPELLANTS,**

**vs.**

**JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.**

**329.**

**KANSAS CITY, MISSOURI; THE PUBLIC SERVICE  
COMMISSION OF THE STATE OF MISSOURI,  
ET AL., APPELLANTS,**

**vs.**

**JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.**

**330.**

**KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY, ET AL., APPELLANTS,**

**vs.**

**KANSAS NATURAL GAS COMPANY, JOHN M. LANDON  
AND GEORGE F. SHARITZ, RECEIVERS, AND FIDELITY  
TITLE AND TRUST COMPANY.**

**353.**

**THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF KANSAS ET AL., APPELLANTS,**

**vs.**

**JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS.**

**PETITION FOR REHEARING OR MODIFICATION OF  
OPINION OF SUPREME COURT.**

**BY L. G. TRELEAVEN, RECEIVER OF THE CON-  
SUMERS LIGHT, HEAT & POWER COMPANY, OF  
TOPEKA, KANSAS.**





**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1918.**

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**Nos. 277, 329, 330, 353.**

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**277.**

THE PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS ET AL., APPELLANTS,

*vs.*

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.

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**329.**

KANSAS CITY, MISSOURI; THE PUBLIC SERVICE  
COMMISSION OF THE STATE OF MISSOURI,  
ET AL., APPELLANTS,

*vs.*

JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.

---

**330.**

KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY, ET AL., APPELLANTS,

*vs.*

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON  
AND GEORGE F. SHARITT, RECEIVERS, AND FIDELITY  
TITLE AND TRUST COMPANY.

THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF KANSAS ET AL., APPELLANTS,

*vs.*

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.

---

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS.

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**Petition for Rehearing or Modification of Opinion of  
Supreme Court.**

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**By L. G. Treleaven, Receiver of the Consumers Light, Heat  
& Power Company, of Topeka, Kansas.**

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L. G. Treleaven, Receiver of the Consumers Light, Heat & Power Company, of Topeka, Kansas, by Leonard S. Ferry and Thomas F. Doran, his solicitors, respectfully petitions this honorable court for a rehearing or modification of opinion in the above entitled cause, and in support of this petition shows:

1. That the record as presented and argued to this court apparently failed, unfortunately, to clearly disclose to this court the standing and rights of this petitioner in this litigation, as will be more fully shown hereafter, or this petitioner has failed to fully and clearly present to this court his issues, rights, and remedies demanded and obtained in the lower court; so that this honorable court has overlooked or misapprehended the rights of this petitioner, and in consequence has failed in its opinion to preserve and safeguard the same.

The record, however, discloses that the court below, in the exercise of proper jurisdiction, upon proper pleadings (including petitioner's amended and supplemental answer or cross-bill), sustained by competent and sufficient evidence, on July 5, 1917, made and entered its decree in behalf of this petitioner "and other defendants" (distributing companies) "seeking the same relief" (Rec., pp. 601, 604) as follows (omitting those parts of the decree not applicable to this petitioner and other distributing companies):

"The rates (twenty-five cent rate) in force on January 1, 1911, under the laws of Kansas, 1911, Chapter 238, section 30, for the sale and delivery of natural gas \* \* \* and,

"Second, that the new rates fixed by the Public Utilities Commission of the State of Kansas by its order of December 10, 1915, known as the 'twenty-eight cent rate,' \* \* \* were on said date and still are, non-compensatory, unreasonably low, confiscatory, and violative of the First Clause of the Fourteenth Amendment to the Constitution of the United States \* \* \* and,

"Fourth, that the preliminary injunction heretofore granted herein was properly and providently issued; and

"Fifth, that, because the rates above specified are non-compensatory, unreasonably low, confiscatory, and violative of the first clause of the 14th Amendment to the Constitution of the United States \* \* \* the plaintiff and the cross-complainants \* \* \* L. G. Treleven as receiver of the Consumers Light, Heat & Power Company, The Wyandotte County Gas Company, and other defendants seeking the same relief, and each of them are entitled to have the preliminary injunction heretofore granted made permanent."

Said decree then prohibits and perpetually enjoins the Public Utilities Commission of the State of Kansas and others from enforcing the rates decreed to be unlawful and confiscatory as against this petitioner, "L. G. Treleven, as

receiver of the Consumers Light, Heat & Power Company," and other defendants "seeking the same relief."

2. Your petitioner further shows that the opinion of this court states on page 5 of the printed copy:

"Our conclusions concerning relationship between the receivers and local companies renders it unnecessary to discuss the effect of rates prescribed for the latter. The receivers were in no position to complain of them."

"The decrees below must be reversed and the cause remanded for further proceedings in conformity with this opinion."

It appears from this quotation that this court observes that the receivers of the Kansas Natural Gas Company were not in a position to complain of the rates prescribed for the local companies, but this court fails to observe that this petitioner, as receiver of a local company, *was* in a position to complain of them, *had complained* of them in this very case, and *had been protected* against them by the very decree this court has reversed.

3. The issues presented and tried in the lower court were much broader than those presented by the original bill of complaint. Answers in the nature of cross-bills, in harmony with the allegations of the complainant's bill as to the unlawful and confiscatory character of the rates, were filed by this petitioner and other defendant distributing companies seeking affirmative relief *in their own behalf*. By reason of the apparent unfortunate failure of this petitioner to clearly advise this court of this fact, the court in its opinion very naturally omitted to protect this petitioner in the rights secured and protected by the decree of the lower court, with the result that a *general reversal* was ordered without directions to the lower court as to the rights of this petitioner.

The omission of this court to consider or pass upon the rights of this petitioner and other *distributing* companies is more clearly explained by the fact that, though the plead-

ings, issues, and evidence in the court below fully justify and sustain the decree and injunction of the lower court in behalf of this petitioner and other distributing companies, the appellant Kansas Public Utilities Commission wholly failed either to embody or print in the record prepared for this court, the answer or cross-bill of this petitioner or any of his evidence, and wholly failed to make or present any assignments of error as to the decree or injunction of the lower court in favor of this petitioner and other distributing companies "seeking the same relief"; thereby wholly failing to present to this court for review or decision any of the issues between this petitioner and his co-defendant in the lower court, the Public Utilities Commission of the State of Kansas, heard and passed upon by the lower court, other than as they appear in the issues presented between complainant and the defendant, the Public Utilities Commission of the State of Kansas, and in the decree of the court below; and your petitioner shows that the issues between this petitioner and his co-defendant, the Public Utilities Commission of the State of Kansas, except as above stated, were presented to this court *only* by "Appendix A" of the brief or statement filed in this court in their own behalf by this petitioner and other distributing companies joining with him in said brief; and it is obvious that this court wholly overlooked and failed to consider said "Appendix A."

And this petitioner further shows that although the appellant, the Public Utilities Commission of the State of Kansas, duly served on counsel for this petitioner the proper præcipe stating the portions of the record it deemed necessary on appeal as against this petitioner, and although this petitioner, through his solicitors, immediately filed his præcipe setting out those portions of the record which *he* deemed necessary to a full and complete determination of this cause in his behalf by this court, and although the clerk of the lower court transmitted to the clerk of this court all of your petitioner's record set out in both said præcipes, the appellant, the Public Utilities Commission of the State of Kansas,

*without notice to this petitioner or his counsel*, signed the stipulation for printing the record found at pages 1 and 2 of the printed record herein; that following said stipulation, which waived the provisions of section 9 of rule 10 of this court, the clerk of this court did not cause any of the record of this petitioner in the court below to be incorporated into the printed record in this court, all of which is fully shown in the affidavit of Thomas F. Doran, found at pages 4-10 of brief of your petitioner filed herein.

Your petitioner further shows that to avoid a possible *general reversal* of this cause by this court without consideration of the rights of this petitioner, he, through his counsel, prepared, printed and filed in this court, with the consent of all parties thereto (asking this court that it be treated as a part of the printed record), "Appendix A" to his brief filed herein; that said record "Appendix A" contains the amended and supplemental answer or cross-bill of this petitioner challenging the rates in question, on the ground that they were and are unlawfully established without supporting evidence, and were and are confiscatory of the property of the Consumers Light, Heat & Power Company in the hands of this petitioner as receiver. It also contains sufficient of the evidence introduced by this petitioner in the lower court to show that the challenged rates were and are unlawful and confiscatory as applied to the property of said distributing company in the hands of this petitioner as receiver. This record stands wholly uncontradicted, and fully sustains the decree and injunction of the lower court in favor of this petitioner, and that portion of said decree and injunction of the lower court in favor of this petitioner and other distributing companies "seeking the same relief" standing unchallenged and unappealed from, should have been and should be affirmed, regardless of the character of the business of the receivers of the Kansas Natural Gas Company or their relationship to the distributing companies.

If the opinion of this court stands as a *general reversal* of the decree and injunction of the lower court, without modifi-

ention, limitation or direction to the lower court as to the rights of this petitioner (and, as will be hereinafter shown, the lower court so construes this court's opinion), then this petitioner will lose all the benefits of the decree of the lower court in a matter so vital as to be totally destructive of the business and confiscatory of the property in his hands as receiver.

4. Your petitioner further respectfully shows that not only did the pleadings and evidence in the lower court establish the unlawful and confiscatory character of the statutory or twenty-five-cent rate, and the commission or twenty-eight-cent rate, as applied to his business, but it appears by the printed record in this case (pp. 1068 to 1072) that the court below, after subsequent hearing, on July 31, 1917, authorized the establishment of a *sixty-cent* rate, and provided that said rate should be divided between the receiver of the Kansas Natural Gas Company and the distributing companies, including the company in the hands of this receiver, on the basis of  $57\frac{1}{2}$  per cent to the Kansas Natural Gas Company and  $42\frac{1}{2}$  per cent to the distributing companies. It is a further admitted fact that the lower court, on further consideration of the needs of the distributing companies, including that in the hands of this petitioner, on November 15, 1918, authorized the installation and collection of an *eighty-cent* rate, divided on the basis of 60 per cent to this petitioner and other distributing companies, and 40 per cent to the Kansas Natural Gas Company; that under said *sixty-cent* rate, on the basis of the division fixed by the lower court, the portion of the rate which this company was required to pay to the Kansas Natural Gas Company amounted to  $34\frac{1}{2}$  cents per thousand cubic feet—or more than the entire statutory rate of twenty-five cents and more than the entire commission rate of twenty-eight cents; that on the division of the subsequent eighty-cent rate fixed by the court, the portion thereof payable to the Kansas Natural Gas Company was 32 cents; that the remaining 48 cents of

the eighty-cent rate was allowed by the lower court to this petitioner and other distributing companies as the amount necessary to yield this petitioner and the other distributing companies a partial return on their investment, the rates theretofore existing having been found wholly inadequate to pay even operating expenses.

In this connection it should be remembered that the property of the Consumers Light, Heat & Power Company was placed in the hands of this petitioner, as receiver, by the very court which entered these decrees, because said Consumers Company had been impoverished and bankrupted by confiscatory rates.

Your petitioner further shows that the Public Utilities Commission of the State of Kansas and the cities of Topeka and Oakland and the consumers are construing the opinion of this honorable court as a *general reversal* of the decree of the lower court in favor of this petitioner, and are threatening your petitioner, on the coming down of the mandate of this court, with a multiplicity of suits for the recovery of the excess of the sixty and eighty-cent rates respectively over the twenty-eight-cent commission rate, and your petitioner shows that the expense of such litigation and the disastrous effects thereof and of the possible recovery of such excess would involve the estate in the hands of this receiver in irretrievable bankruptcy and prevent the possibility of the further delivery of natural gas to the cities of Topeka and Oakland.

5. Your petitioner respectfully shows that notwithstanding the fact that the decree entered in his favor in the court below was not appealed from, and hence not considered by this court, and might therefore, in this petitioner's opinion, be reasonably held to be affirmed by the opinion of this court, the court below, after an extended informal conference with counsel, since the opinion of this court was handed down, has announced that on the coming down of the mandate of this court he *must* construe the decision of this court



to mean a reversal of such decree in your petitioner's favor, saying:

"I do not think that the court should include in the decree anything in reference to the twenty-eight-cent rate being confiscatory as to the distributing companies; nor that it should enter a new injunction, or continue the old one, against the enforcement of the twenty-eight-cent rate as to the distributing companies. It seems to me that the decrees, while running as they do in favor of the receiver, and also in favor of certain of the distributing companies mentioned, and others seeking the same relief, yet were based upon the theory that each and all of the parties named were interested in the rate as a whole, being a joint rate. That theory has been disposed of adversely by the Supreme Court. The decrees, so far as they run in favor of the distributing companies, have no independent basis—no basis except their assumed relationship with the receiver giving the companies an assumed joint interest in an assumed joint rate. It seems to me that, to enter now an injunction in favor of the distributing companies touching the twenty-eight-cent rate, would be placing it upon a new basis; would be doing what the court says the lower court may not do, that is, intermeddle with the mandate and the opinion of the Supreme Court.

"Of course, not entering a decree in reference to the twenty-eight-cent rate, in favor of the distributing companies, naturally leaves the question of rebate open."

It appears from the above quotation that the lower court construes the opinion of this court, as it now stands, as wholly nullifying the former decree of the lower court in favor of this petitioner and other distributing companies seeking the same relief because the challenged rates were established and treated as "joint rates" on an assumed agency relationship between the distributing companies and the receivers of the Kansas Natural Gas Company, which relationship this court has held did not exist, and that it therefore follows that the lower court is not free, as the opinion of this

court now stands, on the coming down of the mandate (quoting from the statement of the lower court above referred to), to "include in the decree" which must be entered pursuant thereto

"anything in reference to the twenty-eight-cent rate being confiscatory as to the distributing companies; nor that it should enter a new injunction, or continue the old one, against the enforcement of the twenty-eight-cent rate as to the distributing companies \* \* \* (as that) would be placing it upon a new basis; would be doing what the court says (*re* Sanford, 160 U. S., 255) the lower court may not do, that is, intermeddle with the mandate and the opinion of the Supreme Court."

If this construction by the lower court of the opinion of this court be correct (in which construction we cannot concur) the necessity for a modification of the opinion of this court is absolutely imperative, for the petitioner by his answer or cross-bill (Rec., Appendix "A" of petitioner's brief herein, pp. 11-36), on his own account, in the language quoted below, challenged the twenty-eight-cent rate, not only because it was confiscatory, but on the ground that it was a "joint rate" unlawfully established (Rec., Appendix "A," pp. 20-21), without evidence or hearing as to this petitioner; that the rate

"was arbitrarily fixed and established by the Public Utilities Commission for the State of Kansas against this defendant without any evidence whatever and without any consideration of its (his) rights in the premises,"

and Rec., Appendix "A," p. 21:

"That the Public Utilities Commission for the State of Kansas fixed said joint rate upon the theory and assumption that two-thirds of said rate should be paid to the Kansas Natural Gas Company or its receivers and one-third to this defendant;"

and Rec., Appendix "A," pp. 21-22:

"This defendant further shows that although said twenty-eight-cent rate is a *joint rate*, it is also a single, indivisible rate for the service rendered to the cities of Topeka and Oakland and their inhabitants; that it is legally impossible to determine a fair and equitable rate for such service without an investigation and determination of the total fair value of the property of this defendant, plus the value of the proportion of the property of the Kansas Natural Gas Company devoted to the public use of furnishing such service to the cities of Topeka and Oakland and their inhabitants."

This petitioner therefore earnestly insists that the record discloses that he sought and obtained a decree against the twenty-eight-cent rate *on his own behalf* on a basis *wholly independent* of the assumed relationship with the receivers of the pipe-line company, and that he is entitled to have the benefit and protection thereof continued. This the lower court recognizes, for in his statement, made at the informal conference hereinbefore referred to, construing the opinion of this court, he says:

"Now, that leaves the issue whether or not the twenty-eight-cent rate was confiscatory as to the distributing companies undisposed of. And it seems to me that there is a fair opportunity for the distributing companies if they see fit, or any of them, either to ask a rehearing in the Supreme Court on that matter, or to ask the court for a direction allowing the lower court to proceed and dispose of that issue. I think that would be a possible course."

This petitioner having correctly tried his case in the court below and having obtained the relief he sought *on his own behalf*, this honorable court will, we are confident, on being advised of the facts, modify its opinion and thereby preserve the rights of this petitioner without subjecting him to the burden and expense of a retrial of issues which have already been fully and fairly determined.

Your petitioner further respectfully shows that his answer or cross-bill challenged the 28-cent rate on this petitioner's own behalf, wholly independent of any contention made by the receivers of the Kansas Natural Gas Company, as is clearly shown by the following language in said answer or cross-bill (Rec., Appendix "A," p. 28):

"This defendant charges that, although the complainant herein may not be compelled to continue the prosecution, as complainant, of the controversy set forth in the original and supplemental bills of complaint herein \* \* \* this defendant receiver charges that he is entitled to, and will, insist upon a determination of the issues raised by this answer without reference to the continued prosecution by the Receiver of the Kansas Natural Gas Company, as complainant, of the controversy set forth in the original and supplemental bills of complaint herein; and this defendant will insist that the Receiver of Kansas Natural Gas Company reply to the issues raised by this answer or in default thereof, that a decree be entered against said receiver; and this defendant will insist that the other parties against whom this defendant prays relief in this answer and who were made parties to this litigation by the complainant in his original and supplemental bills of complaint, be likewise compelled to reply and defend hereto."

Your petitioner further shows that the Public Utilities Commission for the State of Kansas did plead to said answer or cross-bill, and did defend as against it, as is evidenced by the fact that said Commission filed in the court below its motion to strike out of your petitioner's amended and supplemental answer and cross-bill those portions thereof on behalf of this petitioner challenging the unlawful and confiscatory character of the rates in question, as is more clearly shown by a duly certified copy of said motion attached hereto as "Exhibit A," and which your petitioner requests this court to consider as a part of the record on this petition for a rehearing as "new matter arising since the decree"; that is,

matter arising because of an apparent misunderstanding of what the record in the court below actually contained and which may, we believe, be properly considered by this court in passing upon this petition, which, for this purpose, may be treated as a bill of review; and your petitioner shows that said motion to strike out was, by the court below, after a full consideration, properly denied (see Exhibit B hereto), and the cause proceeded to trial upon the issues presented by the amended and supplemental answer and cross-bill of this petitioner, and after full consideration of the issues and evidence presented therein, the decree appealed from was entered by the lower court in behalf of this petitioner fully protecting his rights in the premises.

In consideration of this petition we ask this court to note that the able and painstaking judge who tried this case in the court below, from mature consideration of the evidence presented to him during the years this litigation has been pending before him, learned not only *that the receivers could not secure a percentage greater than two-thirds of the 28-cent rate, but that the distributing companies could not live if they received the entire 28-cent rate, which is clearly evidenced by the fact that that court authorized increases—first to 60 cents, then to 80 cents, under conditions substantially the same as those that existed when the 28-cent rate was established.*

This court should also note that both the statutory (25-cent rate) and the commission (28-cent rate) nullified and set aside the right of this petitioner to charge the much higher (45-cent) rate authorized by franchises of the cities of Topeka and Oakland (Rec., Appendix A, brief of this petitioner, p. 39 and p. 68), and also nullified the contract between the company of which this petitioner is receiver and the pipe line company which then prohibited the collection by this distributing company of any rate less than 38 cents (Rec., Appendix A, p. 56), all of which was done arbitrarily and without hearing or evidence (Rec., Appendix A, p. 20).

It therefore follows that there is neither common law, statutory, contractual, franchise nor other obligation which in any manner either impairs or invalidates the decree of the lower court in favor of this petitioner and other distributing companies named and described therein.

In consideration of the premises, your petitioner respectfully suggests that if the present opinion of this court stands unmodified, and is to be construed as the court below now construes it, the appellant Public Utilities Commission of the State of Kansas will have secured a reversal of the decree and injunctive order of the lower court in favor of this petitioner without an appeal, without a record, and without any assignment of errors lodged against such decree and injunction—a result unthinkable.

Stated in another way, if the present opinion of this court stands unmodified as a general reversal of the judgment of the lower court in favor of this petitioner, it sets aside and nullifies the decree of a court of competent jurisdiction, founded on proper pleadings, and sustained by ample evidence, enjoining a confiscatory rate unlawfully established, and this result is accomplished without an appeal, without a record, and without any assignment of errors, and without consideration of the rights of this petitioner under the Federal Constitution.

Your petitioner therefore respectfully prays that this court modify its opinion so as to affirm the decree and injunctive order of the lower court in favor of this petitioner, and in its mandate direct the lower court accordingly or grant a rehearing herein, and thereon grant the petitioner such relief as shall seem equitable and just.

LEONARD S. FERRY,  
THOMAS F. DORAN,

*Solicitors for L. G. Treleaven,  
Receiver of the Consumers Light, Heat  
& Power Company, of Topeka, Kansas.*

**Certificate of Counsel.**

We, the undersigned, as solicitors for petitioner, L. G. Treleaven, Receiver of the Consumers Light, Heat & Power Company, one of the appellees in the above-entitled cause, hereby certify to this honorable court that in our judgment the foregoing petition for a rehearing is well-grounded in fact and law, and that the same is not interposed for delay.

LEONARD S. FERRY,

THOMAS F. DORAN,

*Solicitors for Petitioner L. G. Treleaven,*

*Receiver of The Consumers Light, Heat &*

*Power Company, of Topeka, Kansas. .*

**"EXHIBIT A."**

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS, FIRST  
DIVISION.

In Equity. No. 136-N.

JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, PLAINTIFF,

*vs.*

THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF KANSAS ET AL., DEFENDANTS.

**Motion to Strike Out Parts of the Amended and Supplemental Answer of L. G. Treleaven.**

Come now the defendants, The Public Utilities Commission for the State of Kansas and H. O. Caster, its attorney, and move to strike out of the amended and supplemental answer of L. G. Treleaven, receiver of the Consumers Light, Heat and Power Company, the following matters, averments, and allegations, to wit:

1. The last sentence of paragraph III of said answer, for the reason that the same is incompetent, irrelevant and immaterial and does not tend to prove or disprove any of the issues in the present controversy.

2. That all, each and every part of paragraph XII be stricken out, for the aforesaid reasons.

3. That all, each and every part of paragraph XIV be stricken out, for the aforesaid reasons.

4. That all, each and every part of paragraph XVII be stricken out, for the aforesaid reasons, and for the further reason that the defendant, L. G. Treleaven, seeks, by said paragraph in connection with other parts of said amended and supplemental answer, to set up a claim for cross-relief



against these defendants, which is contrary to law and in violation of the orders of this court heretofore entered in this suit.

5. That paragraph XIX and each and every part thereof be stricken out, for the reasons aforesaid.

6. That paragraph XX and each and every part thereof be stricken out, for the reasons aforesaid.

7. That paragraph XXI and each and every part thereof be stricken out, for the reasons aforesaid.

8. That paragraph XXII and each and every part thereof be stricken out, for the reasons aforesaid.

9. That paragraph XXIII and each and every part thereof be stricken out, for the reasons aforesaid.

10. That paragraph XXIV and each and every part thereof be stricken out, for the reasons aforesaid.

11. That so much of the prayer of the defendants as asks for any decree in the nature of a cross-claim as against these defendants or for any affirmative relief as against these defendants, be stricken out of said amended and supplemental answer.

H. O. CASTER,

*Attorney for the Public Utilities  
Commission for the State of Kansas.*

F. S. JACKSON,

*Special Attorney for the Public Utilities  
Commission for the State of Kansas.*

Endorsed: No. 136-N. Landon, Rec., *vs.* The Public Utilities Commission of Kansas *et al.* Motion to strike from Amended Answer of Treleaven, Rec., filed Feb. 9, 1917. Morton Albaugh, Clerk.

UNITED STATES OF AMERICA,  
*District of Kansas, ss:*

I, F. L. Campbell, Clerk of the District Court of the United States of America for the District of Kansas, do

hereby certify the within and foregoing to be a true, full, and correct copy of Motion to Strike from Amended Answer of Treleaven, Rec., in the suit of John M. Landon, Receiver of the Kansas Natural Gas Company *vs.* The Public Utilities Commission of the State of Kansas *et al.*, Case No. 136-N, in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka in said District of Kansas, this 7th day of April, 1919.

F. L. CAMPBELL,

*Clerk.*

[SEAL.]

By C. B. WHITE,

*Clerk.*

**"EXHIBIT B."**

Be it remembered, that at a term of the District Court of the United States of America for the District of Kansas, begun and held at the City of Kansas City, in said District, on Monday, the 8th day of January, 1917, the following proceedings, among others, were had, and appear of record in words and figures as follows:

FRIDAY, February 9, 1917.

Before Hon. Wilbur F. Booth, Judge.

No. 136-N.

JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, COMPLAINANT,

*vs.*

THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF KANSAS ET AL., DEFENDANTS.

Now on this 9th day of February, 1917, come the parties hereto same as on yesterday. Thereupon comes on for

hearing the motion of the Public Utilities Commission of the State of Kansas to strike certain portions from the amended and supplemental answer of L. G. Treleven, Receiver of the Consumers Light, Heat & Power Company, and thereupon said motion was presented and argued on behalf of the Public Utilities Commission by H. O. Caster and F. S. Jackson, its solicitors, and by T. F. Doran, attorney for said receiver, and Chester I. Long, on behalf of the complainant herein. Thereupon the court having heard the arguments of counsel and being well advised in the premises finds that said motion to strike should be and the same is hereby overruled; the Public Utilities Commission of the State of Kansas through its solicitors excepting thereto; and the hour of adjournment having arrived and the hearing of said case not being concluded, the further hearing of said case is postponed until Monday morning, February 12th, at ten o'clock a. m.

UNITED STATES OF AMERICA,  
*District of Kansas, ss:*

I, F. L. Campbell, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be a true, full, and correct copy of order overruling motion to strike out parts of the amended and supplemental answer of L. G. Treleven, Receiver, in the suit of John M. Landon, as Receiver of the Kansas Natural Gas Company, *vs.* The Public Utilities Commission of the State of Kansas *et al.*, Case No. 136-N, in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka in said District of Kansas, this 10th day of April, 1919.

F. L. CAMPBELL,  
*Clerk,*

[SEAL.]

By C. B. WHITE,  
*Deputy Clerk.*

IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1918

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Nos. 26160, 26283, 26284, 26323

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No. 277

THE PUBLIC UTILITIES COMMISSION FOR THE STATE  
OF KANSAS et al., Appellants,

v.

JOHN M. LANDON as Receiver of the Kansas Natural Gas Company et al.

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No. 329

KANSAS CITY MISSOURI; THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI et al., Appellants,

v.

JOHN M. LANDON, Receiver of the Kansas Natural Gas Company et al.

---

No. 230

KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY  
GAS COMPANY et al., Appellants,

v.

KANSAS NATURAL GAS COMPANY, JOHN M. LANDON and  
GEORGE F. SHARITT, Receivers, and FIDELITY TITLE  
AND TRUST COMPANY.

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No. 353

THE PUBLIC UTILITIES COMMISSION OF THE STATE  
OF KANSAS et al., Appellants,

v.

JOHN M. LANDON as Receiver of the Kansas Natural Gas Company et al.

---

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS.

**Petition of Johnson County Gas Company, Gardner Gas Company, Edgerton Gas Company, Wellsville Gas Company, Anderson County Light & Heat Company, Richmond & Princeton Gas Company, Baldwin Gas Company, Kansas Farmers Gas Company, Ottawa Gas & Electric Company, Weston Gas and Light Company and Weir Gas Company, Appellees, Distributing Companies, for Rehearing and for Leave to File Supplemental Bills in the Nature of Bills of Review, or Bills to Suspend or Avoid the Operation of the Decree as to These Parties, or to Direct the Court Below to Construe the Decree to Protect the Rights of These Parties, and Brief and Argument in Support of the Same.**

*To the Honorable Justices of the Supreme Court of the United States:*

Now come the Johnson County Gas Company, a Kansas Corporation, the Gardner Gas Company, a Kansas Corporation, the Edgerton Gas Company, a Kansas Corporation, Wellsville Gas Company, a Kansas Corporation, Anderson County Light & Heat Company, a Kansas Corporation, the Baldwin Gas Company, a Kansas Corporation, the Kansas Farmers Gas Company, a Kansas Corporation, the Weston Gas & Light Company, a Missouri Corporation, and the Weir Gas Company, a Kansas Corporation, appellees in the above entitled causes, and show to the court:

That these appellees, are each of them distributing companies, each of them severally own and operate a gas distributing plant, wholly or principally within one city or town in the State of Kansas, except the Weston Gas Company, which owns and operates a gas distributing plant in the town of Weston, Missouri.

That under the commission laws of the State of Kansas Sec. 38, Chap. 238, Session Laws of Kansas, 1911, set out at page 20 of the record, under which law, the Public

Utilities Commission of the State of Kansas is vested with power to fix rates said Commission has no jurisdiction over public utility companies operating wholly or principally within one city or town.

That appellees, distributing companies, operated each severally, wholly within one city or town, under franchises granted by the several cities and towns which they served, in which they were located and thus not under the jurisdiction of the Kansas Commission.

That they received their gas from the Kansas Natural Gas Company and its receivers, and transported the same through their lines and delivered the same to their consumers at the burner tips. All the transactions between the Kansas Natural Gas Company and its receivers and these appellees, distributing companies, were conducted under and pursuant, and in accordance with the terms of the supply contracts shown in the record, by the terms of which these appellees, distributing companies, were to receive a portion of the gross receipts for the sale of gas.

The supreme court of Kansas (*State v. Flannelly*, 96 Kan., 372) decided that under these supply contracts the distributing companies were the agents of the Kansas Natural Gas Company and its receivers, and not vendees or purchasers of gas received from the Kansas Natural Gas Company and its receivers.

The Public Utilities Commission of Kansas did not have and did not claim to have any jurisdiction over these appellees, in the matter of fixing rates under the public utility law, because they operated wholly or principally within one city, but did assert and exercise jurisdiction over these appellees, by claiming in accordance with the decision of the Kansas supreme court that these appellees, distributing companies, were the mere agents of the Kansas Natural Gas

Company and its receivers, and therefore it, the Public Utility Commission, possessed jurisdiction over the Kansas Natural Gas Company and its agents (these distributing companies) to fix rates and did fix rates for gas below the franchise or contract rate authorized by the franchises in the cities and towns in which these appellees, distributing companies, operated.

Had it been known and decreed, as this court now holds that these appellees, and other distributing companies, were not agents of the Kansas Natural Gas Company and its receivers, but were the vendees and purchasers of the gas, then these distributing companies would have had the right to charge the franchise rate in the various cities and towns supplied by them and in case such rates were unreasonably low and confiscatory, to apply to the Public Utilities Commission for an increase in said rates, and in case of their failure to grant such rates, these appellees, distributing companies, would have had their remedy in a court of competent jurisdiction, to enjoin confiscatory rates.

Since the appointment of the receivers and in all the litigation that has followed, the power and responsibility to make rates not only for itself but for the distributing companies, has been asserted by the Kansas Natural Gas Company and its receivers and the Public Utilities Commission of Kansas has based its jurisdiction to fix rates as affecting the distributing companies, on the fact solely that the distributing companies were the mere agents of the Kansas Natural Gas Company and its receivers, and had no independent right to make their own rates or to litigate their claim. By the order of the commission fixing the rate litigated in this case, the commission ordered the Kansas Natural Gas Company and its receivers to put into effect

the rate made by the Commission and ordered the distributing companies not to charge in excess of the rate put in force by the Kansas Natural Gas Company and its receivers. Not only has the Kansas Public Utilities Commission based its jurisdiction and power to fix the rates in question on the fact that under the supply contracts the distributing companies were the agents of the Kansas Natural Gas Company and its receivers, but counsel for the Public Utilities Commission in this case from its inception and in this court, have assumed and actively asserted such to be the fact.

(See Brief of Appellant, P. U. C., p. 6) stated in the following words:

"The gas sold in Kansas is delivered to the consumer thereof in the several cities by distributing companies operating under franchises obtained by the distributing companies from the cities fixing the rates charged consumers for gas. These distributing companies act as agents for the Kansas Natural Gas Company in the distribution and sale of gas. The price received for gas is divided between the distributing companies and the receivers on a percentage basis. The gas is not sold by the receivers to the distributing companies. It is delivered from the pipe lines of the Kansas Natural Gas Company, under the control of the receivers, into pipe lines of the distributing companies, and is through these pipe lines conveyed from the pipe lines of the Kansas Natural Gas Company to the consumers."

When the present litigation was begun and the injunction issued against the Public Utilities Commission of Kansas restraining the enforcement of the rate put in effect by it, these appellees were made defendants in that suit and were enjoined from putting into effect the rate fixed by the commission, or any rate other than the rate fixed by the



Kansas Natural Gas Company and its receivers, and have remained subject to the injunction and compelled to obey its mandate from the date of its issuance to this date. Such injunction provided, among other things as follows:

"That because the rates above specified are non-compensatory, unreasonably low and confiscatory the \* \* \* Commission \* \* \* and *all the other parties to this suit* interested in such rates, \* \* \* be and they are hereby, enjoined and prohibited \* \* \* from putting or maintaining in effect \* \* \* any of said rates \* \* \* (Rec., 296). That the decree against the Kansas defendants permanently enjoins your petitioners from putting and maintaining in effect said rates. Sixth: That the Public Utilities Commission of the State of Kansas \* \* \* and *all other parties to this suit* \* \* \* are hereby permanently enjoined and prohibited from putting into force or maintaining in effect, \* \* \* the rates prescribed by the Commission's order of December 10, 1915, or the rates in force January 1, 1911, prescribed by Sec. 30 Chapt. 238 of the Laws of Kansas, 1911, or any other rates hereafter prescribed by said Commission \* \* \* (Rec., 603). The decree against the Missouri defendants likewise enjoins your petitioners from putting or maintaining in effect the existing rates. Seventh: \* \* \* and the defendant distributing companies are permanently enjoined from \* \* \* interfering with plaintiff in establishing and maintaining such rates as this court has approved or may hereafter approve for consumers of natural gas in Kansas and Missouri" (Rec., 625).

These appellees appeared and filed answer in the lower court admitting that the rates ordered by the Kansas Commission, on December 10, 1915, and the rates in force on January 1, 1911, were unreasonably low and confiscatory as to them and asked that said rates as to them be adjudged unreasonably low and confiscatory.

In the trial of this cause in the court below appellees appeared and asked permission to submit testimony in their own behalf to the effect that as to them the rate ordered by the Kansas Public Utilities Commission in question, and the rate fixed and maintained in force and effect by the franchises and ordinances of the respective cities, and by the Public Utilities Act of Kansas, were at the time of the commencement of this suit, and at the time of the trial unreasonably low and confiscatory, and denied these appellees, distributing companies, due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. This the court below refused.

These appellees, distributing companies, were denied the right of due process of law upon the mistaken theory that the Kansas Natural Gas Company and its receivers were the principal or real parties in interest and entitled to prosecute said suit below against said confiscatory rates, and that these distributing companies were the mere agents and instrumentalities of said receivers in the distribution and sale of gas to the ultimate consumers.

The Kansas Utilities Commission and its counsel, and other appellants and their counsel based their contention on the decision of the Supreme Court of the State of Kansas, and of the Kansas Utilities Commission, that these appellees, distributing companies, were the mere agents of the Kansas Natural Gas Company and persuaded the court below to so hold.

The Kansas Natural Gas Company and its receivers being the sole complainants, the Public Utilities Commission of Kansas and its counsel contended that the appellees, distributing companies, were the mere agents of the Kansas Natural Gas Company and its receivers and that the Kansas Commission possessed jurisdiction over them to fix

rates, and because of that fact persuaded the trial court below to determine that these appellees, distributing companies, were the agents of the Kansas Natural Gas Company and its receivers under said supply contracts, and therefore had no control over the litigation against rates fixed by the Kansas Public Utilities Commission and by the Kansas Natural Gas Company and its receivers, and were denied the right to try the confiscatory character of said rates as to said appellees; and were denied the right to try the issue as to whether the interest which the appellees, distributing companies, had in the gross receipts, were unreasonably low and confiscatory.

The only issue the appellees, distributing companies, were permitted to submit evidence on in the court below was whether there was any reasonable grounds for holding that the receivers could obtain more than two-thirds of the 28c rate, which was the proportion of the gross receipts to which the receiver was entitled under the supply contracts.

In the opinion (Rec., 563) rendered by the court below it said (Rec., 578): "Considerable evidence was introduced touching the financial status of the various distributing companies, the valuation of their plants, the character and extent of their business, their operating expenses and other allied matters. This evidence was introduced, not for the purpose of ascertaining with any accuracy what would be a just and fair rate to be charged by the various distributing companies, but solely for the purpose of ascertaining whether there was any reasonable grounds for holding that the Receiver could obtain more than two-thirds of the 28 cent joint rate."

In the original bill filed by the complainants in the court below it was alleged that the supply contracts were unreasonable and confiscatory as to the receivers and not bind-

ing on them. Appellees, distributing companies also sought to contest that issue in the court below but no hearing or evidence was permitted thereon, the contention being that the receivers had the right to approve or disapprove the supply contracts entered into by the Kansas Natural Gas Company, prior to the receivership, and that up to the time of the trial in the court below the receiver had not approved such supply contracts.

The final decree in the court below provided among other things:

“Nothing contained in this decree nor in the opinion on which it is based shall be construed as determining the status of the distributing companies, in Kansas or Missouri” (Rec., 604).

Thus it appears that the issue of the validity of the contracts was not tried in the court below and the decree left this issue open for adjudication by the court below on a hearing of further testimony.

By virtue of the permanent injunction upon the final hearing in the court below these appellees, distributing companies, were permanently enjoined from putting into effect the then existing rates and were compelled and ordered to put into effect the rate fixed by the receiver, and henceforth from that time to the present these appellees, distributing companies, were powerless to go to the Commission and obtain new rates and were bound by said injunction to put into effect the rates promulgated by the receiver and approved by the court below, and in conformity therewith these appellees, distributing companies, put into effect the rates promulgated and ordered by the receivers and approved by the court below, as they were legally bound to do.

An appeal was taken from the decree of the court below by the Public Utilities Commissions of Kansas and Mis-

souri and by the Attorney Generals of said states to this court.

No appeal, we believe, was taken from the decision of the court below by the cities or towns served by the appellees, distributing companies.

In the preparation of the record and submission of the cause in this court therefore, none of the pleadings or evidence submitted or attempted to be submitted by these appellees, distributing companies, in the court below was presented; and none of the issues tried or triable by these appellees, distributing companies, as between themselves and the respective cities and towns which they served, or between themselves and the Kansas Natural Gas Company and its receivers, either affecting the unreasonable or confiscatory character of the rate or the validity of the supply contracts, nor any of the issues between the distributing companies and the Public Utilities Commission of Kansas on the question of the confiscatory character of the rate, affecting such appellees, distributing companies, was submitted to this court on appeal.

It results from these facts that by reason of the contention of the Public Utilities Commission of Kansas, and the decision of the Supreme Court of Kansas that these appellees, distributing companies, were under the supply contracts, the mere agents of the Kansas Natural Gas Company and its receivers, and the decision of the court below affirming such contention, that these appellees, distributing companies, have never had an opportunity to apply for or secure rates in their own behalf before the Public Utilities Commissions of Kansas and Missouri and have never had an opportunity since this litigation was commenced to try the issues as to whether the rates in force as to them were unreasonably low and confiscatory, or whether the franchise

rates in the respective cities and towns in which they operated were unreasonably low and confiscatory, and whether the interest which these appellees, distributing companies, had in the gross receipts from the sale of gas under the supply contracts, was unreasonably low and confiscatory.

Notwithstanding these facts since the rendition of the opinion by this Honorable Court, reversing the decree of the lower court, and in effect dissolving the injunction granted by the lower court in favor of the Kansas Natural Gas Company and its receivers, these appellees, distributing companies, are threatened with demands for a rebate of money collected by them pursuant to and in conformity with the injunction issued by the lower court against them under which they were compelled to transact their business. Such rebate, if collected would surely bankrupt all of the appellees and leave the cities and towns they serve without gas service.

Appellees distributing companies further show the court that by reason of the opinion of this court in this case, great diversity of opinion arose between counsel for the respective parties with respect to the scope, meaning and effect of such opinion and its effect on the rights of the many parties interested in the litigation.

That thereupon upon an invitation of the court below a conference was held pursuant to a letter sent out as follows:

"My Dear Sir:

Enclosed herewith is a copy of the opinion of the Supreme Court on the appeals in the Gas Case. At the suggestion of a number of attorneys interested, an informal conference will be held April 3rd, 1919, to discuss various questions which now arise among others:

1. What further proceedings in conformity with this opinion should the court take?

2. Does the Supreme Court decision furnish any basis for a claim of refund at this time from either the Receiver or the Distributing Companies?

3. Does your client anticipate filing a petition for rehearing and if so along what lines?

4. In view of the decision, what status does your client now occupy in relation to the Receiver?

5. Is there any reason why the Receiver should not now fix a schedule of rates at the city gates?

6. In view of the decision, is not the time opportune for a full and amicable adjustment of all controversies between the parties?

A frank expression of views from all parties is desired.

In case you can not be present, a communication by letter will be appreciated.

Very truly yours,

W. F. BOOTH."

That at said conference approximately fifty solicitors were present. Practically all of them maintaining widely divergent opinions with respect to the scope, meaning and effect of said opinion.

Your petitioners further state that at said conference between the court below and counsel, the court expressed the view that upon the coming down of the mandate, the court below would, in conformity with the opinion of this court enter a final order holding and decreeing that the supply contracts existing between the Kansas Natural Gas Company and your petitioners were not binding upon the receivers at the time of the entering of the decree appealed from, and would issue a permanent injunction against your petitioners attempting to enforce said supply contracts against the Receivers or the trust estate and that the court would be powerless to entertain any application by your petitioners or accept any proofs to show whether or not said

contracts had been adopted by the Receivers by implication and by their course of business or whether or not there were legal or equitable grounds for the disavowal and rejection of said contracts at the time of entering of said decree, or at the present time.

Your petitioners respectfully show that they have ample evidence and can prove that such supply contracts were fair, reasonable and just and that said appellees constructed their plants and made large investments installing and operating their plants in order to furnish a market for the gas supply of the Kansas Natural Gas Company in reliance upon said supply contracts, and that to cancel said contracts without permitting the appellees to have an opportunity of having such issues fairly tried and determined in a court of competent jurisdiction, would be denying to appellees, distributing companies, due process of law, and would result in irreparable loss and injustice to them.

Your petitioners further respectfully show to the court that if given an opportunity to try said issues before a court of competent jurisdiction they have ample evidence to prove that as to them the rates which were effective and which were enjoined and suspended by the decree of the lower court were unreasonably low and confiscatory and denied to these appellees the rights conferred on them by the Fourteenth Amendment to the Constitution of the United States, and that they have ample evidence and will be able to show that the proportion of the rates then in force and enjoined by the injunction which they received, being one-third of the gross receipts thereof under said supply contracts was as to them unreasonably low and confiscatory and denied to them the rights conferred on them by the Fourteenth Amendment to the Constitution of the United States.

Your petitioners further respectfully show to the Court that they have ample evidence and will be able to prove



in any court of competent jurisdiction that the rates that were put into effect under and pursuant to the injunction issued by the lower court under the orders and directions of the receivers of the Kansas Natural Gas Company, were fair, reasonable and just and that if appellees are required to refund any portion thereof, their property will be confiscated and they will be denied the equal protection of the law and due process of law, to which they are entitled under the Constitution of the United States.

Wherefore, the premises considered your petitioners pray this Honorable Court:

1. To grant a rehearing in this cause.

2. To issue its mandate to the court below specifically directing said court to continue in force and effect as to these appellees, distributing companies, those parts of its decree ordering and commanding appellees to put into force and effect the rates fixed by the receivers of the Kansas Natural Gas Company and approved by the court below, and prohibiting appellees from putting in effect during the continuance of such injunction any other or different rate or rates than those ordered put into effect by the receiver of the Kansas Natural Gas Company and approved by the court below, and specifically directing said court below to reverse that part of its decree holding that said supply contracts were not binding on the receivers, and specifically directing the court below to permit appellees to submit in said court in said cause, pleadings and proof on the issue of whether the rates put in force by the Kansas Public Utilities Commission which were enjoined in this cause were as to appellees unreasonably low and confiscatory, and the issue of whether the percentage of the gross receipts under said rates, collectible by appellees under said supply contracts were unreasonably low and confiscatory.

3. Or in lieu thereof that this court grant leave to your petitioners, these appellees, to file in the court below bills or supplemental bills in the nature of bills of review to suspend and avoid the operation of the decree of this court as to these appellees together with the right to offer testimony in the court below in support of the same. Said bills or supplemental bills in the nature of bills of review to present to the court below issues stated above as to whether the rates put into effect by the Kansas Utilities Commission and which were enjoined in this cause by the lower court were as to these petitioners and appellees unreasonably low and confiscatory, and whether the rates put into effect by the receivers of the Kansas Natural Gas Company under and pursuant to the injunction issued by the court below was as to these appellees unreasonably low and confiscatory, and whether the percentage of the gross receipts received by these appellees under said supply contracts was unreasonably low and confiscatory, and also the issue as to whether the said supply contracts were valid and binding on the receiver of the Kansas Natural Gas Company and specifically direct and authorize the court below on said pleadings or other proper pleadings and proof to hear, try and determine said issues.

CHAS. A. LOOMIS,

*Solicitor for Petitioners and Appellees.*

State of Missouri, County of Jackson, ss.

I hereby affirm that in my opinion the foregoing petition is well founded in fact, and in law and is not made for delay.

CHAS. A. LOOMIS,

*Solicitor for Petitioners and Appellees.*





**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1918.**

**Nos. 277, 328, 330, 353.**

**277.**

**THE PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS ET AL., APPELLANTS,**

**vs.**

**JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.**

**328.**

**KANSAS CITY, MISSOURI, THE PUBLIC SERVICE  
COMMISSION OF THE STATE OF MISSOURI,  
ET AL., APPELLANTS,**

**vs.**

**JOHN M. LANDON, RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.**

**330.**

**KANSAS CITY GAS COMPANY, THE WYANDOTTE  
COUNTY GAS COMPANY, ET AL., APPELLANTS,**

**vs.**

**KANSAS NATURAL GAS COMPANY, JOHN M. LANDON  
AND GEORGE F. SHARITT, RECEIVERS, AND FIDELITY  
TITLE AND TRUST COMPANY.**

**353.**

**THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF KANSAS ET AL., APPELLANTS,**

**vs.**

**JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY, ET AL.**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS,**

**PETITION FOR MODIFICATION OF OPINION OF  
SUPREME COURT, OR FOR REHEARING, BY THE  
LEAVENWORTH LIGHT, HEAT AND POWER COM-  
PANY, OF LEAVENWORTH, KANSAS.**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1918.**

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**Nos. 277, 329, 330, 353.**

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**277.**

THE PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS, ET AL., APPELLANTS,

vs.

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KANSAS CITY, MISSOURI; THE PUBLIC SERVICE  
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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS.

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**PETITION FOR MODIFICATION OF OPINION OF  
SUPREME COURT, OR FOR REHEARING, BY THE  
LEAVENWORTH LIGHT, HEAT AND POWER COM-  
PANY, OF LEAVENWORTH, KANSAS.**

---

*If the Court please:*

Now comes the Leavenworth Light, Heat and Power Company, of Leavenworth, Kansas, by Floyd E. Harper, its solicitor, and respectfully asks this honorable court for a modification of its opinion, or for rehearing in the above-entitled cause.

We have carefully examined the opinion filed herein, and we believe that the rights and interests of this petitioner imperatively require the filing of this petition, to the end that full determination of the issues affecting the property of this petitioner be adjudicated.

We respectfully submit that it is apparent from the opinion filed herein, announced by this honorable court under date of March 17, 1919, that certain issues, rights and remedies vital to the interests of this petitioner are not determined. Possibly we have been unfortunate in not fairly

and fully presenting to this court the interests of this petitioner as affected by the decree of the district court. However, a reference to the brief filed on behalf of this petitioner in this court jointly with the Topeka and Atchison companies, will disclose that a sincere effort was made to present these matters (the facts as to the Topeka company being typical of those covering this company and the Atchison company), and this petitioner refers to the petition for rehearing filed by the receiver of the Topeka company for a full and detailed statement of the facts upon which the decree of the lower court in favor of the distributing company is founded. We believe that in the opinion filed it is evident that certain material elements, issues and important rights involved in this cause and of vital concern to this petitioner have been misapprehended and overlooked.

It is possible we do not correctly construe the language of the opinion filed herein. We note the statement of the ultimate conclusion of the opinion in the following language:

"Our conclusion concerning relationship between the receivers and local companies renders it unnecessary to discuss the effect of rates prescribed for the latter. The receivers were in no position to complain of them."

This language, as applied to the original bill, is, of course, entirely clear.

However, we respectfully submit that, if it is to be construed as in any way affecting the provisions of the decree of the district court on the cross-bills, it places this petitioner in a most embarrassing and unfortunate position.

In view of the fact that the Public Utilities Commission for the State of Kansas is claiming that the effect of the opinion filed by this court is to be construed as a complete reversal of the relief granted by the district court under the cross-bills, as well as that granted under the original bill, the disastrous consequences which would follow to the property

of this petitioner becomes obvious, if the claims of the Utilities Commission be sustained in that regard.

We respectfully submit that the opinion filed overlooks the fact that the decree of the district court was much broader than the issues framed upon the original bill filed by the receiver of the pipe-line company.

The suit in the district court was begun by the filing of the original bill by the receiver of the Kansas Natural Gas Company; it is clear from the opinion that the decree rendered by the district court upon the issues of the original bill is reversed.

However, in addition to the decree upon the original bill, the district court also in its decree granted certain relief of most vital importance upon the cross-bills filed in this proceeding.

We are contending that the opinion filed by this court in no manner reverses the findings of the decree of the district court upon the cross-bills in this cause. If that be true, and the claims of the Kansas Public Utilities Commission in that respect be unfounded, we respectfully pray that this court modify the opinion filed, by declaring in clear and unmistakable language, that conclusion.

However, if the construction sought to be placed upon the opinion by the Kansas Public Utilities Commission be correct, then we respectfully submit that the following observations are in point and appropriate, as calling to the attention of this court certain misapprehensions of the condition of the record in this case and the various issues arising thereon and presented thereby.

The following suggestions are, therefore, submitted, in view of the present claims of the Kansas Public Utilities Commission, appellant, as to the effect of the order of this court as set forth in the opinion on file:

1. Independent of whether or not the interstate character of the transportation and delivery of natural gas ceases at the connection between the pipe-line company and the city mains, yet the effect of the 28-cent order of the Kansas Com-



mission directly affects the interstate commerce conducted by the pipe-line company.

2. The order of the Public Utilities Commission of the State of Kansas, entered pursuant to the statute of that State, attempted to establish a *joint rate*, to be divided between the pipe-line company and the local distributing company, to be paid by the consumer for gas delivered to his meter.

3. The transaction involved in producing the gas in the Oklahoma field, transporting the same interstate and delivering the product to the consumer in Leavenworth has been uniformly treated, accepted and adjudicated, both by the operators of the properties and by the Kansas Utilities Commission, as a joint operation and a single transportation movement.

4. The flow of gas from the mains of the pipe-line company into the mains of the local distributing company is not measured until delivered to the ultimate consumer and measured through the meter on his premises.

5. The rate fixed by the Public Utilities Commission of the State of Kansas, and enjoined by the decree of the district court appealed from, was a rate ordered paid by the consumer upon the assumed division thereof between the pipe-line company and the local distributing company.

6. The rate of 28 cents per thousand cubic feet prescribed in the order of the Public Utilities Commission as the rate to be paid by the consumer, is less than the fair and reasonable compensation to be paid to the Kansas Natural Gas Company (the pipe-line company) for its product and service, independent of the fair compensation to the local distributing company. (See petition of Treleaven, receiver of the Topeka company, for a rehearing herein, pp. 7-8.

7. The Kansas Natural Gas Company is immediately and directly interested in the confiscatory character of the rate of 28 cents per thousand cubic feet of gas prescribed by the Kansas Public Utilities Commission, the same being less than the fair compensation to the pipe-line company alone for its

service in producing and transporting the gas to the mains of the local distributing company.

8. If the enforcement of the order of the Kansas Utilities Commission prescribing the 28-cent gas rate is not restrained by injunction, then this will limit the rate to be collected by the distributing company; the distributing company could not pay the pipe-line company more for the gas than can be collected from the consumers. Therefore the 28-cent rate order of the Commission is a direct burden upon the interstate commerce of the pipe-line company, because its enforcement would entirely destroy that commerce.

9. No errors were assigned on the record in this case against the findings and decree of the district court upon the cross-bills of the distributing companies. Therefore the opinion of this court should formally affirm the decree on the cross-bill, or should clarify the issues between the parties to the record as to the effect of the order of reversal upon the decree of the district court entered on the cross-bills.

10. The distributing companies were necessary and proper parties in this case for a full and complete determination of all the issues arising upon the record. There being no assignments of error against the decree in favor of the distributing companies, as complainants in their cross-bills, the opinion of this court should be limited in specific language to the issues raised by the original bill, and should specifically affirm the decree in favor of the distributing companies.

FLOYD E. HARPER,

*Solicitor for the Leavenworth Light, Heat,  
and Power Company of Leavenworth, Kansas.*

THOMAS F. DORAN,

*Of Counsel.*

**Certificate.**

STATE OF KANSAS,  
*Leavenworth County, ss:*

I hereby certify that in my opinion the foregoing petition  
is well founded in fact and in law, and not made for delay.

FLOYD E. HARPER,  
*Solicitor for the Leavenworth Light, Heat,  
and Power Company of Leavenworth, Kansas.*



**In the Supreme Court  
of the United States**

**OCTOBER TERM, 1918.**



**No. 277**

**THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF  
KANSAS. et al., Appellants.**

**vs.**

**JOHN M. LANDON AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY. et al.**

**No. 329**

**KANSAS CITY, MISSOURI; THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI et al. Appellants.**

**vs.**

**JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY. et al.**

**No. 330**

**KANSAS CITY GAS COMPANY, THE WYANDOTTE COUNTY  
GAS COMPANY. et al. Appellants.**

**vs.**

**KANSAS NATURAL GAS COMPANY, JOHN M. LANDON, and  
GEORGE F. SHARRITT, RECEIVERS, and FIDELITY TITLE  
AND TRUST COMPANY.**

**No. 353**

**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
KANSAS. et al. Appellants.**

**vs.**

**JOHN M. LANDON, AS RECEIVER OF THE KANSAS NATURAL  
GAS COMPANY. et al.**

**Motion of the Atchison Railway, Light and Power  
Company, Appellee, to modify the opinion and decree  
of this court by declaring that the decree of the court  
below enjoining the twenty-eight cent rate as applicable  
to the distributing companies has not been reversed, or  
permit and direct the court below to try the validity of  
the order of The Kansas Public Utilities Commission  
as it affects the distributing companies, and the other  
issues in the cause not disposed of by the opinion of  
this court, or to grant a re-hearing herein.**

**J. M. CHALLISS,**

**Attorney and Solicitor for The Atchison  
Railway, Light & Power Company.**

**W. P. WAGGENER,  
Of Counsel.**

**Appellee.**

**401 Commercial Street,  
Atchison, Kansas.**

**401 Commercial Street,  
Atchison, Kansas.**

# **In the Supreme Court of the United States.**

OCTOBER TERM, 1918.

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No. 277

THE PUBLIC UTILITIES COMMISSION FOR THE STATE OF  
KANSAS. et al., Appellants.

vs.

JOHN M. LANDON AS RECEIVER OF THE KANSAS NATURAL  
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**Motion of the Atchison Railway, Light and Power Company, Appellee, to modify the opinion and decree of this court by declaring that the decree of the court below enjoining the twenty-eight cent rate as applicable to the distributing companies has not been reversed, or permit and direct the court below to try the validity of the order of The Kansas Public Utilities Commission as it affects the distributing companies, and the other issues in the cause not disposed of by the opinion of this court, or to grant a re-hearing herein.**

Comes now The Atchison Railway, Light & Power Company, one of the appellees herein, and states that it is one of the distributing companies, engaged jointly with the receiver of The Kansas Natural Gas Company in the distribution and sale of gas in the city of Atchison, Kansas; that in litigation in the court below, it, together with the City of Atchison, and other distributing companies and cities, were parties; that when The Kansas Public Utilities Commission made its order, fixing the joint rate of twenty-eight cents for gas to be furnished by the receiver of The Kansas Natural Gas Company and the distributing companies, the said Receiver, being the producer, and being directly and vitally interested in such order, brought his action against the Public Utilities Commission of the state of Kansas and the various distributing companies and cities, for the purpose of testing the validity of such twenty-eight cent order, and enjoining its enforcement under the provisions of the statute of the State of Kansas, which provides for such a remedy.

A cross bill was filed by The Atchison Railway, Light & Power Company and other distributing companies, and upon such cross bill The Atchison Railway, Light & Power Company introduced evidence of the confiscatory character of such twenty-eight cent rate order, evidence of the valuation of its plant, used and useful in the public service, the cost of operation, and gross and net returns. A decree of the lower court was entered, finding that such twenty-eight cent rate order, was unreasonably low and confiscatory, and its enforcement was adjoined, and a joint rate of sixty cents was established by decree of the court, which the distributing companies were authorized to exact and receive from the public, and a certain portion thereof was to be returned to the receiver, and the remainder retained by the distributing companies.

The distributing companies were proper and necessary parties to the litigation. The jurisdiction of the court below was questioned, inquired into, and sustained, and upon appeal,

has been affirmed by the decree of this court. The effect of the decree of the court below was that the distributing company was prevented from charging any other or different rate for gas than that which would produce the receiver the amount of return he was found to be entitled to receive under the sixty cent order of the court. An appeal was taken from this decree by the Kansas Public Utilities Commission, but no exception was taken to that portion of the decree which found and held that the twenty-eight cent rate order was confiscatory of the property and business of the distributing companies.

In view of that fact, and in view of the further fact that the opinion of this court does not touch upon the question as to the effect of this twenty-eight cent rate upon the property of the distributing companies, much doubt and speculation has arisen in the minds of counsel representing the various parties as to the exact meaning of the opinion of this court, and as to what effect it will have upon the portions of the decree of the lower court which were not the subject of review in the appeal, and have not been touched upon in the opinion.

The decree as to this appellee found that the twenty-eight cent rate was confiscatory generally, and then permanently enjoined this twenty-eight cent rate as to the distributing companies, as well as to the receiver. (Vide par. "2" and "5" Records, page 602).

There were no assignments of error lodged against this portion of the decree. There is included in the transcript, no evidence on this subject, and no discussion of the matter in appellant's brief. Under these circumstances, we respectfully submit this court should not direct a dissolution of the injunction in favor of the distributing companies when the question has not been brought upon the record, nor submitted to the court, and yet a general reversal with directions to proceed in accordance with the opinion, if construed as contended for by the Commission, will result in a reversal of all that has been done in the past, which alone has protected the property of these distributing companies from confiscation.



True it is, that Judge Booth in his opinion generally states that considerable evidence of valuation and cost of operation of the distributing plants was received, for the purpose of determining whether the receiver could secure any greater proportion of the twenty-eight cent rate. The distributing companies had their cross bills and were challenging the validity of the twenty-eight cent rate as to them. The matter went before the court on proper pleading. Evidence was tendered; injunction was granted. The matter has thus been heard and determined, and stands unreversed, on account of no appeal having been taken therefrom, this is the situation or the distributing companies have not had their day in court.

It was intimated by the court below in informal conference that it is its duty to set aside injunction in toto under the mandate and the opinion. Even so, the parties are still in court. The court has jurisdiction over them, and the subject-matter, and if all that has been done is to be undone, there should be affirmative direction to the court below to proceed, after a re-framing of the issues, if necessary, to hear, try and determine the effect of the twenty-eight cent rate order upon the distributing companies, their property and business.

Under the present arrangement, the distributing companies are the sole market for the receiver of The Kansas Natural Gas Company, and if the effect of the twenty-eight cent rate is to bankrupt the distributing companies and confiscate their property, it thus becomes a direct, tangible and disastrous burden upon the Interstate Commerce in which the Receiver is engaged.

The court in its opinion has held that the receiver is not interested in the rates which are to be received by the distributing companies, as he cannot be compelled to receive an unremunerative rate. But as a practical question, we respectfully submit that the Receiver is vitally interested in seeing that the distributing companies secure from the public a rate not only

sufficiently remunerative to justify them in continuing business, but also sufficiently remunerative to enable him to carry on the Interstate Commerce in which he is engaged. A commission-made rate which will destroy the receiver's market, will absolutely destroy the receiver's business.

We respectfully submit that the opinion filed herein by this court overlooks the fact that the decree of the court below was more comprehensive than the issues framed upon the original bill filed by the Receiver of The Kansas Natural Gas Company, but included the entire business as a whole, and granted relief upon cross bills which were filed by the distributing companies, and afforded relief of vital importance to them.

We respectfully submit that the opinion filed by this court does not reverse the finding and decree of the lower court upon these cross bills. If that is a fact, then the claims of the Kansas Public Utilities Commission in that respect are without merit, and an indication by this court in a modification of its opinion or decree to that effect will preserve to these distributing companies that which a judicial determination has ascertained to be their due, and will tend to shorten litigation which has been much protracted.

If, however, the construction of the opinion which is contended for by the Kansas Public Utilities Commission be correct, then we respectfully submit that the following observations are in point and appropriate, after calling to the attention of this court certain misapprehensions of the condition of the record in this case, and the various issues arising therefrom and presented thereby:

1st: The twenty-eight cent rate order of the Kansas Public Utilities Commission directly affects and controls the Interstate Commerce conducted by the receiver of The Kansas Natural Gas Company, irrespective of whether or not the interstate character of his business ceases at the city gates or the burner tips. The Receiver cannot secure for his product more than the distributor can receive from the public, and a rate

order which applies to the local distributor only will directly affect interstate commerce, if the rate order will not permit the distributor to secure the product.

2nd: The order of the Kansas Public Utilities Commission, which was enjoined in the lower court, attempted to establish a *joint* rate to be divided between the producer and the distributor, and which was to be paid and collected from the consumer for gas passing through his meter. The injunction as to the receiver's portion of this rate has been dissolved. The injunction in favor of the distributing companies' portion of this rate stands, or is dissolved, as this court is now asked to determine. The attitude of the Kansas Utilities Commission, the receiver of The Kansas Natural Gas Company, and the distributing companies has always been that the production of gas in Oklahoma and its distribution in Kansas and Missouri was a joint operation, and one continuous transporting movement from the gas well to the burner tip. The gas which leaves the well in Oklahoma is never measured, so far as the public is concerned, until delivered to the ultimate consumer and measured through his meter.

3rd: The rate fixed by the Public Utilities Commission of the State of Kansas and enjoined by decree of the court below, and appealed from, was a gross joint rate ordered paid by the consumer for the joint benefit of the receiver of the Kansas Natural Gas Company and the distributing companies. In this gross joint rate, the receiver was vitally interested, as well as the distributing companies.

4th. Irrespective of the findings of the lower court as to the interstate or intrastate character of the business conducted by the receiver and distributing companies, it is apparent from the record in this case and the evidence and the decree of the court below, that the rate of twenty-eight cents per thousand cubic feet prescribed in the order of the Public Utilities Commission to be paid by the ultimate consumer, is less than the fair and reasonable compensation to be paid to the receiver of

The Kansas Natural Gas Company, the carrier, for its product and service, outside of and beyond the fair compensation to which the local distributing company is entitled.

5th: The Kansas Natural Gas Company or its receiver, which this court has held is engaged in interstate commerce, is immediately and directly interested in the confiscatory character of the twenty-eight cent rate, made by The Kansas Public Utilities Commission, the same being less than the fair compensation of the pipe line company alone for the service it performs in producing and transporting the gas from Oklahoma across the State of Kansas and to the distributing companies.

6th: If the enforcement of the order of the Kansas Public Utilities Commission, prescribing the twenty-eight cent gas rate and which has been enjoined by the lower court, is not restrained by an affirmation of that portion of the decree of the lower court, or by new and additional restraining orders to be issued by the lower court, upon permission and direction by this court, then such twenty-eight cent rate will be in force and effect. The result will be that the distributing company cannot pay The Kansas Natural Gas Company more for the gas than can be secured from the consumer. Therefore, the twenty-eight cent rate order, even though it may be held to be binding only upon the local company, will become a direct burden upon and in fact a prohibition of the Interstate commerce of the carrier company, because the enforcement of such rate order would annihilate and destroy the market of the carrier, and he will be without customers or consumers.

7th: No errors were assigned on the record in this case against the findings and decree of the lower court upon the cross bill of your petitioner, therefore the opinion of this court should formally affirm the decree upon the cross bill in this petitioner's favor, or if it should be held that such decree should be reversed, direction and permission should go to the lower court to take up the issues joined between this local distributing company, the Utilities Commission and the Receiver,

and determine the rights, liabilities and obligations of the parties in the premises.

8th: In view of the intimate relations existing between the pipe line company and the distributing company, their method of conducting the business, the joint rate which was provided in the original distribution contracts, the joint rate which was maintained in that respect by the order of the Public Utilities Commission, and the joint rate which was recognized and covered by the decree of the lower court, and in further view of the fact that the business of the pipe line company or its receiver, and the distributing companies was carried on so far as the public is concerned as a unit, and in further view of the fact that without the distributing companies, the receiver of the pipe line company would have no market for his product, this petitioner, as well as other distributing companies similarly situated, was an indispensably necessary and proper party to the proceedings in the court below for a full and complete determination of all the issues arising upon the record, and particularly upon its cross bill.

This applicant secured a decree of the lower court in its favor and in favor of distributing companies similarly situated upon its cross bill. No assignment of error having been lodged against the decree in that respect, such decree should be affirmatively up-held by the opinion and decree of this court, to the end that the property and estate of this applicant can be protected, as in its cross bill prayed.

In the proceeding in this court this applicant did not suggest the incorporation in the record of its cross bill and the evidence it produced, nor the incorporation of evidence produced by other distributing companies similarly situated, for that from the state of the record, no appeal was attempted to be had against that portion of the decree in which this applicant was vitally interested. With the decree as it stood, it had no complaint to make, excepting as to the insufficiency of the sixty cent rate order by the lower court, which was a matter

of detail and which was subsequently corrected by application to the court, and a more compensatory rate of eighty cents was made.

In consideration of all which this applicant respectfully prays the court that it modify its opinion and the decree of this court, by affirmatively holding and stating the decree of the court below, enjoining the enforcement of the twenty-eight cent rate as against the distributing companies is affirmed, or in the event the court concludes that such would be improper, then that the lower court be permitted and directed to have the issues between the parties reframed, if necessary, and that a full hearing be had upon the original, amended or supplemental cross bills of the distributing companies, as to the confiscatory character of the twenty-eight cent rate order of the Kansas Public Utilities Commission, or that a rehearing be granted herein, and if it should be suggested that the printed record is incomplete or deficient in any respect, to enable the court to pass upon the matters suggested, then that permission be granted to supplement and perfect such record prior to such re-hearing, all of which is respectfully suggested and submitted to the end that the property, business and estate of this applicant shall not be destroyed and confiscated by the enforcement of the order of the Public Utilities Commission of the State of Kansas, which has heretofore been enjoined.

Respectfully submitted,

J. M. CHALLISS,

Attorney and Solicitor for The Atchison  
Railway, Light & Power Company,  
Appellee.

W. P. WAGGENER,  
Of Counsel.

#### CERTIFICATE OF COUNSEL.

I, the undersigned, as counsel for The Atchison Railway, Light & Power Company, appellee, in the above entitled cause,

hereby certify to this Honorable Court, that in my judgment the within petition for a modification of the opinion and decree of this court, or for a re-hearing, is well founded in fact and law, and that the same is not interposed for delay.

J. M. CHALLISS,

Solicitor for The Atchison Railway,  
Light & Power Company, Appellee.





PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS ET AL. *v.* LANDON, RE-  
CEIVER OF THE KANSAS NATURAL GAS COM-  
PANY, ET AL.

KANSAS CITY, MISSOURI, ET AL. *v.* LANDON,  
RECEIVER OF THE KANSAS NATURAL GAS  
COMPANY, ET AL.

KANSAS CITY GAS COMPANY ET AL. *v.* KANSAS  
NATURAL GAS COMPANY ET AL.

PUBLIC UTILITIES COMMISSION FOR THE  
STATE OF KANSAS ET AL. *v.* LANDON, RE-  
CEIVER OF THE KANSAS NATURAL GAS COM-  
PANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS.

Nos. 277, 329, 330, 353. Argued November 6, 1918.—Decided  
March 17, 1919.

The District Court, having extended its receivership under Jud. Code, § 56, over the entire business and property of a company engaged in interstate transportation and sale of gas in several States of the circuit, has jurisdiction of a dependent bill brought by the receivers to enjoin officials of those States from imposing rates alleged to be confiscatory, and burdensome to the interstate business. P. 244. See 234 Fed. Rep. 152, 155.

Interstate commerce is a practical conception, and what falls within it must be determined upon considerations of established facts and known commercial methods. P. 245.

While the piping of natural gas from State to State, and its sale and delivery to independent local gas companies, is interstate commerce, the retailing of the gas by the local companies to their consumers is intrastate commerce and is not a continuation of such interstate commerce, even though their mains are connected per-

manently with those of their vendor and their vendor's agreed compensation is a definite proportion of their gross receipts. *Id.*

In such case, regulation of the rates chargeable by the local companies has but an indirect effect upon the interstate business of the transporting and selling company; at least when the latter is in the hands of receivers who have not accepted or become bound by the contracts with the former; and such receivers, not being obliged to accept unremunerative prices, have no ground to complain that rates fixed for the local companies are confiscatory, or are burdensome to the interstate business, even though that business consists exclusively in selling the gas to such local companies. P. 246.

234 Fed. Rep. 152; 242 Fed. Rep. 658; 245 Fed. Rep. 950, reversed.

THE case is stated in the opinion. (See also, *post*, 591.)

Mr. F. S. Jackson for Public Utilities Commission for the State of Kansas *et al.*

Mr. Robert Stone and Mr. Chester I. Long, with whom Mr. John H. Atwood, Mr. George T. McDermott, Mr. Austin M. Cowan, Mr. R. A. Brown, Mr. T. S. Salathiel and Mr. John J. Jones were on the briefs, for Landon, Receiver; Kansas Natural Gas Co.; and Sharitt, Receiver: <sup>1</sup>

That the court below had jurisdiction over the Kansas and Missouri defendants because of the ancillary and dependent character of the suit, see 234 Fed. Rep. 154; *Phoenix Ry. Co. v. Geary*, 239 U. S. 277; *Krippendorf v. Hyde*, 110 U. S. 276; *White v. Ewing*, 159 U. S. 36.

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<sup>1</sup> For the cases involving this controversy in various phases, see: *McKinney v. Kansas Natural Gas Co.*, 206 Fed. Rep. 772; *McKinney v. Landon*, 209 Fed. Rep. 300; *Kansas City Pipe Line Co. v. Fidelity Title & Trust Co.*, 217 Fed. Rep. 187; *Fidelity Title & Trust Co. v. Kansas Natural Gas Co.*, 219 Fed. Rep. 614; *State v. Flannelly*, 96 Kansas, 372; s. c., 96 Kansas, 833; *Landon v. Public Utilities Commission*, 234 Fed. Rep. 152; *State v. Litchfield*, 97 Kansas, 592; *State v. Kansas Natural Gas Co.*, 100 Kansas, 593; *State v. Gas Company*, 102 Kansas, 712; *Landon v. Public Utilities Commission*, 242 Fed. Rep. 658; *Landon v. Public Utilities Commission*, 245 Fed. Rep. 950; *St. Joseph Gas Co. v. Barker*, 243 Fed. Rep. 206.

There is no misjoinder of causes. The property is a unit, to be protected as such.

The protection of the commerce clause extends not only to the transportation of the article, but also to the sale of the article when it arrives at its destination. *Heyman v. Hays*, 236 U. S. 178; *Pipe Line Cases*, 234 U. S. 548; *Brown v. Maryland*, 12 Wheat. 419; *American Express Co. v. Iowa*, 196 U. S. 133; *Minnesota v. Barber*, 136 U. S. 313; *Schollenberger v. Pennsylvania*, 171 U. S. 1, 24. The transportation and sale of natural gas in interstate commerce is national in character. *Haskell v. Cowham*, 187 Fed. Rep. 403; 234 Fed. Rep., at p. 164; *West v. Kansas Natural Gas Co.*, 221 U. S. 229; *Haskell v. Kansas Natural Gas Co.*, 224 U. S. 217; this case, 242 Fed. Rep. 687, 689; *South Corvington Ry. Co. v. Corvington*, 235 U. S. 537; *Pipe Line Cases*, 234 U. S. 548; *Wabash &c. Ry. Co. v. Illinois*, 118 U. S. 557.

With one or two exceptions, the distributing companies do no business except to transport and distribute the natural gas transported in interstate commerce by the plaintiff receivers. Employment of these local agencies in itself would not authorize the State to regulate the interstate commerce conducted by the plaintiff receiver. *West v. Kansas Natural Gas Co.*, *supra*; *Western Union Telegraph Co. v. Foster*, 247 U. S. 105. Local incidental service at the beginning or end of the journey does not affect the interstate character. *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498; *Pennsylvania R. R. Co. v. Clark Coal Co.*, 238 U. S. 456, 465-468; *Southern Ry. Co. v. Prescott*, 240 U. S. 632; *Pennsylvania R. R. Co. v. Sonman Coal Co.*, 242 U. S. 120. The Supreme Court of Kansas, in *State v. Lannelly*, 96 Kansas, 372, and *State v. Litchfield*, 97 Kansas, 592, took the position that the distributing companies were but the agents of the receiver of the Kansas Natural Gas Company. If so, this case comes within *Crenshaw v.*

*Arkansas*, 227 U. S. 389; *Singer Sewing Machine Co. v. Brickell*, 233 U. S. 304; *Davis v. Virginia*, 236 U. S. 697; and *Stewart v. Michigan*, 232 U. S. 665; for the order for the gas is given by the consumer to the distributing company long before the gas is started in the course of transportation. When the consumer connects with the distributing company's system, he thereby asks for a supply to be furnished him at all times in the future. It is with the knowledge of the demands of these consumers, and for the purpose of supplying them, that the receiver starts his natural gas in the course of transportation from Oklahoma to Kansas.

The use of the distributing companies' systems in the distribution and sale of natural gas does not change the interstate character of the commerce. As the court below found (242 Fed. Rep. 681), the transportation does not cease until the gas is consumed. The contention that the gas is at rest, that the whole pipe line system constitutes one huge reservoir from which the gas is taken off as needed by the consumers, is not supported by the evidence and is contrary to the court's finding.

Plurality of carriers does not affect the question. *South Covington Ry. Co. v. Covington*, 235 U. S. 537.

There may be a change of ownership in transit without affecting the character of the shipment. *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S. 403. It is the purpose and intent with which a shipment is commenced that determines. *Kelley v. Rhoads*, 188 U. S. 1, 23; *Swift & Co. v. United States*, 196 U. S. 375.

The present case is much stronger than the *Swift Case*, for here the gas moves without interruption or change in ownership from the gas fields in Oklahoma to consumers in Kansas and Missouri. It is more than a recurring course of dealing. It is constant and continuous. When it is started in its course it is with the intent and purpose that it shall be delivered to consumers without interruption

in transportation. See also *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498; *Texas & New Orleans R. R. Co. v. Sabine Tram Co.*, 227 U. S. 111; *Railroad Commission of Louisiana v. Texas & Pacific Ry. Co.*, 229 U. S. 336; *Pennsylvania R. R. Co. v. Clark Coal Co.*, 238 U. S. 456; *Pennsylvania R. R. Co. v. Sonman Coal Co.*, 242 U. S. 120; *Atchison, Topeka & Santa Fe Ry. Co. v. Harold*, 241 U. S. 371; *Railroad Commission v. Worthington*, 225 U. S. 101. The distributing companies occupy the same position as connecting carriers, and the gas moves in a like manner as if a carload of coal was shipped from Oklahoma over a railroad, delivered to a terminal company at the outskirts of the city, and by the terminal company delivered to the consignee. *United States v. Terminal Association of St. Louis*, 224 U. S. 383; *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498.

Incidental storage in the pipe lines and holders does not destroy the interstate character of the movement; nor does the drawing out of the gas for consumption as the movement progresses. *Western Transit Co. v. Leslie & Co.*, 242 U. S. 448; *Western Union Telegraph Co. v. Foster*, 247 U. S. 105. The original package doctrine is applicable only to goods which have come to rest after their interstate journey and are intended to be transported no further in interstate commerce.

The mixing of intra- and interstate natural gas in the same pipe lines does not give the State authority over the mass. *State v. Stock Yards Co.*, 94 Kansas, 96, 99; *Minnesota Rate Cases*, 230 U. S. 352.

The gas in both main and service pipes belongs to the receivers and is paid for by the consumer at his meter. The receiver must bear all the loss from leakage, and gets nothing for the gas delivered if the consumer does not pay. The theory that the interstate transportation ends with a sale and delivery to the distributing company where the

latter's pipe connects with the trunk line, is fallacious, for there is no such delivery—the gas passes in freely and continuously; nor any sale—the distributor never owns the gas, and merely collects from the consumers and accounts to the receiver for his proportion (upon which the latter depends for all his expenses and profit), acting for him in a representative capacity, whether as agent or connecting carrier is immaterial.

The fixing of the price at which the gas may be sold is therefore the fixing of the rate for transportation and a direct interference with interstate commerce.

The supply contracts do not bind the receiver, because he has never adopted them; because they are void under the Federal, Kansas and Missouri Anti-Trust Acts; because of changed conditions; and because the bases of these contracts—rate provisions of the franchise ordinances—are void for want of power in the cities and have been violated and disregarded by them.

The rates fixed by the Kansas Commission are confiscatory and violate due process.

*Mr. James D. Lindsay*, with whom *Mr. Frank W. McAllister*, Attorney General of the State of Missouri, *Mr. W. G. Busby* and *Mr. A. Z. Patterson* were on the brief, for Public Service Commission of Missouri.

*Mr. A. F. Smith*, with whom *Mr. E. M. Harber*, *Mr. Benj. M. Powers*, *Mr. Ray Bond* and *Mr. Chas. L. Faust* were on the briefs, for Kansas City, Joplin and St. Joseph, Missouri.

*Mr. Charles Blood Smith* for Fidelity Title & Trust Co.

*Mr. J. W. Dana* for Kansas City Gas Co. *et al.*

*Mr. Leonard S. Ferry*, *Mr. Thomas F. Doran*, *Mr. M. F. Cosgrove*, *Mr. J. M. Challis* and *Mr. Floyd Harper* filed a brief on behalf of various distributing companies.

MR. JUSTICE McREYNOLDS delivered the opinion of the court.

These are appeals by different groups of defendants below from decrees prohibiting public commissions and officers of Kansas and Missouri, certain municipalities and many local gas distributing companies from interfering with establishment and maintenance of selling rates for gas to consumers sufficiently high to compensate receivers of the Kansas Natural Gas Company. 234 Fed. Rep. 152; 242 Fed. Rep. 658; 245 Fed. Rep. 950.

The Kansas Natural Gas Company—hereinafter, The Gas Company—a Delaware corporation, owned a system of pipe lines extending from Oklahoma and Kansas points to some forty terminal towns and cities in Kansas and Missouri and produced, purchased, transported, distributed and sold natural gas prior to October 9, 1912. During the years 1904-1908 by separate agreements it undertook to supply many local companies with gas for ultimate sale to their customers and to accept therefor a definite proportion—generally two-thirds—of the gross amounts paid by such customers. Permanent physical connections permitted gas to pass from The Gas Company's pipe lines into the several local companies' mains. The latter operated under special ordinances usually specifying the rates which customers should pay; and, except in four relatively unimportant places, the former had no local franchise permitting either distribution or sale of gas, nor did it own any interest in a defendant distributing company.

The Gas Company procured gas by drilling, purchase or otherwise in Southern Kansas and Oklahoma—six per cent. in the former—forced it through pipe lines and delivered it in the local mains at the connection points. None was obtained in Missouri. Having received gas at the connection points the several local companies dis-

tributed and sold it, collected established rates and settled with The Gas Company as agreed. Approximately forty-four per cent. of the total was thus sold to customers in Kansas and fifty-six per cent. in Missouri.

October 9, 1912, the United States District Court for Kansas appointed receivers for The Gas Company and shortly thereafter, acting under § 56, Judicial Code, extended the receivership to Missouri and Oklahoma. It is unnecessary to detail subsequent changes in respect of this receivership. The receivers took over the company's property, affairs and business and operated them under orders of the court; without specifically adopting or disavowing the supply contracts of 1904-1908 they continued to deliver gas to local distributing companies and to accept payments as originally agreed.

Available gas diminished; pipe lines to new wells became necessary; operating costs increased; and the sums received from local distributing companies were inadequate for the receivers' demands. In 1915 they petitioned the Kansas Public Utilities Commission to permit higher charges to customers by local companies. Responding the Commission authorized, December 10, 1915, what is known as the "28 Cent Schedule"—much below the rates requested.

Claiming jurisdiction over distribution and sale of gas in that State and power to fix the rates which local companies should both pay and charge therefor, the Missouri Public Service Commission suspended some proposed advanced rates to consumers and threatened to enforce further appropriate orders if found necessary. Certain local companies, notably the Kansas City Gas Company, insist that the receivers should comply with the original supply contracts between them and The Gas Company.

In December, 1915, the receivers began this proceeding against Kansas Public Utilities Commission, Missouri Public Service Commission, thirty-two local distributing



companies and forty-seven cities and towns in those States. After setting out the history of The Gas Company the bill alleged that the above-described actions by state commissions resulted in imposing upon the receivers inadequate and confiscatory rates and unduly burdened the interstate commerce which they were carrying on by transporting and selling gas; that the original supply contracts with distributing companies, although never adopted by them, were improvident, wasteful, a fraud upon creditors and no longer obligatory; that the city ordinances fixing prices to customers were unreasonable, non-compensatory and confiscatory of estate and property in the receivers' hands. They asked an appropriate injunction restraining the commissions, municipalities and distributing companies from interfering with establishment of reasonable and compensatory rates for selling gas to consumers.

The court below held the business carried on by the receivers—transportation of natural gas and its disposition and sale to consumers through the distributing companies—was interstate commerce of a national character; that the commissions' actions interfered with establishment and maintenance of reasonable sale rates and thereby burdened interstate commerce and took the receivers' property without due process of law; that the original supply contracts were not binding upon the receivers. And it accordingly enjoined the commissions, their members, the attorneys general of both States, the various municipalities and the distributing companies from interfering with establishment of such reasonable and compensatory rates as the court might approve.

We think the trial court properly overruled the objections offered to its jurisdiction and nothing need be added to the reasons which it gave. 234 Fed. Rep. 152, 155. But we cannot agree with its conclusions that local companies in distributing and selling gas to their customers

acted as mere agents, immediate representatives or instrumentalities of the receivers and as such carried on without interruption interstate commerce set in motion by them.

That the transportation of gas through pipe lines from one State to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the State. *American Express Co. v. Iowa*, 196 U. S. 133, 143; *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229; *Haskell v. Kansas Natural Gas Co.*, 224 U. S. 217.

But in no proper sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner-tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce and then disposed thereof at retail in due course of their own local business. Payment to the receivers of sums amounting to two-thirds of the product of these sales did not make them integral parts of their interstate business. In fact, they lacked authority to engage by agent or otherwise in the retail transactions carried on by the local companies. Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods. *Rearick v. Pennsylvania*, 203 U. S. 507, 512; *The Pipe Line Cases*, 234 U. S. 548, 560. The thing which the receivers actually did was to deliver supplies to local companies. Exercising franchise rights, the latter distributed and sold the commodity so obtained upon their own account and paid the receivers what amounted to two-thirds of their receipts from customers. Interstate movement ended when the gas passed into local mains. The court below erroneously

adopted the contrary view and upon it rested the conclusion that the Public Commissions were interfering with establishment of compensatory rates by the receivers in violation of their rights under the Fourteenth Amendment.

The challenged orders related directly to prices for gas at burner-tips and only indirectly to the receivers' business. They were under no compulsion to accept unremunerative prices; even the original supply contracts had not been adopted and were subject to rejection. See *Newark Natural Gas & Fuel Co. v. Newark*, 242 U. S. 405. Our conclusion concerning relationship between the receivers and local companies renders it unnecessary to discuss the effect of rates prescribed for the latter. The receivers were in no position to complain of them.

The decrees below must be reversed and the cause remanded for further proceedings in conformity with this opinion.

*Reversed and remanded.*

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